
(2002) 07 BOM CK 0092
In the Bombay High Court
Case No : First Appeal No. 329 of 2001

Shiv Builders and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2003) 1 ALLMR 97 : (2002) 6 BomCR 742 : (2002) 4 MhLj 826 :
(2003) 1 RCR(Civil) 505

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : R.J. Varma and V.V. Bower, for the Appellant; S.M. Samudra, for the Respondent

Judgement

D.Y. Chandrachud, J.—This First Appeal is directed against a Judgment and Order dated 11th October, 2000, of the learned 4th Joint Civil Judge, Senior Division, Nagpur. By the impugned judgment and order, the suit filed by the respondent-bank for the recovery of its outstanding dues, has been decreed. The appellants are original defendant Nos. 1 to 3 to the suit. The Trial Court while decreeing the suit has directed all the 5 defendants to the suit, including the appellants, to jointly and severally pay a total amount of Rs. 6,22,133.85 along with future interest @ 16.5% p.a. from the date of suit until payment. While referring to the date of institution of the suit in clause 2 of the operative order, the learned Trial Judge has referred to the date as 27th February, 1995. Both the learned counsel are agreed that this is an inadvertent typographical error and the correct date from which interest would have to be paid, as the date of institution of the suit is 27th February, 1998. The learned Trial Judge has also granted monthly installments of Rs. 5,000/- to the appellants to pay the outstanding dues. There is a declaration that the dues of the appellant are secured by an equitable mortgage by deposit of Title deeds in respect of two flats being Flat No. 304-B and Flat No. 308-H, which has been referred to in operative Clause 4 of the impugned order.

2. Apart from the typographical error which has crept in the operative order of the learned Trial Judge, this First Appeal has been filed on a very narrow question namely, the correctness of the order of the learned Trial Judge insofar as it awards future interest @ 16.5% p.a. on the amount of Rs. 6,22,133.85/-. The contention of the appellants is that the future interest @ 16.5% could only have been awarded on the principal sum which was advanced amounting to Rs. 5,00,000/- and that, therefore, the order of the learned Trial Judge would require modification to that extent. Since this was the only point which was urged, the parties, through learned Counsel, had agreed that the matter may be heard and finally disposed of at the stage of admission. Record and proceedings were called for. With the assistance of the learned counsel. I have perused the record and proceedings insofar as it is relevant for the disposal of this appeal.

3. In the present case, a cash credit facility was granted by the respondent-bank to the appellants. The facility was initially granted to the extent, of Rs. 3,00,000/- on 3rd June, 1990. The extent of the facility was enhanced to Rs. 4.50 lakhs on 18th July, 1994 and to Rs. 5,00,000/- on 8th March, 1995. There is no dispute about the fact that the moneys were disbursed and availed of by the appellants. Insofar as the question of interest is concerned, the documents on record would leave no manner of doubt that the rate of interest that is agreed upon between the parties was in any event, that which has been allowed by the judgment of the learned Trial Judge. Exhibit-21 is the letter of sanction dated 25th April, 1994, issued by the bank and Clause 12 thereof specifies that the rate of interest could be 1.5% above or below, as the case may be, the State Bank advance rate subject to a minimum of 16.5%. In Clause 23, which is the subsequent letter dated 7th March, 1995, whereby the cash credit limit was enhanced to Rs. 5,00,000/- the minimum rate of interest that is provided for is 16.75% per annum. The appellants executed a Demand Promissory note on 8th March, 1995 (Exhibit-24), agreeing to pay the amount of Rs. 5,00,000 advanced by the bank together with a minimum rate of interest of 16.75% per annum with quarterly rests. Similarly, Exhibit-26, which is the agreement for cash credit hypothecation of goods and Exhibit-27, which is the agreement for hypothecation of debts and assets, provide for interest @ 16.75% per annum and 17.25% per annum, respectively.

4. The Statement of account was duly proved in evidence. The agreements between the parties provide for levying of interest, as noted earlier, with quarterly rests. The total amount, which is due and payable at the foot of the Account is Rs. 6,21,133.85 as on the date of institution of the suit.

5. The Supreme Court has in a recent judgment in Central Bank of India Vs. Ravindra and Others, , held that the expression "the principal sum adjudged" occurring in Section 34 of the Code of Civil Procedure, 1908, would include the amount of interest charged on periodical rests, and capitalized with the principal sum actually advanced so as to become an amalgam of the principal in such cases where it is permissible as per contract between the parties or as a part of

established banking practise. In the present case, the contract between the parties, as noted earlier, clearly provides that interest at a minimum rate of 16.5% would be charged on quarterly rests. Therefore, the interest that would be payable on the principal sum adjudged with effect from the date of the institution of the suit, would include interest both on the initial amount of Rs. 5,00,000/- that was advanced as well as on the interest computed thereon, which has become an amalgam of the principal amount by capitalization. The Judgment of the Supreme Court in Central Bank of India's case provides a complete answer to the submissions of the appellants. There is, therefore, no merit in the submission that interest from the date of the institution of the suit should have been computed only on the principal amount of Rs. 5,00,000/- and not on the amount of Rs. 6,21,135.85. In the circumstances, there is no merit in the principal point which has been canvassed in the First Appeal. However, while disposing of the first appeal, it would be necessary to direct that future interest at the rate of 16.5% per annum would be payable from 27th February, 1998, which was the date on which, the suit came to be instituted until full payment is made to the respondent-bank and the total amount of Rs. 6,22,135.85/- as quantified in the operative Clause 2 of the direction of learned Trial Judge in the impugned order shall stand corrected to read as 6,21,131.85.

6. The First Appeal is accordingly disposed of in the aforesaid terms.