

(2008) 04 CAL CK 0002

In the Calcutta High Court

Case No : G.A. No. 1656 of 2006 and C.S. No. 29 of 2006

Sibco Investment P. Ltd.

APPELLANT

Vs

Small Industries Development Bank of India

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2009) 147 CompCas 166

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indira Banerjee, J.—The defendant is a statutory authority, constituted under the Small Industries Development Bank of India Act, 1989.

On or about December 21, 1993, the defendant issued bonds in the form of promissory note called 13.50 per cent. SIDBI Bonds 2003 (4th series) on which interest was payable at 13.50 per cent. on June 21 and December 21, every year.

2. Similar bonds in the form of promissory note called 12.50 per cent. SIDBI Bonds 2004 (5th series) on which interest was payable at 12.50 per cent. on June 21 and December 21, every year was issued by the defendant on December 21, 1994.

The aforesaid bonds were transferable by endorsement and were of the face value of Rs. 10 lakhs each. The maturity date of the SIDBI Bonds (4th series) was December 21, 2003 and the maturity date of SIDBI Bonds (5th series) was December 21, 2004 respectively. The aforesaid bonds were freely traded in the security market.

3. The plaintiff claims to have purchased, in usual course of its business, 15 bonds of face value of Rs. 10 lakhs each of 4th series bearing the numbers 4/SIDBI/000135 to 000149, and 26 bonds of face value of Rs. 10 lakhs each of 5th

series bearing the numbers 5/SIDBI/000124 to 000137, 5/SIDBI/000220 to 000221 and 5/SIDBI/000295 to 000304 from one Shankar Lal Saraf (since deceased) of 3B, Lal Bazar Street, Kolkata on July 1, 1998, at a consideration of Rs. 3.69 crores. The said Shankar Lal Saraf had, during his life time, purchased the bonds from M/s. CRB Capital Markets Ltd. which subsequently went into liquidation.

4. The plaintiff paid the consideration for the aforesaid bonds to Shankar Lal Saraf (since deceased), by cheque No. 136229 dated July 1, 1998 of Rs. 3.69 crores drawn on the branch of Vysya Bank Ltd., at Netaji Subhas Road, Kolkata.

The plaintiff claims to have taken delivery of the bonds referred to above from the said Shankar Lal Saraf (since deceased) particulars of the bonds and the interest payable by the defendant to the holder of the bonds have been set forth in paragraph 10 of the affidavit in support of the masters summons.

5. On July 2, 1998 the plaintiff deposited the aforesaid 41 bonds in the office of the defendant at No. 11, Dr. U. N. Brahmachari Street, Kolkata, for the purpose of registration and enfacing of its name so that interest that accrued on the bonds from time to time and redemption value thereof could be paid to the plaintiff.

The plaintiff has alleged that in spite of requests, the defendant did not register the bonds in the name of the plaintiff and also failed to pay to the plaintiff interest on the bonds.

The defendant apparently refused to register the bonds in the name of the plaintiff, on the ground that M/s. CRB Capital Markets Ltd. which had gone into liquidation, had transferred the bonds to Shankar Lal Saraf within a year of initiation of liquidation proceedings.

6. The plaintiff contends that the subject bonds, being transferable promissory notes, which the plaintiff had purchased from Shankar Lal Saraf (since deceased), whose name had been registered and enfaced on the bonds, there was no reason not to register the same in the name of the plaintiff. The defendant, it is urged, had accepted the title of Shankar Lal Saraf (since deceased), on the subject bonds.

In the aforesaid circumstances the plaintiff filed a writ application being W.P. No. 1456 of 1998 in this Court praying inter alia for orders on the defendant to register the transfer of the bonds in question in favour of the plaintiff and to pay interest of Rs. 52,75,000 thereon.

7. The writ application was, however, dismissed with liberty to plaintiff to take recourse to the company proceedings pending in the Delhi High Court. The plaintiff filed an appeal being APOT No. 207 of 2001 against the order of dismissal of the writ petition.

On or about January 9, 2000 the plaintiff requested Shankar Lal Saraf to initiate

suitable proceedings in the High Court of Delhi to clear his transaction with M/s. CRB Capital Market Ltd. under the provisions of Companies Act, 1956 so that the matter could be treated as outside the purview of the liquidation proceedings under the Companies Act, 1956 which were pending at New Delhi.

8. On December 17, 2004 the Delhi High Court delivered a judgment, holding that the purchase by Shankar Lal Saraf, of the bonds, which are subject matter of this suit, from M/s. CRB Capital Market Ltd. was not hit by the restrictions on fraudulent transfer by a company against which liquidation proceedings had been started.

The plaintiff communicated the said order dated December 17, 2004 of the Delhi High Court to the defendant at its office at No. 11, Dr. U. N. Brahmachari Street, Kolkata vide its letter dated January 11, 2005. The plaintiff also demanded the original 41 bonds from the defendant so that the plaintiff could complete all the formalities for redemption and payment of interest, as all the bonds had matured by then.

9. On about January 25, 2005 the plaintiff withdrew the appeal being APOT No. 207 of 2001 and accordingly it was dismissed as withdrawn by the Division Bench of Asok Kumar Ganguly and Tapan Kumar Dutt, JJ.

By a letter dated January 31, 2005 the plaintiff informed the defendant of the withdrawal of the appeal and requested the defendant to give the plaintiff the redemption value of bonds along with the interest accrued thereon, as directed by the Delhi High Court.

