(2013) 05 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 404 of 2012.

Tek Singh — APPELLANT

Vs

Himachal Gramin Bank and Others — RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 05 SHI CK 0056

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : R.P. Singh, for the Appellant; Y. Paul and Ms. Kiranjit Narula, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sood, J.—This appeal has been preferred against the judgment of the learned District Judge, Mandi, decreeing the suit of the respondent-bank for recovery of Rs. 2,90,160/- with interest at the rate of 15% per annum with monthly rests from 17.8.2008 till its realization. The learned trial Court on the evidence before it decreed the suit for recovery of Rs. 1,25,000/- with interest at the rate of 15% per annum with quarterly rests from 17.8.2007 till its realization.

2. In appeal preferred by the bank challenging inadequacy adjudication of the amount due, the learned appellate Court modified the judgment holding that the sum due was Rs. 2,90,000/-. The finding of the learned trial Court that a sum of Rs. 1,39,000/- had not been adjusted in loan account of the appellant, was negatived on the facts proved on record. The learned appellate Court also awarded interest at the rate of 15% per annum with monthly rests.

3. Learned counsel for the appellant urges that the interest could not be charged on monthly rests but only on quarterly basis since the documents on record did not support the case of the appellant-bank on this aspect. The question of law raised by him is, whether the judgment of the learned appellate Court can be sustained when it ignores the rate of interest as itself acknowledged by the bank

to be paid on quarterly rests?

4. I have heard learned counsel for the parties and have gone through the record.

5. Learned counsel for the appellant has placed reliance on the judgment of the Supreme Court in Central Bank of India Vs. Ravindra and Others, to urge that interest could not have been charged on monthly rests.

6. Before adverting to the judgment, I note that in the documents of the plaintiff itself, interest has been mentioned at various rates. Ex. PW-2/F, which is a Letter of Hypothecation, rate of interest is 15% per annum with monthly rests, but on 6.5.2003 vide Ex. PW-2/D, which is a Balance Confirmation Letter, the bank itself acknowledges that the rate of interest should be 15% per annum with quarterly rests. I also note that in the mortgage deed Ex. PW-2/H executed on 3rd May, 2003, the rate of interest has been left blank. The relevant portion of the deed reads:-

...I hereby covenant that I will pay to the Bank within two days of the demand made in writing by the Bank the Principal sum of Rs. 2,64,000/- with interest thereon at the rate of ____ % with Qty rests. I agree that the Bank shall be entitled in its discretion to increase the rate of interest. I agree to avail of the said loan in stages after verification of the progress of development of work by the Bank.

The column relating to the interest has been left blank. In these circumstances, there is no doubt in my mind that there is no agreement to pay interest on monthly rests, I further find that in Ex. PW-1/B, which is a Balance Confirmation Letter, though the rate of interest 15% per annum has been filled in, but "monthly, quarterly, half yearly rests" has not been indicated. Taking into consideration this state of affairs, I cannot persuade myself to hold that the judgment of the learned appellate Court can be sustained when it seeks to find as a fact that the interest to be charged is on quarterly basis. This is a glaring error apparent on the face of the record itself and does not require any elaborate reasoning. In these facts, the decree of the learned appellate Court is modified and I hold that the interest payable would be at the rate of 15% per annum with quarterly rests and not on monthly rests. On the other aspect of adjustment of the amount etc., I find that the learned appellate Court rightly holds that the amount paid has been adjusted.

In these circumstances, this appeal is allowed to the extent indicated above. On the question as to whether the rate of interest charged on monthly rests, I hold that there is no such stipulation rather the documents show different rates and the mortgage deed shows no stipulation of payment of interest. Appeal is partly allowed, as held.

