
(2019) 06 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 6979 Of 2013

Rajesh Kishan Khanaj	Vs	APPELLANT
Federal Bank Limited And Ors		RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 34(2)

Citation : (2019) 06 BOM CK 0081

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Sudhir Prabhu, Vivek S. Sawant

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for hearing immediately.

2. The respondent Bank instituted the suit for recovery of the due amount against the petitioner Borrower and guarantors in the Court of Civil Judge

Senior Division, Ichalkaranji being Special Civil Suit No. 196 of 2005. The petitioner is hereinafter referred to as "the defendant no.1" and the

respondent as "the Bank". Defendants no.1 and 2 are the real brothers and defendant no.3 is their real Uncle. They all were dealing with the

business of transportation. In October, 1997, the Bank advanced term loan of Rs.1,66,000/- to the defendant no.1 to purchase a truck. Defendants

no.2 and 3 voluntarily agreed as Guarantors. A secured term loan agreement was executed by all the defendants wherein the agreed rate of interest

was 21% p.a. Letter of Guarantee executed by each Guarantor independently speaks about the agreed rate of interest as 21% p.a. Clause 3 of the

term loan agreement shows that, Bank had liberty to charge 2% penal interest if the installment remains unpaid. The promissory note also states that

agreed rate of interest was 21% p.a. The suit for recovery instituted by the Bank was decreed by the trial Court on 2nd May, 2006. The operative

order reads as under :

1. Suit is decreed with cost.

2. Defendants No.1 to 3 should jointly and severally repay the due amount of Rs.2,72,696/ (Rupees Two Lacs Seventy Two Thousand Six Hundred

Ninety Six only) along with interest as per present norms of the R.B.I. which definitely shall not exceed the agreed rate of interest.

3. Defendant should repay the due loan amount within two months. Failing which plaintiff is at liberty to recover the same on the strength of this decree.

4. Decree be drawn accordingly.

5. In the suit, the petitioner disputed the rate of interest and claimed that the agreed rate of interest was 14.5% and not 21%. The learned trial Judge

has held that, the Bank proved that agreed rate of interest was 21% p.a. with quarterly rests. Issue no.6 which is relevant for consideration in the

present petition reads as under :

Whether the plaintiff is entitled to claim future interest, if yes, at what rate ?

6. The issue is answered in the affirmative as per the present norms.

7. The Bank instituted Regular Darkhast No.21 of 2006 and claimed recovery of the following amount : Rs.2,76,696/ as per the decree,

Rs.2,90,970/ interest pendent lite i.e. from 17th January, 2002 to 11th July, 2006 (the date on which Darkhast is filed).

. In addition, the Bank has also claimed future interest from 11th July, 2006.

8. The petitioner deposited Rs.4,23,981/ during November, 1990 till 13th August, 2012. On 28th August, 2012, he filed an application and disputed the

calculations. He thus claimed that, Rs.81,170/ were deposited in excess of the agreed dues. The Executing Court rejected the said application vide

order dated 5th October, 2010. The petitioner thereafter filed another application on 8th January, 2013 and disputed the calculations on two grounds,

namely : (i) in terms of the provisions of Section 34(2) of the CPC where a decree

is silent with respect to payment of future interest from the date of the decree to the date of payment, the Court shall deemed to have refused such interest and therefore the recovery of interest, for a period post decree was not permissible.

9. He therefore requested the Executing Court to direct the Bank to disclose the rate of interest charged and recovery from the petitioner from the date of the suit to the date of the decree.

10. The learned Judge rejected the said application on the ground that, very same issue was raised in the earlier application dated 28th August, 2012 and therefore second application dated 8th January, 2013 was not maintainable.

11. The petitioner being aggrieved by the order dated 11th February, 2013 passed below Exhibit 83 has preferred this petition.

12. The issue in the petition is, whether the decree is silent with respect to payment of future interest and whether recovery of such future interest by the respondent Bank was permissible and if the answer to this issue is not affirmative, then at which rate of interest, was the Bank entitled to charge and recover. So far as the first issue is concerned, it may be stated that, in terms of the operative order passed by the trial Court, (which I have reproduced hereinabove) authorises the Bank to recover the dues with interest as per the present norms of RBI which would not exceed the agreed rate of interest.

