(1997) 01 BOM CK 0029

In the Bombay High Court

Case No : First Appeal No. 41 of 1996

Smt. Neela Ashok Naik and another APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1998) 1 ALLMR 755 : (1998) 94 CompCas 460

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Judgement

R.K. Batta, J.—The appellants had taken a loan of Rs. 95,000 for the purchase of a Maruti omnibus on May 16, 1991, and appellant No. 2 stood guarantor for the said loan and in order to secure due repayment of the same, the appellants executed certain documents, namely, terms and conditions letter, hypothecation agreement, guarantee agreement and form of agreement all dated May 16, 1991. Three fixed deposits to the tune of Rs. 85,000 were taken as collateral guarantee under the form of agreement dated May 16, 1991. The appellants paid a few installments and thereafter stopped paying the loan amount. A sum of Rs. 9,500 was adjusted from the said fixed deposits on November 21, 1991. Since no payments were made by the appellants, the respondent-bank filed a suit for recovery of a sum of Rs. 1,42,000 from the appellants with interest thereon from December 21, 1993, till final payment. The rate of interest from the time of taking loan until the filing of the suit and even thereafter varied from time to time and the same was to be compounded quarterly. During the pendency of the suit the balance of the fixed deposit receipt amount along with interest to the tune of Rs. 1,20,340 was sought to be adjusted on November 11, 1994, which was stated to be the date of maturity of the said fixed deposits.

2. The appellants had in fact contested the suit mainly on the ground of rate of interest payable on the said loan which according to them was 15.5 per cent. The trial court came to the conclusion that the respondent had established that a sum

of Rs. 1,42,395 was due from the appellants to the respondent and the appellants were directed to pay the said amount with interest at the rate of 19.75 per cent. per annum compounded quarterly from December 21, 1993, till the date of final payment. The appellants were also directed to pay costs and other expenses in terms of Order XXA of the Civil Procedure Code. The amount of the fixed deposits which was adjusted after the filing of the suit was to be reduced from the decretal amount.

3. In fact, the appellants had taken the plea in pare. 6 of their written statement that any installment which had fallen overdue was required to be deducted from the three fixed deposits to the tune of Rs. 85,000 but the respondent did not take any steps to adjust the same.

4. The learned advocate, Shri Thali, placed before me two submissions. First, that in view of condition No. 6 in the form of agreement dated May 16, 1991, the respondent was required to adjust the installment which became overdue from the three fixed deposits which were kept as collateral security and even though the respondent had adjusted Rs. 9,500 from the said fixed deposits on November 21, 1991, the balance due out of the said fixed deposits was not adjusted by the respondent, with the result that though the fixed deposits were carrying interest at the rate of 13 per cent., yet the appellants are being made to pay much higher interest on the loan by not adjusting the amount from the said fixed deposits in respect of the installments which had become due. The second submission made by the learned advocate, Shri Thali, is that from the date of decree, interest which can be awarded has to be limited to 6 per cent. per annum on the principal sum adjudged in view of the Full Bench ruling of this court in Union Bank of India Vs. Dalpat Gaurishankar Upadyay, .

5. The learned advocate, Shri Chodnekar, on the other hand, has urged before me that the loan which was granted to the appellants was for business purpose and, as such, the interest which is payable even after the date of decree is the contractual rate and not 6 per cent. as alleged by the learned advocate for the appellants. In respect of clause 6 of the form of agreement dated May 16, 1991, under which collateral security of fixed deposits to the tune of Rs. 85,000 was taken, it was contended by him that it is the sole discretion of the bank whether to adjust the installments overdue from the fixed deposits or not and normally such adjustment is done in case of chronic failure to pay the installments. In support of his contention in relation to business loan, Shri Chodnekar relied upon the judgment of this court in Canara Bank Vs. Mahadeo Appa Phadatare and others,

6. In view of the rival contentions raised before me, the points which arise for determination are :

(i) Whether the loan in question was for the purpose of business or in other words whether it can be said to be a commercial loan; and

(ii) Whether the respondent can adjust collateral security of fixed deposits against the installments overdue as per its sole discretion.

7. In so far as the first question is concerned, the evidence on record led by the respondent does not establish that the loan which was given to the appellants was either a commercial loan or a business loan. PW-1, bank manager, has categorically admitted in his examination-in-chief that the loan for the purchase of the Maruti omnibus was given to the appellants for personal use. This witness reaffirmed during cross-examination voluntarily on his own that the loan was granted to defendant No. 1 not under the scheme of profession, but it was given for personal use under the bank''s big buy scheme. Neither the details of the said scheme have been given by the witness nor any papers relating to the said scheme were placed before the court during the course of his evidence. These averments do not establish that the transaction which was given was either commercial transaction or business loan and, on the contrary, the evidence of the manager, PW-1, is clear that the loan was for personal use. I, therefore, do not find any force in the contention of the learned advocate, Shri Chodnekar, that the loan in question is a commercial transaction/business loan and after the date of decree the interest payable would be the contractual rate of interest. The interest payable in such circumstances from the date of decree shall be 6 per cent. in terms of section 34 of the CPC and in view of the Full Bench ruling of this court in Union Bank of India Vs. Dalpat Gaurishankar Upadyay, the interest of 6 per cent. shall be payable only on the principal amount adjudged.

