(1994) 05 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.S. No. 68 of 1992

State Bank of India APPELLANT

Vs

Sewa Singh alias Sukhdev Singh and Others RESPONDENT

Date of Decision : 16-05-1994

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1994) 05 SHI CK 0003

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Bhupinder Gupta, for the Appellant; S.S. Kanwar for Defendant No. 1 and N.K. Thakur for Defendants Nos. 2 to 4, for the Respondent

Judgement

D.P. Sood, J.—Sewa Singh, defendant No. I, an Ex-Serviceman, approached the plaintiff- bank a body corporate constituted under the State Bank of India Act, 1955 for the financial assistance in relation to the purchase of the vehicle. A sum of Rs. 2,84,000/- (Rupees Two Lacs Eighty Four Thousands only) in favour of defendant No. I was granted subject to defendant No. I executing the loan documents alongwith the furnishing of the guarantee for its repayment. The medium term loan to the aforesaid sum was granted to defendant No. 1 in lieu of his having executed an agreement for medium term loan for an amount of Rs. 2,84,000/- (Rupees Two Lacs Eighty Four Thousands only) on 29th May, 1989. The vehicle purchased pursuant to the said financial assistance so given to him was also hypothecated. Defendants 2 to 4 stood guarantee and executed guarantee deeds. The aforesaid loan amount was to be paid in 84 monthly instalments. The first instalment was to commence w.e.f. 29th September, 1989. The interest upon the aforesaid amount was agreed to be at the rate of 4% below the State Bank advance rate with a minimum of 12-1/2% per annum rising and falling therewith calculated respectively on the daily balance in the loan account compounded with quarterly rests. Apart from the abovesaid documents Executed by the defendants, a letter of arrangement of even date was also executed by the defendants agreeing to repay the loan amount with the stipulated interest subject to its revision from time to time. Later the rate of interest as per letter dated 1st October, 1991 was revised to 25% per annum below State Bank of India advance rate subject to a minimum rate of 14% per annum with quarterly rests w.e.f, 22nd September, 1990 till further revision. Penal interest in case of default at the rate of 2% per annum over and above and agreed rate of interest was also chargeable w.e.f. 1st July, 1990. This fact was intimated to the defendants. Later the defendants became defaulters. They were requested to make the payments and regularise the accounts by in plaintiff-bank, but of no avail. Accordingly, as per the amounts books of the plaintiff- bank, the outstanding liability amounted to Rs. 3,26,939/- as on 21st April, 1992 being the principal and interest calculated at the stipulated rates referred to above. The plaintiff-bank has demanded the payment of interest at the rate of 20.75% per annum with quarterly rests on the suit amount from 21st April, 1992 onwards till its repayment because of the defendants having become defaulters. Ultimately, the suit for the abovesaid amount of Rs. 3,26,939/- has been filed on 23rd April, 1992.

2. The suit has been resisted and contested vide separate written statement by defendant No. l and defendants 2 to 4 on various grounds, namely, that the suit has not been filed by an authorised person, that the loan documents with blank columns were got signed from the defendants. The rate of interest has also been disputed. According to the defendants, it was 12-1/2% per annum only and not as claimed by the plaintiff-bank. In any case, it is contended that the plaintiff-bank is not entitled to charge interest at the rate of 20.75% per annum.

3. On the pleadings of the parties, this Court framed the following issues vide its order dated 13th October, 1993:-

1. Whether the suit in question has been filed by a duly authorised person as alleged? OPP

2. Whether the signatures of the defendants were obtained on the loan documents by the plaintiff-bank under pressure as alleged in para-6 of the written statement? OPD 1 to 4

3. Whether the plaintiff is entitled to recover the suit amount or any portion thereof as alleged? OPP

4. Whether the plaintiff is entitled to recover the interest at the agreed rate or simple interest as alleged by defendants in their respective pleadings? OPP

5. In case issue No. 2 is decided in the negative, whether defendants 2 to4 did not stand as guarantors for defendant o. 1 as alleged? OPD 2 to 4.

