

(1999) 06 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 42 of 1994

State Bank of India

APPELLANT

Vs

Mandav Udyog and Others

RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 21A, 35A
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 34
Contract Act, 1872 — Section 59, 60, 61

Citation : (1999) 2 ShimLC 408

Hon'ble Judges : D. Raju, C.J.;Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; B.K. Malhotra, for the Respondent

Final Decision : Allowed

Judgement

D. Raju, C.J.—The Appellant-Bank has filed the above appeal against the judgment and decree passed by a learned single Judge of this Court on 25.4.1994 in Civil Suit No. 110 of 1986, whereunder the suit filed by the Appellant-Bank against the Defendants came to be decreed, not as prayed for, but in a partial manner rendering the Plaintiff-Appellant ineligible to certain rights claimed under the terms of the loan transaction. Having regard to the narrow and limited controversy in the suit and in the absence of any cross-objections filed by the Defendants, it is unnecessary for us to delve at length with the entire gamut of pleadings, particularly, the various contentions raised by way of defence to the suit claim by the Defendants-Respondents before the Court below. Suffice it to notice that the Plaintiffs claim for a decree of Rs. 9,86,349-19 on account of principal and interest said to be due on three loan facilities stated to have been made available by the Plaintiff-Bank to the Defendants. The first loan facility is stated to be on Medium Term Loan with a limit of Rs. 1 Lac, the second one being Medium Term Loan with a limit of Rs. 5 lacs and the third being Cash Credit with a limit of Rs. 1 lac. It was also claimed and over which there is no controversy between parties that the loan facilities were made available for the

business activities of the Defendants and in order to secure the re-payment of the loan several documents came to be executed with two equitable mortgages also created to secure the repayment of the amount due under the loan. As on the date of the filing of the suit, the Defendants were said to be under liability for the following sum as against the three category of loans advanced by the Plaintiff-Appellant:

Nature of limit Amount outstanding

Medium Term Loan Limit of Rs. 1 Lakh Rs. 1,25,096.42.

Medium Term Loan Limit of Rs. 5 lakhs Rs. 7,16,893.86.

Cash Credit limit of Rs. 1 lakh Rs. 1,44,358.91 ----- Total Rs. 9,86,349.19 -----

2. A decree for the total amount with interest at the rate of 13.5% per annum with quarterly rests has been prayed for with a relief prayed, for final decree for the sale of the mortgaged property also. The said suit was instituted on 22.12.1986. As indicated earlier, it is unnecessary to deal with the other items of defence except the claim that there was a dispute raised with reference to the rate of interest, to which the Plaintiff-Bank would be entitled to recover from the Defendants and, if at all, on which part or portion of the amount decreed the interest would become payable. For the sake of completeness, it may be noticed that the loan documents are comprised in three agreements, marked as Exts. P-3, P-30 and P-33 and that there was no challenge made on behalf of the Defendants to the items debited by the Plaintiff to the Defendants' account even during the course of arguments. The respective sanction letters pertaining to the loans in question were marked as Ex. P-2, P-29 and P-32.

3. Having regard to the above, after trial and on the basis of the materials placed on record, the learned single Judge after taking into account the relevant documents governing each loan, viz., Medium Term Loan of Rs. 1 Lac : Ex. P-2, Ex. P-3 and Ex. P-75; for Medium Term Loan of Rs. 5 Lacs : Ex. P-29, P-30 and Ex. P-31 and Cash Credit Term Loan of Rs. 1 Lac ; Ex. P-33, Ex. P-34 and Ex. P-35, the Plaintiff was held entitled to interest at the rate of 13-1/2% per annum with quarterly rests in relation to first two loan transactions and the third loan transaction at the rate of 14% per annum with quarterly rests. The learned single Judge also held that as on the date of the filing of the suit a consolidated amount of Rs. 9,86,349.10 was due and payable by the Defendants to the Plaintiff on the three loan facilities, inclusive of interest. Taking into account the fact that during the pendency of the suit part of the mortgaged property, with the permission of the Court, was permitted to be sold and out of the sale proceeds a sum of Rs. 3,50,000/- was said to have been tendered and paid towards the principal amount on behalf of the Defendants and on the view that in the light of the instructions imparted by the debtor at the time of making payment to appropriate the same against the principal due, the learned Judge observed that it was for the creditor to have either accepted as it was proposed

or not to have accepted the amount and returned the same but once having accepted the amount the creditor is bound to follow the instructions of the debtor. In that view of the matter, the learned single Judge held that all payments made during the pendency of the suit, which were to the tune of Rs. 6,36,943.53 are liable to be adjusted towards the principal sum and not towards the interest. Applying the principles laid down by the very learned Judge in Civil Suit No. 61 of 1986 Punjab National Bank v. Surinder Singh Mandyal and Ors. rendered on the very same day dated 24.4.1994, the learned single Judge also held that for the purposes of Section 34 of the Code of Civil Procedure, the "principal sum adjusted" means the principal sum outstanding excluding any interest or any other item and thereby adjudged the principal amount due and payable by the Defendants to be as follows in respect of the three items of loans:

