

(2005) 01 JH CK 0039
In the Jharkhand High Court
Case No : AFOD No. 116 of 1995 (R)

State Bank of India

APPELLANT

Vs

Braj Kishore Prasad and Others

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2005) 2 BC 571 : (2005) 1 JCR 521

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Kameshwar Parasd and Rajesh Kumar, for the Appellant; R.S. Mazumdar, for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This appeal at the instance of the appellant State Bank of India is directed against the judgment dated 23rd March, 1995 and decree dated 29th March, 1995 passed in Money Suit No. 16 of 1984 whereby and where under the learned sub-Judge-II, Chaibasa decreed the suit but reduced the rate of interest from 13.5% per annum to 10% per annum.

2. Case of the plaintiff-appellant in brief is that defendant- respondent No. 2 applied for cash credit facility before the plaintiff-appellant which is a banking company up to the sum of Rs. 95,000/- on 6.12.1979 and defendant No. 2 executed several documents and surety in favour of the plaintiff-bank. The defendant-respondent Nos. 1, 3 and 4 stood as guarantor of the defendant-respondent No. 2 and defendant-respondent No. 2 availed the said case credit facility from the plaintiff bank after executing Demands Promissory Note and the Promissory Note were delivered to the plaintiff-bank by defendant-respondent Nos. 1, 3 and 4 on 6.12.1979 along with Demand Promissory Note under the signatures of defendant-respondent Nos. 1, 3 and 4. Other terms were also executed by defendant-respondent Nos. 1, 3 and 4. Defendant-respondent No. 2 appeared in the suit and filed written statement stating therein that the suit is

not maintainable and it is bared by law of limitation and ultimately submitted that he is ready to pay the actual and genuine dues of plaintiff-bank and he is regularly depositing the cheque as per decision rendered in Money Suit No. 13 of 1984.

3. On the pleadings of the parties learned Court below framed following issues which are as follows :-

1. Is the suit as framed maintainable?
 2. Has the plaintiff valid cause of action or right to sue?
 3. Is the plaintiff bank entitled to get a decree of Rs. 3,31,872,76/- with interest"
 4. To what relief or reliefs the plaintiff is entitled to?
4. Issue No. 3 was the most important issue and while deciding this issue the learned Court below decided the issue in favour of the plaintiff-bank, but reduced the amount of interest from 13.5% per annum to 10% per annum future and pendelitte.

5. Submission of the learned counsel for the appellant is that this rate of interest was agreed upon between the parties at the time of awarding cash credit facility to the defendant-respondent No. 2 for which defendant-respondent Nos. 1, 3 and 4 stood as guarantor and agreed on that rate of interest. It is a settled principle of law that rate of interest agreed upon between the parties cannot be disturbed as per Section 34 of the CPC which is quoted herein-below :

"34.-(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 not 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 a correspondent 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."

goes to show that when there is no agreement then the rate of interest chargeable will be at the rate of 6% per annum but when there is agreement then rate of interest will be rate of interest which has been agreed upon between the parties. In the instant case the defendant-respondent No. 2 while taking cash credit facility has agreed that the rate of interest will be 13.5 per annum and the Court cannot reduce or interfere with the rate of interest as agreed upon between the parties and therefore, reduction in rate of interest from 13.5% to 10% per annum is not proper and to that extent judgment and decree should be set aside.

6. On the other hand learned counsel for the respondents submitted that the Court was justified in reducing the amount of interest because at the time of awarding cash credit facility, the plaintiff-bank got signature of the defendants-respondents on several papers and the defendants-respondents in order to take cash credit facility without going through the papers put their signatures. It was further pointed out that in fact there was no agreement on the point of rate of interest because defendants-respondents put their signatures without actually knowing what will be the rate of interest chargeable on the amount of loan taken from the bank and therefore, the learned Court below has rightly allowed the interest at the rate which the learned Court below thought it proper to allow and that is the justified rate of interest.

7. It is well settled that in so far as the decree is for payment of money the Court may allow the interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged and not exceeding 6% per annum. But in case of commercial transaction the rate of interest may not exceed contractual rate agreed upon between the parties and here in the instant case though a plea has been taken on behalf of the defendants-respondents that there was no meeting of minds so far as the rate of interest is concerned because defendants-respondents were asked to put their signatures on some paper and they put their signatures without knowing the rate of interest but this plea cannot be accepted at this stage and it will be deemed that both the sides agreed on the rate of interest and the Court cannot interfere with the rate of interest agreed upon between the parties and therefore, finding of the learned Court below to the extent of reducing the rate of interest agreed upon between the parties from 13.5% to 10% per annum is not acceptable and that part of the finding of the learned Court below is hereby set aside and the suit is decreed for the amount as claimed by the plaintiff-appellant with rate of interest standing at 13.5% per annum.

8. In the result this appeal succeeds the judgment and decree of the learned below are hereby set aside.