(1997) 08 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 122 of 1988

UCO Bank APPELLANT

Vs

Mahesh Kumar and Others RESPONDENT

Date of Decision : 14-08-1997

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

Citation : (1997) 3 ShimLC 403

Hon'ble Judges : P.K. Palli, J;Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : R.L. Sood, for the Appellant; Deepak Gupta, for Respondent Nos. 1 and 3 and Praneet Gupta, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Panta, J.—The Plaintiff Bank-Appellant herein has directed the present appeal against the judgment and decree dated March 15, 1988 passed by the learned Single Judge in Civil Suit No. 80 of 1986.

The Plaintiff-bank sanctioned a term loan of Rs. 2,56,000 in favour of Defendant Mahesh Kumar on 16-10-1981 and 17-11-1981 for the purchase of Leyland Tuskar Truck bearing Engine No. 119309, Chassis Number D-135871 which was subsequently registered No. HPN-2050. Defendants 1 to 3 executed a memorandum of agreement dated 26-10-1981 Defendants 2 and 3 stood as guarantors for Defendant No. 1. The amount of cash credit was repayable along with interest at the rate of 12-1/2% per annum with quarterly rests. The Defendants, however, failed to repay the loan amount as per terms and conditions agreed upon between the parties. The Plaintiff-bank accordingly filed a suit for recovery of the amount of Rs. 2,56,000 along with interest thereon at the rate of 12-1/2% per annum with quarterly rests.

2. Though the suit of the Plaintiff was reisted and contested by Defendants 1 and 3 initially by filing joint written statement. Defendant No. 2 did not choose to

appear and contest the suit and hence proceeded ex parte. On 15-3-1988 Defendant Mahesh Kumar appeared and admitted the claim of the Plaintiff and consented to a decreed for Rs. 3,89,626.41 P. However, he made a statement that he shall not be charged any future interest. He, however, prayed that he may be allowed to any a sum of Rs. 50,000 by end of June 1988 and subsequently from July 1988 he shall pay monthly instalments of Rs. 50,003 till the entire decretal amount was paid.

3. On the basis of the statement made by Defendant, the learned Single Judge decreed the suit vide impugned judgment and decree dated 15-3-1988. A decree for Rs. 3,89,626.41 Paise with costs was passed in favour of the Plaintiff and against the Defendants. Further simple interest at the rate of 12-1/2% per annum was allowed from the date of passing of the decree till the payment of the entire decretal amount. The Defendants were permitted to pay the decretal amount by instalments as prayed for by the first Defendant,

4. The Plaintiff feeling dis-satisfied with the judgment and decree of the learned Single Judge has assailed the impugned judgment and decree in this appeal on the following grounds:

(i) That the learned Single Judge has not decreed the suit with interest at the rate of 12-1/2% per annum with quarterly rests for value received in view of the fact that all the documents have been proved by the Plaintiff-bank and further since the Defendants admitted the claim in its entirety without any exception or reservation.

(ii) Pendente lite interest should have been allowed from the date of institution of the suit till the final realization of the decretal amount.

Sh. Deepak Gupta learned Counsel for Defendants 1 and 3 has contended that u/s 34 of the Code of Civil Procedure, interest is payable/awardable on the ''Principal sum adjudged'', which does not include any component of interest irrespective of agreement between the parties. He has also further contended that award of interest is entirely in the discretion of the Court and as such no fault can be found if pendente lite interest in the exercise of such discretion has not been awarded from the date of the suit. He has also contended that the statement was made by first Defendant for repayment of the loan amount under bona fide belief that he would get some relief in the rate of interest claimed by the Plaintiff-bank and also repayment of the amount in instalments. He had contended that the rate of interest of 12-1/2% incorporated in the memorandum of agreement Exhibit P-1 and in Pronote Exhibit P-4 has been over-written and forged Similarly, according to the learned Counsel the words ''with quarterly rests'' inserted in clauses 1 and 2 of memorandum of agreement Exhibit P-1 have been written in different ink and pen than the ink and pea used in filling in blanks.

We have given our best consideration to the respective contentions of the learned Counsel for the parties and perused the material on record.