8. In so far as the second question which arises for determination, it is necessary to reproduce clause 6 of the form of agreement dated May 16, 1991, under which collateral security of fixed deposits to the tune of Rs. 85,000 was kept :

"6. In the event of any money hereby secured remaining unpaid after becoming payable or the value of the said securities/shares at any time being insufficient in your opinion, I/we authorise you through your agents and nominees without notice to me/us to sell and realise the said securities/shares or any part thereof at such times and prices and generally in such manner as you in your absolute discretion shall think fit without being liable for any loss. I/We undertake to accept your accounts of sales as conclusive evidence of the matters therein."

9. The above clause clearly provides that if any amount remains unpaid after becoming payable then in such an eventuality the bank has absolute discretion to sell and realise the securities/shares or any part thereof at such time and price without notice to the person who has taken the loan. This discretion, which has to be exercised by the bank, has to be judiciously exercised and not arbitrarily or at the sweet will of the bank. The appellants had given collateral security of fixed deposits to the tune of Rs. 85,000 and in terms of clause 6 whenever any installment remained unpaid, the said amount could be realised by appropriating the sum from the fixed deposits. In fact, the respondent-bank had on November 21, 1991, appropriated a sum of Rs. 9,500 from these securities for the balance amount which was due on that day, but the bank subsequently did not follow the same procedure. There was no impediment whatsoever to adjust the installments

payable out of the said collateral security. In case the appellants had objected to such appropriation, then the position would have been different. However, there is nothing on record to suggest that there was any objection whatsoever even to the adjustment of Rs. 9,500 from the said collateral security and/or that the appellants had raised any objection regarding any subsequent adjustment in case the bank had taken resort to the same in terms of clause 6. It is only after the filing of the suit that the collateral security amount along with interest to the tune of Rs. 1,20,340 was shown as adjusted on November 11, 1994. Under these circumstances, this method of adjustment adopted by the bank had adversely affected the appellants who, on account of non-application of clause 6 by the bank are required to pay more interest on the loan, whereas they earned only 13 per cent. interest on the fixed deposit. Therefore, keeping in view clause 6, I am of the opinion that the bank was required to adjust the installment of Rs. 2,755 which was due every month from the collateral security which was available with the bank in view of clause 6 of the form of agreement dated May 16, 1991.

10. I had asked learned advocate for the appellants to prepare a chart of adjustment of every installment payable from the collateral security, namely, fixed deposits, but in case of such adjustment the appellants would not be entitled to 13 per cent. interest on the fixed deposits and it was agreed that interest on the said deposits be calculated at 10 per cent. The chart accordingly prepared is kept as annexure "A" to this judgment. The learned advocate, Shri Chodnekar, confirmed that mathematically the chart is correct except for a difference of Rs. 2 only.

11. The learned advocate, Shri Thali, has submitted before me that as on October 16, 1994, as per the calculation in the said chart (annexure "A") the amount due on October 16, 1994, would be Rs. 19,696. He further submits that in order to avoid further calculation the appellants agree that this amount of Rs. 19,696 be taken as principal amount adjudged in the suit plus Rs. 3,889.96 as interest at the rate of 19.75 per cent. on the said amount till the date of decree.

12. In view of the above, the principal amount adjudged in the suit shall be Rs. 19,696 upon which interest payable till the date of decree shall be Rs. 3,889.96. The total amount payable till the date of decree shall, therefore, be Rs. 23,586. From the date of decree the appellants shall be liable to Pay 6 per cent. interest on the principal sum adjudged, i.e., Rs. 19,696. The said amount of interest till date comes to Rs. 1,182 approximately. Therefore, the total liability of the appellants under the decree till today shall come to Rs. 24,768. From this amount Rs. 15,000 which was deposited in this court on July 30, 1996, shall stand deducted. In other words, the liability of the appellants shall be restricted to Rs. 9,768. The costs in the lower court and in this court are quantified at Rs. 5,000 which will be added to the amount payable, plus the total amount which is payable now shall be Rs. 14,768.

13. For the aforesaid reasons, the appeal is partly allowed and the total liability of the appellants as of today is quantified at Rs. 14,768. The said amount shall

be paid in this court within a week from today, failing which the parties shall have to pay contractual rate of 19.75 per cent. on the said amount.

14. Appellant No. 2 undertakes to pay the said amount within a week.

15. The respondent is entitled to withdraw the amount of Rs. 15,000 already deposited with interest thereon.