On February 17, 2005 the defendant made over the original 41 bonds to the plaintiff after registering the same in the name of the plaintiff and enfacing the name of the plaintiff on each of the bonds.

On or about February 18, 2005 the plaintiff deposited the aforesaid 41 bonds at the office of the defendant at Mumbai for expeditious encashment of redemption value of the bonds and payment of interest that had accrued.

10. On or about February 21, 2005 the defendant paid Rs. 4.1 crores on account of principal and Rs. 3,75,37,500 towards interest, that is, Rs. 7,06,88,398 in total after deduction of tax at source of Rs. 78,49,102. It is alleged that the defendant deducted tax at source in excess of statutory requirement, while making payment of the principal amount and interest.

Plaintiff by its letter dated February 24, 2005, drew the attention of the defendant to such excess deduction, whereupon the defendant sent two warrants aggregating Rs. 58,86,833 to the plaintiff.

11. According to the plaintiff, the defendant paid interest up to the due dates mentioned on the bonds. It did not pay interest for the delay in payment of principal redemption amount, after expiry of the maturity dates and also for the delay in payment of interest which fell due on the bonds after July 31, 1997,

when interest was last paid to Shankar Lal Saraf (since deceased). The interest was payable every June and December from December, 1998 onwards.

12. The plaintiff has claimed that the defendant was and still is liable to pay interest on delayed payment of the value of the bonds, as well as delayed payment of interest accrued thereon, at the agreed rate, on compound basis.

The plaintiff by its letter dated October 3, 2005 demanded from the defendant a sum of Rs. 3,02,99,446.49 on account of interest on belated payment of principal amount and on account of interest on belated payment of interest which was calculated up to October 31, 2005. The said letter was followed by another letter dated November 10, 2005 demanding Rs. 30,67,826.67 on account of interest on belated payment of principal amount and Rs. 2,75,60,140.74 on account of belated payment of interest totalling to Rs. 3,06,27,967.41.

13. The defendant by its letter dated November 23, 2005 denied its liability to pay interest as demanded by the plaintiff or any part thereof on the grounds mentioned in the said letter.

The plaintiff has filed a commercial Suit No. 79 of 2006 to enforce his claim towards interest on delayed payment of maturity value of the bonds, as well as delay in payment of interest thereon. An application has been made in the said suit for summary judgment under Chapter XIII-A.

14. According to the plaintiff the defendant has no defence to the claim of the plaintiff. Counsel appearing on behalf of the plaintiff has cited a judgment of the Supreme Court in the case of Central Bank of India Vs. Ravindra and Others, . The Supreme Court held as follows (pages 445 and 446):

It was also submitted that Section 34 of the C.P.C. is general in its application to all money suits and if banking practice or banking contracts providing for capitalisation of interest charged on periodical rests were to be recognised it will mean that application of Section 34 would be different in suits filed by banks and in suits filed by creditors other than bankers. In our opinion it is bound to be so. Section 34 is general procedural provision and whether it would apply or not and if apply then to what extent would obviously depend on the fact situation of each case.

15. We are, therefore, of the opinion that two-judge Bench decision of this Court in Corporation Bank Vs. D.S. Gowda and Another, and the three-judge Bench decision in Bank of Baroda Vs. Jagannath Pigment and Chem. and Others, are correctly decided and are, therefore, affirmed. A creditor can charge interest from his debtor on periodical rests and also capitalise the same so as to make it a part of the principal. Such a course can be justified by stipulation in a contract voluntarily entered into between the parties or by a practice or usage well established in the world to which the parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or usage or practice can stand abrogated by legislation such as usury laws or debt relief laws

and so on."

16. There can be no dispute with the proposition laid down in the aforesaid judgment. The question is whether the petitioner is in the facts and circumstances of this case, entitled to interest for delayed payment of maturity value of the bonds and delayed payment of interest that had accrued on the bonds.

The defendant has in its affidavit-in-opposition disputed its liability to the plaintiff to pay interest on delayed payment of the maturity value of the bonds as well as interest on delayed payment of interest. The defendant contended that pursuant to an order dated July 17, 2004 of the hon"ble Delhi High Court, the defendant had cleared the entire amount, due and payable by the defendant to the plaintiff, inclusive of interest.

17. Significantly, the plaintiff by its letter dated January 31, 2005, sought payment only of the redemption value of the bonds with interest accrued thereon. There was neither any claim for interest on delayed payment of redemption value or for further interest on interest.

In the facts and circumstances of this case, it cannot be said that the defendant has no defence to the case made out by the plaintiff.

18. There is a triable issue as to whether there is any subsisting cause of action, after receipt of the redemption value of the bonds along with periodical interest payable on the said bonds and also as to whether the defendant can be held responsible for the delay, having regard to the facts and circumstances of this case and in particular the communication from the Reserve Bank of India dated June 9, 1997, inter alia directing the defendant not to transfer or register any lien or otherwise deal with securities of the defendant in which M/s. CRB Capital Market Ltd. had invested, without the permission of the official liquidator, the earlier communication dated January 29, 1997, of the Reserve Bank of India informing the defendant of the freezing of assets of M/s. CRB Capital Market Ltd. and the various communications from the defendant to the official liquidator attached to the Delhi High Court.

19. The application for summary judgment under Chapter XIII-A of the Original Side Rules is, therefore, dismissed.