1. On the marginal term loan of Rs. 1,00,000/- = 75,000-00.
2. On the marginal term loan of Rs. 5,00,000/- = 4,50,000-00.
3. Against cash credit limit of Rs. 1,00,000/- = 81,110-36. ----- = 6,06,110-36. -----

Ultimately, the learned Single Judge passed a decree for Rs. 9,86,349-10 against the Defendants jointly and severally but having regard to the adjudged principal sum to be Rs. 6,06,110-36, it was directed that the said sum only shall carry interest at the rate of 13-1/2% per annum from the date of institution of the suit till the date of decree and from the date of decree till date of payment, after adjusting Rs. 6,36,943-53, said to have been admittedly received by the Plaintiff from the Defendants during the pendency of the suit or any other amounts towards the principal amount, as and when the same were received. It was also directed that the Defendants shall pay the sum ordered to be paid within six months from the date of decree, failing which it was ordered to be recoverable in the first instance by the sale of the remaining mortgaged property, as detailed in the title deeds Ex. P-42 and Ex. P-43 and the balance, if any, to be recoverable from the person and property of the Defendants.

4. As noticed above, felt aggrieved, the Plaintiff-Bank filed the above appeal. Mr. K.D. Sood, learned Counsel for the Appellant-Bank in pursuing the grounds of appeal raised against the judgment of the learned single Judge, contended that the judgment and decree passed by the learned single Judge is opposed to the various judgments of this Court and the apex Court and the Plaintiff-Bank is entitled to the decree as prayed for with interest at the rates claimed with quarterly rests till date of payment, thereby emphasising the claim hat even interest pendente lite and even after the decree till the ate of realisation, the interest is recoverable under the same pattern, is agreed to between the parties. The learned Counsel also contended hat the manner of appropriation directed by the learned single Judge and the reasoning adopted in order to do so is also opposed to Section 60 of the Contract Act, 1872 and the well settled principles of law aid down by the Courts and consequently, the suit ought to have been

decreed as prayed for in its entirety by allowing the appeal or the differential amount also.

5. Per contra, Mr. B.K. Malhotra, while drawing inspiration and support from the reasoning assigned by the learned single Judge also placed reliance upon the decisions reported in Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, ; AIR 1998 S.C. 101 N.M Veerappa v. Canara Bank; AIR 1969 SC 600 Soli Pestonji Majoo v. Ganga Dhar Khemka in contrast to the decisions reported Central Bank of India Vs. Ravindra and Others, Punjab National Bank and etc. Vs. Vidya Hatchery, etc. etc., strongly relied upon for the Appellant by the learned Counsel, Mr. K.D. Sood.

6. We have carefully considered the submissions of the learned Counsel appearing on either side. So far as the question relating rate of interest to be decreed and the amount on which such interest is to be granted is concerned, the matter cannot be said be res integra any longer and what is required to be done is the application of the principles laid down in more than one authoritative renouncements of their Lordships of the apex Court and the Division Benches of this Court. In Corporation Bank Vs. D.S. Gowda and Another, the apex Court apart from observing that the question of interest with periodical rests on bank loans would normally be governed by terms of agreement between Bank and the borrower where such agreement exists and that normally the practice of the bankers is to debit accrued interest to borrowers account at regular periods, also held that in the case of commercial tans interest with quarterly rests is permissible and the circulars/erections issued by the Reserve Bank of India under the provisions of the Banking Regulations Act, 1949, regarding interest with eriodical rests are binding upon the Banks, to follow them. In (1996) SCC 280 Bank of Baroda v. Jagannath Pigment and Chem. and Ors., it was held that the Bank was held entitled to claim compound interest and convert the principal sum claimed as inclusive of interest in the said principal sum adjudged, relying upon the decision in Corporation Bank Vs. D.S. Gowda and Another, No doubt in Central Bank of India Vs. Ravindra and Others, , their Lorships of the apex Court observed that the interpretation of the liability of the borrower to pay interest on the principal sum, including interest that merged with the principal sum adjudged or principal sum as lent, is required to be authoritatively laid down by a Bench of five Judges.