6. Whether the defendant No. l is legally entitled to the payment of the decretal amount by way of easy instalments, as sought for by him? OPD-1.

7. Relief.

4. At this stage, it would be pertinent to detail that an application (OPM No.

223.of 1992) under Order 39 Rules 1 and 2 CPC was filed by the plaintiff-bank requesting for the attachment and sale of the truck and adjustment of the sale proceeds towards the suit amount. That application had been contested by the defendants. While deciding the said application, this Court took into consideration that after filing of the suit, an amount of Rs. 37,000/- had been paid on 1.5.1992 and 14.9.1992 only towards the suit amount and thus, considering the other attenuating circumstances too, the truck in question bearing registration No. HIK-235, Tata Diesel Make 1989 was ordered to be attached vide order dated 15.1.1993. Subsequent to he disposal of this application, only an amount of Rs. 15'',000/- was paid by defendant No. l on 1.9.1993. In other words, total amount of Rs. 52,000/- has been paid by the defendants towards the outstanding liability against them to the plaintiff-bank during the pendency of the suit.

5. It may not be out of place to mention that consequent to the non-appearance of the defendants pursuant to the orders of this Court on 22.4.1993, a show cause notice to each one of them as to why contempt of Court proceedings be not initiated against them for intentional disobedience of the orders of this Court was also issued. These proceedings also continued. Defendant No. l also admitted that he was in possession of the truck and vide his statement dated 21.5.1993, he undertook to produce the same after ten days to be counted from that date in accordance with the orders of even date. However, he failed to do so and sow cause notice was again issued to him.

6. Subsequently, defendant filed another application (OMP No. 92 of 1994), wherein vide para 8 thereof, they agreed to suffer the decree subject to charging of simple interest and repayment of the decretal amount to be made in instalments. This application was resisted by the plaintiff-bank. However, parties further negotiated the matter and the negotiations have ended the long dispute and the Learned Counsels for the parties have today made their statements before this Court which have been duly recorded and are C-l, C-2 and C-3, respectively. These statements shall form of the decree.

7. In view of these statements, thee is no dispute about the calculation of the suit amount including the interest on the agreed rate as on 21.4.1992.This suit was filed on 23.4.1992. According to Learned Counsel for the defendants, future interest chargeable should be in accordance with the principles laid down in Union Bank of India Vs. Dalpat Gaurishankar Upadyay, , followed by this Court in the case of Punjab National Bank v. Surinder Singh Mandyal and Others (Civil Suit No. 61 of 1986) decided on 25.4.1994 and State Bank of India v. M/s. Mandav Udyog and Others (Civil suit No. 110 of 1986), both decided by Mr Justice Devinder Gupta, J. I need not refer to the decisions so cited at the Bar by the Learned Counsel for the parties since I agree with the principle laid down in Union Bank of India''s case (supra) by the Bombay High Court and followed in subsequent two other civil suits by brothers Mr. Justice Devinder Gupta, J. holding the term ''principal sum adjudged'' for the purpose of Section 34 C.P.C. means the original amount lent with the addition there of any interest

whatsoever. It has also been held that in addition to pendente and future interest, additional interest adjudged on such principal sum for the period prior to the institution of the suit can also be granted by the Court. This interest adjudged for the period prior to the institution of the suit also has to be on ''such principal sum'' and this also has reference to the earlier expression ''Principal sum adjudged''.

8. In the instant case, the principal sum advanced to the defendants at the time of advancement of the loan was Rs. 2,84,000/-. The suit amount includes therein the interest which has remained unpaid till the date of the institution of the suit. As per the statement of accounts, some amounts towards the insurance and guarantee tee have been spent by the plaintiff-bank on behalf of the defendants. However, this statement further shows that the plaintiff-bank has also charged penal interest to the tune of Rs. 623.40 as per the entry pertaining to 153.1991. Though, amount spent towards payment of insurance and guarantee fee appear to be recoverable by the plaintiff-bank, yet the plaintiff-bank is not entitled to charge the penal interest. Accordingly, this penal interest of Rs. 623.40 has to be deducted from the suit amount. Resultantly, plaintiff-bank is entitled to a decree in the sum of Rs. 3,26,315.60. However, the principal sum for the purpose of Section 34 of the CPC would be and is adjudged as Rs. 2,84,000/- till the date of its realisation.

