

(2013) 12 MP CK 0201
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12483 of 2013

State Bank of India

APPELLANT

Vs

Patwa Foundation Trust

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : AIR 2014 MP 17 : (2014) 1 JLJ 382

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : Praveen Chaturvedi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition has been filed by the petitioner/State Bank of India aggrieved of the judgment dated 04/09/2013 passed by Debts Recovery Appellate Tribunal, Allahabad in Appeal Sr. No. 11672013. The only grievance made in this petition is that the Tribunal while passing the impugned order and allowing the appeal of the respondent directed that the Bank shall charge/calculate the interest at par with the BPLR i.e. 13.25% on reducing balance up to the date of filing of the Securitization and thereafter @ 10% simple interest from 14/10/2012 till full realization of the dues instead of contractual rate of interest.

2. Grievance of the petitioner is that interest rates could not have been reduced by the Tribunal as, such power is not available to the Tribunal while dealing with the proceedings u/s 17(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Act"). It is submitted that section 34 of CPC is not applicable to the present proceedings and that section 17 of the Act as the provisions contained in the Act are having overriding effect over other laws by virtue of section 35 of the Act.

3. We have heard the learned counsel for the petitioner. We have also perused the provisions contained u/s 17(3) of the Act. The said section is relevant and is reproduced hereunder for the sake of reference:

17(3). If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

4. We have also considered the provisions contained under sections 34 and 35 of the Act. It will be appropriate to take note of sections 34 and 35 of the Act, which read as under:

34. Civil court not to have jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)

35. The provisions of this Act to override other laws -- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

5. Bare perusal of these provisions goes to show that discretion which is available to the Tribunal to grant interest pendente lite as per the provisions contained u/s 34 of C.P.C. have not been specifically excluded. Section 34 of the Act (sic CPC) reads as under:

34. Interest.--(1) Where and insofar 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 nationalised banks in relation to commercial transactions.

Explanation I.--In this sub-section, "nationalised bank" means a corresponding 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.

6. We have also gone through the impugned order. Issue of interest has been considered by the Appellate Tribunal in the light of the judgment of Hon'ble Supreme Court delivered in the case of C.K. Sasankan Vs. The Dhanalakshmi Bank Ltd., . Relevant discussions with respect to reduction of rate of interest pendente lite appears in para Nos. 7 to 10 which read as under:

7. The next question which is raised is that whether the Tribunal may have jurisdiction to reduce the rate of interest. In this reference, the Apex Court in C.K. Sasankan Vs. The Dhanalakshmi Bank Ltd., has held that the principle lies u/s 34 of the Code, the pendente lite interest would apply at the discretion of the Tribunal. In this reference, the paragraph Nos. 8 and 9 are relevant which reads as under:

8. The quantum and rate of interest which the appellant in the present case is entitled to would be in accordance with the provisions of section 34 of the Code. According to the provisions of section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the suit till realization is in the discretion of the court as is confirmed by the use of the word "may" but such discretion has to be exercised by the court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the court is also to consider the parameter, scope and ambit of section 34 of the Code.

9. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable.

7. In view of the aforesaid, we can also examine the reasons given by learned Tribunal for reducing the rate of interest. Discussions appear in para Nos. 8 to 11 of the judgment of learned Tribunal, which are also reproduced hereunder for the sake of reference:

8. On the basis of the aforesaid the question arises that at what rate the interest shall be paid by the appellant to the Bank from the date of filing of the Securitization Application. The question with regard to the application of discretion by reducing the interest at discretion of the Tribunal by virtue of the principle lies u/s 34 of the Code are to be considered. The Securitization Application before the Tribunal was preferred on 14.10.2012 although on behalf of the Bank during the arguments technical question is raised to the effect that the affidavit has been sworn on 14.10.2012 but the date which is typed in the S.A. is 18.10.2012. Therefore, it was submitted that it is not proper fact that the S.A. before the Tribunal was preferred on 14/10/2012. In this reference, this is to be seen that though the date in the S.A. is typed is shown as 18/10/2012 but the date on which the S.A. is sworn is 14/10/2012 and on the application the seal of the notary is put for 14/10/2012, thus once the date is put as 14/10/2012 then the dated 14/10/2012 correlates with the date of the affidavit sworn. This is a technical objection which cannot be said to be proper. In the present case, it was submitted that for the purpose of running school, the other trustees have borrowed the loan from the Bank and the founder trustee submitted that she will liquidate all the dues of the Bank and she has already paid entire principal dues with some interest of the Bank then it is a fit case where the Tribunal should allow the appellant to pay the interest @ 10% simple on reducing balance from the date of filing of the S.A. i.e. 14/10/2012 u/s 17 of the Act.

9. Considering the aforesaid aspect of the case since the Trust is running a school and the loan was applied for the purpose of expanding the educational facilities to the children of the locality therefore, it will be appropriate to direct the appellant to pay 10% simple of rate of interest from the date the S.A. was filed till full liquidation of the dues.

10. Under the circumstances, the Bank is directed to charge the interest @ 10% simple interest from 14/10/2012 till the full realization of the dues.

11. On the basis of the aforesaid, it is directed that the Bank shall intimate to the founder trustee the amount of interest after calculating the same at par with BPLR i.e. 13.25% on reducing balance and the amount as such shall be paid by the appellant to the Bank within a period of 15 days from the date the intimation is received from the Bank and it is further directed that the Bank shall charge the interest @ 10% simple interest from 14/10/2012 till the full realization of the dues.

In view of aforesaid, we find that the provisions contained u/s 34 of C.P.C. refer to discretion for awarding interest pendente lite and which have been applicable even in a case covered by the Act by Hon"ble Supreme Court as aforesaid have not been specifically excluded under the provisions contained under sections 34 and 35 of the Act, we, therefore, find no infirmity in the approach of the Tribunal in this regard. Consequently, present writ petition is dismissed.