7. All these aspects have been taken note of by a Division Bench of this Court in the decision reported in (1997) 2 S.L.C. 373 State Bank of India v. Himalaya Engineer Works and Ors. and while observing that till the ratio of the earlier decisions of the apex Court are set aside, reversed or modified by a larger Bench, the same would hold the field and binding, held that the "principal sum adjudged would include the principal amount of loan and the amount of interest accrued thereon. In our view also, that should inevitably be the position since the bankers, as obligated upon them, invariably work; out at the closs of every quarter the interest due and add their towards the outstanding balance, which

thereafter is treated as principal sum for the next quarter for computation of interest. The unpaid interest remaining at the end of every quarter, merges with the principal lent and automatically gets converted into principal by virtue of the agreement to change interest with quarterly rests which has the backing and mandate of law by virtue of the circulars/orders of the Reserve Bank of India. As for the rate of interest also, the Plaintiff-Bank was held entitled to future interest at the agreed rates on the principal sum adjudged to be paid with quarterly rests till date of payment or realisation of the amount. In (1997) 3 SLC 403 U.Co. Bank v. Mahesh Kumar and Ors. also, the same view has been taken by another Division Bench of this Court. Yet another Division Bench of this Court has also taken the same view in batch of appeals reported in AIR 1999 Himachal Pradesh 24, holding further that in view of the circulars/directions issued by the Reserve Bank of India under Sections 21 and 35-A of the Banking Regulations Act, 1949, which is binding on all Banks, the Court also would have no discretion to grant different rates of interest than such contractual rates of interest even from date it is due and payable, to the date it is actually paid.

8. The learned single Judge has chosen to follow and apply his own judgment rendered on the same day, separately in Civil Suit No. 61 of 1986, holding that the term principal sum adjudged for the purpose of Section 34 of the CPC means only the principal sum outstanding, excluding any interest or any other item and this judgment is since reported in Punjab National Bank Vs. Surinder Singh Mandyal and Others, Once the parties have agreed, as part of the loan transaction, as they are bound to also as enjoined in the statutory circulars/directions of the Reserve Bank of India, which regulated the lending transactions of Banking Institutions, particularly Nationalised Banks, and the parties are bound by them, it is not given to Courts to discern and disintegrate the accounts by going into the origin, character or nature of the amounts, by re-opening the settlement of accounts all the more so where the provision for charging interest at quarterly rests cannot held to be illegal or unconscionable and in that process such interest outstanding at the end of the quarter concerned became part of the principal by the beginning of the next quarter rendering it eligible for being taken into account for charging and calculating interest on the said sum also. The Civil Courts cannot, alter the terms of the contract or re-arrange and rewrite the solemn contracts entered into by borrowers with reputed public undertakings and recognised banking institutions with and on such altered basis reopen and resettle settled accounts. For all the reasons stated above, we are unable to subscribe to the view taken by the learned single Judge in the decision reported in Punjab National Bank Vs. Surinder Singh Mandyal and Others, and also in the one which is the subject-matter of appeal before us. Those decisions cannot be held to lay down the correct position of law.

9. So far as the question of appropriation of the amounts paid by the debtor is concerned, the learned single Judge was also of the view that in view of the specific instructions in this behalf said to have been given by the debtor at the time of making payments by him to adjust such payments against the principal

only and the Plaintiff having accepted those amounts without any demur or objections, it did not lie in the mouth of the creditor to appropriate the payments made first towards the interest and then towards the principal. On that view of the learned Judge, it was directed that all payments made during the pendency of the suit to the tune of Rs. 6,36,943-53 are liable to be adjusted only towards principal and not towards the interest, first. The learned Counsel for the debtor has placed strong reliance in this regard on the decision reported in Meghraj and Others Vs. Mst. Bayabai and Others, The Apex Court had an occasion to deal with this question, directly in a decision reported in M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, . On an elaborate and exhaustive analysis of the case law on the subject in the light of the provisions contained both in the CPC and Sections 59 - 61 of the Contract Act, 1872, it was observed by their Lordships that Section 59 refers to several distinct debts payable by a person and not with cases where the principal and interest due on a single debt or decree passed on such debt carrying subsequent interest and that Section 60 of the Contract Act also cannot be read independently excluding or totally divorced from the criteria or principles laid down in Section 59 of the said Act, and accepting such an argument would amount to doing violence to the language employed in the Section and purpose sought to be achieved and that it would also be contradictory in terms. It has also been held therein that Sections 59 and 60 of the Contract Act and the principles laid down therein would be applicable to predecretal stage and not thereafter. It was observed therein as follows:

14. In view of what has been noticed hereinabove, we hold that the general rules of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e., that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 - 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on the single debt.

