(2011) 01 P&H CK 0408

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 445 of 2009

State Bank of Patiala — APPELLANT

Vs

Sewa Singh and Others — RESPONDENT

Date of Decision : 06-01-2011

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

Citation : (2011) 162 PLR 341 : (2011) 3 RCR(Civil) 540

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.—Plaintiff-Appellant Bank filed a suit for recovery. The said suit was decreed by the trial Court vide judgment and decree dated 4.4.2008. Aggrieved by the same, Defendants No. 2 to 6 filed an appeal. The said appeal was partly, allowed by the Additional District Judge, Kaithal vide judgment and decree dated 17.10.2008 whereby pendente lite and future interest was reduced to 6% per annum from 12% per annum. Hence, the present appeal by the Plaintiff-Bank.

2. The case of the parties, as noticed by the learned Additional District Judge in paras 2 and 3 of its judgment reads as under:

2. Briefly stating the facts are that the Plaintiff-Respondent-Bank State Bank of Patiala, a body corporate constituted under State Bank of India (Subsidiary Banks) Act 1959 with its head office at Patiala, instituted the present suit on the ground that on 13.9.1988 Defendant-Appellants applied for A.T.L. of Rs. 70,000/- and the same was sanctioned on purchase of new tractor. The said loan was sanctioned after due and usual verification and considering the financial requirements of the borrowers. The loan was sanctioned subject to terms and conditions of the documents, which were executed at the time of sanctioning of the loan. The repayment of the loan was stipulated within nine years from the date of advance, in 18 half yearly installment of Rs. 3900/- plus interest thereon,

on or before 31st July and 31st January each year. In case of default in repayment, the bank-Plaintiff was authorized to take penal action. Rate of interest was 4 percent below State bank of India, advance rate, rising and falling therewith a minimum 12.5 percent per annum. It has been pleaded that in acceptance and acknowledgment of the terms and conditions, an agricultural term loan of Rs. 70,000/- was sanctioned, and in order to secure, the due repayment thereof, (principal alongwith contractual rate of interest) and other incidental costs, charges and expenses, Appellants-Defendants executed and delivered in favour of the Plaintiff bank, the necessary security documents for consideration of A.T.L. i.e. hypothecation agreement dated 15.9.1988; letter of undertaking dated 16.9.1988 thereby the Defendants-Appellants undertook to repay loan in installment and for that purpose, Appellant-Defendant mortgaged their lands owned by them with Plaintiff bank under a mortgage deed dated 15.9.1988. As such, Agricultural Term Loan of Rs. 70,000/- was sanctioned in favour of the Defendant-Appellants. The Defendants No. 7 and 8 stood as Guarantors for the borrowers and also executed an agreement of guarantee deed dated 16.9.1988 in favour of the Plaintiff bank. It has, thus, been pleaded that the liability of all the Defendants are joint and several and coextensive and individual towards Plaintiff bank. The Defendants deposited a sum of Rs. 12,505.78 paisa with the Plaintiff bank towards margin money as agreed under the authority of the said borrower. Consequently the Plaintiff bank disbursed Agricultural Term Loan of Rs. 70,000/-. The Defendants have purchased the tractor and Harrow. Tractor was got registered by the Defendants. Notice was served upon the Defendants calling upon them to repay the loan, which was duly served and finally registered notice dated 7.9.1993 and 16.3.2001 were served upon the Defendants but to no effect. On these premises, the suit was filed. The suit was contested by the Appellants-Defendants and a comprehensive written statement has been filed. The factum of loan has been admitted. However, it has been stated that land of the Defendants-Appellants which is situated in village Kurar, is a totally flooded area and land is not fertile enough to generate any income. The Govt. of India as well State Govt. started a project scheme in the year 1995 to make land of village Kurar reclaim with the help of Govt. of Netherland. Due to the said reasons, Defendants could not repay the loan amount advanced by the Plaintiff bank. The Respondent-Plaintiff-bank has charged excessive interest i.e. compound interest. The loan was advanced for agricultural purpose and rate of interest was agreed between the parties at six percent per annum. The Plaintiff bank has no right to recover amount, equivalent to five times excess of principal. The Plaintiff bank has not granted any benefit of scheme floated by Reserve Bank of India vide which tractor''s loanees which were in debt in the year 1992, were waived. The water of the tubewell is equally not fit for agricultural purpose and as such the Defendants are not in a position to pay such huge amount of loan. The suit is also barred by limitation. The documents were prepared by the bank and thumb impressions thereupon of the Defendants were obtained on some blank and printed papers. The Defendants have stated that they never agreed to pay interest. On these premises, it has been pleaded that the suit be dismissed.

3. On the pleadings of the parties, the following issues were framed:

1. Whether the Plaintiff is entitled for a decree of suit for recovery as prayed for? OPP

2. Whether the suit of the Plaintiff is not maintainable?OPP

3. Whether the suit is barred by limitation?OPD

4. Whether the Plaintiff has no cause of action to file the present suit?

5. Relief.

4. Learned Counsel for the Appellant has submitted that the trial Court had allowed future rate at the agreed rate between the parties. Learned Additional District Judge has erred in reducing the rate of interest on erroneous consideration.

5. Learned Counsel for the Respondents, on the other has submitted that the Respondents had taken a loan from the Bank for purchase of a tractor. However, they could not repay the loan in time. The future rate of interest allowed by the trial Court was on the higher side.

6. After hearing the learned Counsel for the parties, I am of the opinion that the instant appeal deserves dismissal.

Section 34 of the CPC reads as under:

34 Interest.-(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.

(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.

7. Thus, as per the above provision, future interest not exceeding 6% per annum

can be allowed by the Court. However, in cases involving commercial transaction, the rate of interest may exceed 6% per annum but shall not exceed the contractual rate of interest. In the present case, the Defendants had taken agricultural loan for purchase of a tractor. However, the Defendants could not repay the loan. Consequently, the suit filed by the Bank for recovery was decreed. The learned trial Court, while reducing the rate of interest, has exercised its discretion vested in it. The judicial discretion exercised by the learned Additional District Judge cannot be said to be without jurisdiction.

8. No substantial question of law arises in this regular second appeal which would warrant interference by this Court. Accordingly, this appeal is dismissed.