5. It has come in the evidence of Sh. Ramesh Chand Khatri, Clerk-Assistant Cashier of the Plaintiff-bank who appeared as PW 1 that he had been dealing with the truck loan case of the Defendants when he was posted in Sataun branch of the Bank since June 1983 Memorandum of Agreement (Exhibit P-l1, Guarantee deeds (Exhibits P-2 and P-3), Demand Promissory Note (Exhibit P-4), Letter of Waiver (Exhibit P-5) and Letter of Continuity (Exhibit P-6) were filled in by Sh. S. K. Gupta, with whose hand writing he was familiar. He also placed on record Statement of account (Exhibit P-7) duly certified under the Bankers Book Evidence Act and this document was prepared by him and contained the signatures of Sh. S. K. Gupta, Manager of the Bank. He also proved on record letters (Exhibits P-8 to P-l3) which contained the signatures of the first Defendant and admitted by him in the Court. He also stated that the blanks in these letters have been duly filled in the presence of the first Defendant who signed them thereafter. It has come in his cross-examination that the rate of interest charged throughout is 12-1/2% with quarterly rests and the words ''with quarterly rests'' inserted in Clauses 1 and 2 of the Exhibit P-1 were in the land of Sh. S. K. Gupta, Chief Cashier He showed his ignorance whether the ink and pen by which the above words have been written are different than the ink and pen used in filling in the other blanks. It has come in his further cross-examination that he could not say that the digit 12-1/2% in the Pronote (Exhibit P-4) had been over-written and forged. Sh. Satish Chopra, Manager of the Plaintiff-bank has stated that no payment has been received against the truck loan in question after the compilation of the statement of account and the filling of the suit. It has been stated by him in his cross-examination that if the rate of simple interest of 12-1/2% per annum is allowed throughout on the total amount recoverable from the Defendants as on the date of filling of the suit the said sum comes to Rs. 3,42,450. In rebuttal Defendant Mahesh Kumar appeared and admitted the Plaintiff''s claim in its entirety and further stated that the decree of Rs. 3,89,626.41 P. may be passed against him.

6. On the basis of the evidence discussed above, it is clear that the suit was filed for the recovery of Rs. 3,89,626.41 P. including the interest at the rate of 12-1/2% per annum with quarterly rests and the first Defendant had admitted the entire claim and further prayed that the decree be passed against him for the claimed amount. In their written statement filed by Defendants 1 and 3, they have stated that they had agreed to pay the simple interest at the rate of 12-1/2% per annum and the Plaintiff-bank has wrongly charged compound interest. There is nothing stated in the written statement by the contesting Defendants that the digit "12-1/2% per annum" appearing in Exhibits P-1 and P-4 were lateron incorporated by the Plaintiff-bank or these documents were forged by it The Plaintiff-bank issued letters concerning balance (Exhibits P-8 to P-l3) to the first Defendant who confirmed his signatures thereon and these documents would prove that the interest at the rate of 12-1/2% per annum with quarterly rests was added to the loan amount and the total amount claimed in the suit was on the basis of the agreed rate of interest with quarterly rests. The

contesting Defendants have not stated in their written statement that the words ''with quarterly rests'' written in Exhibit P-1 were lateron inserted by the Plaintiff-bank. In the face of the pleadings of the parties and further admission by the first Defendant on March 15, 1988 that he admitted the Plaintiff''s claim in entirety and a decree of Rs. 3,89,626.41 P may be passed against him would hold the Defendants liable for payment of the amount claimed in the suit by the Plaintiff-bank The contention of the learned Counsel for Defendants 1 and 3 that interest 12-1/2% per annum with quarterly rests was inserted or the documents Exhibits P-1 and P-4 were forged lateron is not tenable.

7. The next question which arises for consideration is whether the Plaintiff-bank is entitled to interest pendente lite or not. This claim of the Plaintiff-bank appears to be valid and legal. In Bank of Baroda Vs. Jagannath Pigment and Chem. and Others, , it was held that the ''principal sum adjudged'' would indicate the principal amount of loan and the amount of interest accrued thereon.

Following the said ratio of the judgment of the apex Court, we hold that the ''principal sum adjudged'' would be inclusive of the amount of interest accrued on the principal amount of loan Therefore, the Plaintiff-bank is entitled to interest at the rate of 12-1/2% per annum with quarterly rests from the date of the institution of the suit till the decree is passed by the learned Single Judge, and thereafter the future interest at simple rate of 12 1/2% per annum from the date of passing of the decree till the payment of the entire decretal amount claimed in the suit In the present case no reason have been recorded by the learned Single Judge in not awarding the interest pendente lite. Therefore, it cannot be said that the discretion was exercised on sound judicial principles as contended by Sh. Deepak Gupta, learned Counsel for Defendants 1 and 3.

8. Consequently, the present appeal is allowed to the extent indicated above. The impugned judgment and decree of the learned Single Judge are modified and the Plaintiff-bank is held entitled to pendente lite interest on the principal sum adjudged at the rate of 12-1/2% per annum with quarterly rests from the date of institution of the suit till the date of the decree i. e. March 15, 1988 and future interest at 12-1/2% per annum at simple rate of interest from the date of passing of the decree till the payment or realization of the entire decretal amount.

In the facts and circumstances of the case, the parties shall bear their own costs of the appeal.

