
(2016) 05 P&H CK 0274
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17354 of 2015

Surender Singh and another	Vs	APPELLANT
Haryana Gramin Bank		RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LawHerald 2138

Hon'ble Judges : Mr. S.J. Vazifdar, Acting C.J. Mr. Arun Palli, J.

Bench : Division Bench

Advocate : Mr. Sanjiv Gupta, Advocate, for the Appellant; Mr. A.K. Goyal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.J. Vazifdar, Acting Chief Justice - (Oral) - The petitioners seek a writ of mandamus directing the respondents to allow them to deposit a sum of Rs. 7,44,719/- in terms of the order dated 14.05.2015 passed by the Sub-Divisional Officer (Civil), Pehowa (for short "SDO"). The petitioners had availed a loan from the respondent-Bank. The matter is covered by the Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks), Act, 1973. The SDO by the said order directed as under:

"I have perused the record carefully and have heard the arguments of the counsels for parties. As per the record the respondent has availed the loan of Rs.4,50,000/- from bank as per its terms & conditions by mortgaging his owned land measuring 32 kanals situated at Tukar through Mortgage deed No.2099/1 dated 17.10.2007. The respondent has not deposited the loan amount as per the terms & conditions of the Bank & due to this an amount of Rs.7,96,728/- including interest up to 12.09.2013 has become payable. The counsel for the respondent is ready to deposit the amount if given rebate in applying interest. Hence, I order in present case that if respondent deposit the entire amount within 1? months i.e.up to 30.06.2015, then that borrower shall be entitled to

rebate of 15% interest. This relaxation shall be given only if the amount is deposited up to 30.06.2015. After this duration this application would stand decreed and thereafter the respondent shall be liable to make the payment of the Bank along with interest and applicant bank will have the right to recover the amount by selling the property of respondent by filing execution. The application is consigned to record room.

2. While the petitioners have been granted the rebate of 15% of the interest, it is provided that they would be entitled to the same only if they deposit the amount by 30th June, 2015. There is however, considerable dispute as to the exact amount due. This in turn is on account of the dispute as to whether the respondent-Bank is entitled to charge compound interest or only simple interest. The order itself does not specify the rate of interest. Nor does it specify whether the respondent-Bank is entitled to compound interest or not.

3. Both the parties rely upon Clause 4 of the Hypothecation Agreement, which governs their rights. Clause 4 reads as under:

The Borrower(s) shall pay interest on the loans to be calculated on the daily balances in the loan account(s) with monthly/quarterly/half yearly/yearly or other rests according to the practise of the Bank and as per the guidelines as applicable/issued by RBI from time to time, as may be applicable, at the rate of 6% and 6.5% per annum above/below the Benchmark Prime Lending Rate of the Bank/RBI Rate rising and falling therewith or at such other rate as may be decided by Bank from time to time, with a minimum of 12% & 13.5 % per annum.

4. The Clause does not specify whether the interest is to be compounded monthly, quarterly, half yearly, yearly or in any other manner. This was a cyclostyled agreement. It is necessary for the parties to have specified which of the options would operate. In the result, therefore, there does not appear to be any agreement for compound interest. The practise of the respondent-Bank, if any, has not been tendered in evidence. In any event, our attention has not been drawn to any such practise. In the circumstance, at least, in the facts of this case, respondent-Bank would only be entitled to simple interest.

5. There is also confusion regarding the rate of interest. The percentage of 6% and 6.5% is written in hand and the option of whether this percentage is to be above or below the Benchmark Prime Lending Rate is also not indicated. However, the minimum rate is indicated as 12% and 13.5% per annum. Even, in this regard, our attention has not been invited to any provision which would indicate that it would be 12% or 13.5% per annum.

6. The petitioners would still be entitled to a benefit of 15% interest although the amounts have not been paid by 30th June, 2015 on account of the dispute relating to the quantum payable. By this judgement we intend indicating the basis on which the respondent Bank shall compute the amount that is payable under the order dated 14.05.2015 passed by the SDO. The facility of 15% rebate

of interest shall be applicable if the petitioners pay the amount as recomputed within eight weeks from the date on which they are informed of the same.

7. The petitioners, however, themselves admit that an amount of Rs. 5 lakhs is payable.

8. In the circumstances, the petition is disposed of by the following order:

1. The petitioners shall pay an amount of Rs. 5 lakhs on or before 15th July, 2016.

2. The respondent-Bank shall be entitled to charge simple interest @ 12% per annum.

3. The respondent-Bank shall compute the amount payable on the basis of 12% per annum simple interest and inform the petitioners of the same.

4. The petitioners shall, within eight weeks of being indicated the amounts by the respondent-Bank, pay the same.

5. In the event of the petitioners paying the amounts as aforesaid, they will continue to have the benefit of the rebate of 15% interest.

6. In the event of the petitioners not paying the amount, the respondent-Bank shall be at liberty to recover the amounts in accordance with law. The petitioners shall also be entitled to defend themselves in such proceedings.