9. Now, I advert to the next question as to what would be the rate of interest to be awarded in future. In view of the principles laid down in the Full Bench case of Union Bank of India (supra) followed by this Court in two civil suits referred to above, to my mind, though the amounts adjudged by the Court by way of ''principal sum'' as well as ''interest'' thereon for the period prior to the institution of the suit together may be termed as ''aggregate amount adjudged'' or ''suit amount'' as payable on the date of the suit, yet adjustment by the Court shall remain static throughout for the purpose of calculating the future interest till its realisation. No interest is payable on the amount of interest adjudged on such principle sum. Interest, whether simple or compound will remain ''interest'' for the purpose of Section 34 and shall never merge in the principal. The Legislature, while using the expression "in addition to any interest adjudged on such principal for any period prior to the institution of the suit" in Section 34 of the CPC in contra-distinction to the expression ''principal sum'' has not made any distinction between the interest computed by way of simple interest or compound interest. In that view of the matter, ''principal sum adjudged'' used in Section 34 of the CPC means the original amount lent with the addition whatsoever. This will be the position notwithstanding any agreement between the parties or any prevailing bank or trade practice to the contrary.

10. In the instant case, applying the abovesaid principle, the agreed rate of interest was at the rate of 12-1/2% per annum with quarterly rests. In case, the future interest is allowed at this rate, this would mean the calculation of interest not only on ''principal sum adjudged'', but also on the interest accrued

thereupon. Hence, interest with quarterly rests cannot be allowed. In that view of the matter, the plaintiff-bank shall only be entitled to future interest at the rate of 12-1/2% per annum on simple basis on the ''principal sum adjudged'', namely, Rs. 12-1/2% per annum on simple basis on the ''principal sum adjudged'', namely, Rs. 2,84,000/-, the amount of the loan initially advanced to the defendants by the plaintiff-bank. As regards the subsequent payments made during the pendency of the suit, it has to been specifically directed to be adjusted to the principal amount nor it has been agreed to by the plaintiff-bank to be adjusted as such.

11. In view of he discussion made above, a decree in the sum of Rs. 3,26,315.60 (Rupees Three Lacs Twenty Six Thousands Three Hundreds Fifteen and Paise Sixty only) (Principal Rs. 2,84,000/- and remaining amount as interest upto April 21,1992) is passed in favour of the plaintiff and against the defendants jointly and severally with future interest at the rate of 12-1/2% per annum on the principal amount so adjudged, namely, Rs. 2,84,000/- from April 22,1992 till its realisation. Costs on decretal amount as per rules.

12. Taking into consideration the outstanding amount payable by the defendants to the plaintiff-bank and also the future interest which would accrue on the principal sum so adjudged, to my mind, the decretal amount alongwith future interest in the light of the observations made above, are ordered to be paid in instalments, each instalment being of Rs. 7,000/- per month. However, the first instalment shall commence from 10th July, 1994. In case, the defendant(s) defaults in making the payment of instalment, the entire decretal amount shall be recoverable at once.

13. Before parting with this case, the plaintiff-bank is also directed to adjust the amount of Rs. 52,000/- admittedly paid during the pendency of the suit towards the decretal amount.

14. At this stage, a request for the refund of the court-fee has been made on behalf of the parties. The suit was at the stage of recording the evidence of the plaintiff-bank. Evidence has not been recorded. As such an amount to the extent of 2/3rd of the court-fee is ordered to be refunded to the plaintiff-bank. Decree sheet be prepared.