13. Admittedly, the agreed rate of interest was 21% p.a. However the judgment and other evidence on record, shows that, interest was charged at the rate of 15% p.a. on the principal amount from the date of filing of the suit till the date of the decree. There is a letter on record issued by the Bank to the learned Civil Judge stating that interest was calculated at the rate of 15% simple interest from the date of filing of the suit i.e. 17th January, 2002 on the principal amount of Rs.2,72,696/-. Thus, the interest charged and recovered was less than contractual rate of interest. So far as the contention of the petitioner that the decree is silent in respect of payment of future interest and therefore recovery is not permissible is concerned, it is to be stated that the learned Judge has framed the issue and answered that the plaintiff is entitled to claim the future interest. The finding recorded by the learned Judge in relation to future interest has not been challenged and therefore it has attained finality. The learned Counsel for the petitioner submits

that, operative part of the order does not make reference to or says anything about future interest. I do not agree with the submissions because the

operative part of the order in Clause 2 empowers the Bank to recover the interest as per the RBI norms on the due amount of Rs.2,72,696/.

Though, the operative part of the order does not segregate the interest from the institution of the suit till the decree and future interest, it is to be

understood that once the issue is answered in affirmative in relation to the future interest in favour of the Bank, the order in Clause 2 of the judgment

is to be understood that, the Bank was entitled to recover even the future interest. I therefore hold that the decree was not silent with respect to

payment of future interest on the principal sum.

14. In so far as, the second contention is concerned, the Bank has charged and recovered interest at the rate of 15% simple interest from the date of

filing of the suit as against contractual rate of interest of 21%. It cannot be disputed that, in commercial transactions, grant of interest for period after

passing of decree at contractual rate ought to be rule and grant of interest at reduced rate, a rare exception. Here, the loan was advanced for a

commercial transaction as it is connected with trade or business of a party incurring a liability within the meaning of Explanation (ii) of Section 34,

CPC.

15. That in the case of Satish Solvant Extractsions Private Limited v. The New India Assurance Company Ltd. reported in AIR 1996 Bombay 293,

the Division Bench has held thus :

“A plain reading of the above section clearly goes to show that in a decree for payment of money, the Court has the power to grant interest

pendente lite and future interest. This power is, however, discretionary which is evident from the expression "may, in the decree, order interest

appearing in Subsection (1). The discretion is both in regard to grant of interest and the rate of interest. The exercise of this power is not dependent

upon a specific claim being made by the plaintiff for such interest. The Court has the power to grant interest pendente lite, whether claimed in the suit

or not, if it is satisfied on the facts of the case that such interest should be granted. The question is one for the discretion of the Court, which it has to

exercise judiciously having regard to the facts and circumstances of the case before it. Ordinarily interest pendente lite should be granted under

Section 34 of the CPC unless there are cogent reasons for depriving the plaintiff of the interest during trial. In other words, grant of interest should be

the rule—refusal an exception. The discretion of the Court, as earlier stated is not only in the matter of grant of interest but also as to the rate of

interest. The Court has also to fix the rate of interest. The discretion in the matter of future interest is however restricted to six per cent per annum

except in commercial transactions where under the proviso it may be allowed at the contractual rate or bank rate in relation to such transactions.—??

16. Likewise, in the case of *Syndicate Bank v. M/s. W.B. Cements Ltd. And Ors.*, AIR 1989 Delhi 107, it is held thus :

—??In commercial transactions, grant of interest for period after passing of decree at the contractual rate ought to be rule and grant of interest at

reduced rate a rare exception. The same principles should be applied for determining the very reasonable rate of pendente lite interest. The very

purpose of amendment would be lost if as a matter of rule interest is awarded at a rate not exceeding 6% per annum in commercial transactions. The

grant of interest at a rate lesser than the contractual rate as a matter of rule, will amount to giving premium to those who trade upon the money of

others. The defaulting borrower cannot be given the benefit of reduced rate of interest as a matter of rule, it will amount to giving premium to those

who trade upon the money of others. The defaulting borrower cannot be given the benefit of reduced rate of interest as a matter of rule only because

the bank had to resort to legal recourse on account of non—payment by the borrower except of course in exceptional circumstances. The existence of

exceptional or special circumstances will depend on facts and circumstances of each case. One such illustration of exceptional or special

circumstances can be where borrower made every sincere effort to pay but failed and grant of interest at contractual rate will render closure of his

unit resulting in unemployment of large number of persons. Another such illustration can be the conduct of the creditor himself which may justify the

grant of reduced rate of interest. Ultimately fact of each case will determine special or exceptional circumstances.—??

17. Thus, taking into consideration the facts of the case and the ratio laid down in the aforesaid two cited judgments, I am of the view that the Bank

has correctly charged and recovered the dues from the petitioner. That no error is committed by the learned Judge in rejecting the contention of the

petitioner judgment debtor. Thus, for the reasons stated, the petition deserves no consideration. It is accordingly dismissed.