In paragraph 9 of the said judgment, it was also further held:

There does not appear to be any obligation on the decree-holder to intimate the judgment-debtor that the amount paid to him had not been accepted in the manner specified by him in the letter accompanying the payment. Insisting upon such a course would result in unnecessary burden upon the financial institutions and conferment of unwanted unilateral discretion in favour of the defaulters. Acceptance of the plea that the amount paid first should be adjusted in the

principal amount would not not only be against the provision of law but against the public policy as well. To provide security, continuity and certainty in business transaction, the Legislature has been making specific provisions in that regard which may be found in various provisions of the Negotiable Instruments Act, 1881, or Order 37, CPC and other statutory provisions.

10. So far as the decision reported in N.M. Veerappa Vs. Canara Bank and Others, is concerned, it seems to have been held that the decision in Corporation Bank Vs. D.S. Gowda and Another, cannot help the Bank to contend that Section 21-A override the provisions contained in Order 34, Rule 11 of the CPC pertaining to the discretion to be exercised. But, in view of the agreement between the parties in the case before us wherein the Defendant-borrower undertook to pay interest at a particular rate with quarterly rests till the dues under the loan borrowed is fully discharged and such provisions having been held to have the force of law and at any rate not held by any Court to be unconscious or illegal, the Courts could not allow the parties to wriggle out their solemn commitments made to a public undertaking at the time of borrowing and on which assurance the money has been lent and the discretion of the Court also cannot be exercised in an individual case coming before it de hors such solemn commitment under which the amount has been borrowed. The discretion, if any, with a Court in this regard also should as exercised with great caution, care and circumspection and in a judicious manner too and not for the mere asking. In the case on hand in spite of our scanning through the judgment and decree of the learned single Judge, we find no reason, leave alone such reason being either genuine or reasonable or acceptable being found to have been recorded at all to operate as an extenuating circumstance, to deviate from the agreement and the learned Single Judge appears to have as a matter of course, allowed the claim made by the Defendants by awarding simple interest. This course of action cannot be countenanced in view of the overwhleming weight of the authoritative decisions of the Supreme Court as also of this Court, noticed supra. The judgment and the decree of the learned single Judge in this regard is liable to be and is hereby set aside.

11. So far as as the question of calculation of interest on the "principal sum adjudged" is concerned, we are unable to agree with the reasoning of the learned single Judge and in contrast, we are in entire agreement with the view taken by an earlier Division Bench of this Court reported in (1997) 2 S.L.C. 373 (supra), wherein it has been held that the "principal sum adjudged" would include the principal amount of loan and the amount of interest accrued thereon, which by the very nature and terms of the loan transactions became part and parcel of the principal sum at the end of each quarter before commencement of the succeeding quarter. The accounts, settled in this manner for which there was no objection taken also before the learned single Judge could not be discredited, to segregate the original principal amount from the sum adjudged to be due from the Defendants on which the rate of interest with the agreed rests would be payable till the discharge of all the dues under the loan agreement. On this count

also, the judgment and decree of the learned single Judge cannot have our approval and the same is hereby set aside.

12. Equally unjustifiable appears to be the manner of appropriation directed by the learned single Judge and in the teeth of the categorical pronouncement made in the decision reported in M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, the directions in the decree made by the learned single Judge in this regard cannot be sustained. In the teeth of the solemn agreement between the parties, as part of the loan transactions and also the well-settled principles that the amounts paid by the debtor will be first credited towards the interest and then only towards the principal, there was no justification for the learned single Judge to adopt a different method in this case. The conclusions of the learned single Judge in this connection directly runs counter also to the decision of the latest pronouncement on the subject. On this ground also, the manner of appropriation directed by the learned single Judge has to be and is hereby set aside, as not sustainable in law.

13. For all the reasons stated above, the appeal is allowed, as prayed for, and that the suit Civil Suit No. 110 of 1986 shall stand decreed as prayed for by the Plaintiff-Bank with interest at the rates due, as held by the learned single Judge but on the entire sum decreed, with quarterly rests till the date of recovery or payment and full discharge of the loan. The judgment and decree of the learned single Judge shall stand modified to that extent and in other respects so far as it relates to the directions made therein to seek for recovery by sale of the remaining mortgaged properties and also by personal recovery, in default of payment of the sum within six months from this day, (instead of from the date of the decree in the suit) those directions issued by the learned single Judge shall be in full force and effect. The appeal is allowed with costs.