(2010) 08 PAT CK 0032

In the Patna High Court

Punjab National Bank APPELLANT

Vs

Sheovijoy Udyog and Others RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0032

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—This first appeal has been filed by the Punjab National Bank, Chapra, District Saran against that part of the judgment and decree whereby the learned court below has granted interest pendente lite and future @ 12% per annum only while decreeing the plaintiff-appellant?s money suit.

2. The plaintiff-appellant filed the aforesaid suit for realization of Rs. 1,54,034/- from the defendant-respondent No. 1, partnership firm and its partners on the ground that the defendants applied for loan which was sanctioned for Rs. 1,00,000/- on 28.2.1981 with interest @ 19.40% with quarterly rests. After trial the lower court below decreed the plaintiff-appellant?s suit and awarded interest @ 12% pendente lite and future.

3. The learned Counsel for the appellant submitted that the partnership firm is a Small Scale Industries and the loan was for the commercial purpose and, therefore, the lower court below should have granted contractual rate of interest i.e. 19.40% per annum. The learned Counsel relied upon a decision of the Hon?ble Supreme Court reported in State Bank of India Vs. Yasangi Venkateswara Rao, and submitted that the court cannot interfere the rate of interest.

4. It may be mentioned that in spite of notice nobody appeared on behalf of the respondents at the time of hearing the appeal.

5. In view of the above facts and circumstances of the case and the submissions of the learned Counsel for the appellant, the only point arises for consideration in this appeal is as to whether the Court was bound to decree the money suit with interest @ 19.40% per annum and whether the rate of interest i.e. 12% granted

by the court below is legal or not.

6. From perusal of the judgment in the case of State Bank of India (Supra) it appears that in that case the Hon?ble High Court had declared Section 21A of the Bank Regulation Act, 1949 as being ultra vires. It was challenged before the Hon?ble Supreme Court. The Hon?ble Supreme Court observed that if the parties agree that in respect of the amount advance against a mortgage compound interest will be paid, we fail to understand as to how the Court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. From the above facts, it appears that in that case the rate of interest pendente lite and future was not in dispute.

7. For the purpose of deciding the question raised by the learned Counsel for the appellant Section 34 C.P.C. is relevant, which reads as follows:

34. Interest - (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate nor exceeding six per cent. Per annum as the court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

(Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. Per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I- In this sub-section, ?nationalized bank? means corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.).

(2) Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

8. From the above provisions, it becomes clear that while decreeing the suit for payment of money the court would adjudge the principal sum on the date of the suit. The court is also called upon to adjudge interest due and payable by the defendant for the pre-suit period and interest pedente lite and future. It is well settled principles of law that the use of the word ?may? in Section 34 C.P.C. confers discretion on the court to award or not to award interest or to award

interest at such rate as it deem fit.

9. In a decision reported in Central Bank of India Vs. Ravindra and Others, the Hon?ble Supreme Court at paragraph 55 (8) has held that ?award of interest pendent elite and post decree is discretionary with the Court as it is essentially governed by Section 34 C.P.C. dehors the contract between the parties. In a given case, if the Court finds that in the principal sum adjudged on the date of the suit component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendent elite and post decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.?

10. At paragraph 58 (2), the Hon?ble Supreme Court has held that the principal sum so adjudged is ?such principal? within the meaning of Section 34 of the C.P.C. on which interest pendente lite and future i.e., post decree interest at such rate and for such period which the Court may deem fit may be awarded by the Court.

11. In a recent decision reported in (2009) 12 SCC 324 Rampur Fertiliser Limited v. Vigyan Chemicals Industries, the Hon?ble Supreme Court at paragraph 17 held as follows:

17. The quantum and rate of interest which the appellant in the present case is entitled to would be in accordance with the provisions of Section 34 of the Code and not in accordance with the provisions of the Act. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount.

12. It appears that in that case, the plaintiff filed the suit claiming initial interest @ 18%. When the Act being Interest on Delayed Payments to Small Scale and Ancillary Industrial Act, 1993 was enacted the plaintiff amended the plaint and claimed 24% interest. The suit was decreed with interest @ 18% per annum. The defendant filed appeal and the plaintiff filed cross objection claiming interest at higher rate. The first appellate court dismissed the appeal of the defendant and allowed the cross objection filed by the plaintiff and held that the plaintiff would be entitled to get interest @ 23% per annum. Thereafter the defendant filed second appeal before the High Court. The High Court modified the decree and held that the plaintiff is entitled to recover interest on decreed amount @ 18% per annum. Against the judgment of the High Court, appeal was filed before the Supreme Court. The Hon?ble Supreme Court considering Section 34 of the C.P.C. at paragraph 19, 20 and 21 held as follows:

19. It was further held in Clariant International case that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take

judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in Kaushnuma Begum v. New India Assurance Co. Ltd., H.S. Ahammed Hussain v. Irfan Ahammed and United India Insurance Co. Ltd. v. Patricia Jean Mahajan and it was observed that:

36. ...Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

20. In Assam Small Scale Industries Development Corpn. Ltd. also in terms of Section 34 of the Code, in relation to the transactions made prior to coming into force of the Act, simple interest at the rate of 9% per annum was granted taking the same to be bank rate at the relevant time.

21. Therefore, in view of the forgoing legal proposition, we hold that the High Court was not justified in granting interest at the rate of 18% per annum with monthly rests. Considering the facts and circumstances of the present case we direct that pendente lite and future interest at the rate of 9% shall be paid.

13. In view of the above settled principles of law the grant of rate of interest during the pendency of the suit and, thereafter is a discretionary jurisdiction of the Court. While ascertaining the right of interest the Court of law can take judicial notice of both inflation as also fall in bank rate of interest. Therefore, it cannot be said that the Court is bound to grant the rate of interest at which the parties agreed. In my opinion, after the suit is filed before a Court of law the rate of interest agreed or claimed becomes immaterial and, therefore, the Court has the jurisdiction to ascertain the rate of interests and in the present case, the learned court below has granted 12% interest. I find no reason to interfere this discretion exercised by the learned court below. Accordingly, in my opinion the impugned judgment and decree cannot be interfered with in this appeal.

In the result, I find no merit in this appeal and accordingly, it is dismissed. In the facts and circumstances there shall be no orders as to costs.

