

(2010) 04 MP CK 0050
In the Madhya Pradesh High Court

UCO Bank (Nationalized Bank)

APPELLANT

Vs

Shankar Enterprises through V.M .Gaur (Dead) through Legal Representative, Smt. Achal Gaur Widow of Late V.M. Gaur, Rajendra Kumar Jetli, Vishwamitra Gaur (Dead) through Legal Representative (Smt. Achal Gaur and Others) and Jagdish Prasad Sharma, Deputy Accounts Officer, J.C. Mills

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2010) ILR (MP) 2157 : (2010) 3 MPHT 441 : (2010) 2 MPJR 234 : (2010) 3 MPLJ 67 : (2011) 2 RCR(Civil) 332

Hon'ble Judges : Piyush Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Piyush Mathur, J.

The United Commercial Bank (UCO Bank) has preferred this First Appeal against the Judgment and decree passed by the Vth Additional District Judge, Gwalior, in Civil Original Suit No. 6-B/1986, where in the suit preferred by the Bank, for the recovery of dues of Rs. 1,68,593.91 Paise (which stood paid-up during pendency of Suit) pendente lite interest @ 5% has been awarded and the Appellant-Bank claims herein that instead of 5%, the Court should have awarded contractual rate of interest. This Appeal relates only to this solitary issue as to whether a Civil Court possess the power and discretion to grant interest as per the rate mutually agreed between the parties or at a lower rate for the period during which the suit remained pending with the Court (pendente lite interest only).

The facts of the case reveal that Shankar Enterprises being a Partnership Firm had obtained financial assistance from the Appellant-Bank and a Term Loan of Rs. 65,000/- and a Cash Credit Facility of Rs. 60,000/- was sanctioned in favour of the Firm, for which the Respondents No. 4 and 5 stood Guarantors and the

Respondents No. 2 and 3 being Partners of the Firm were equally made responsible for the return of the Loan amount.

When the Partnership Firm, its Partners and Guarantors could not deposit the Loan amount including interest, a suit was filed on Date 12.09.1983 by the Bank for the recovery of Rs. 1,68,593.91 Paise but during the pendency of the Suit, Defendant No. 3 had deposited the entire Suit amount of Rs. 1,68,593.91 Paise on Date 03.02.1988 vide Cheque No. 101595 (including Principal and Interest Amounts) and upon its presentation before the Trial Court, the Counsel for the Bank had received the Cheque, although the same was not immediately encashed by the Bank, due to undisclosed reasons, but the fact remains that the entire due amount was deposited by the Respondents during the pendency of the Suit.

While the Suit was pending with the Trial Court, Defendant No. 5-Govind Narayan Shah expired and his name was deleted from the array of Defendants, whereafter the Bank filed an Application for attachment and another Application was filed by Defendant No. 4 seeking issuance of Interim Orders for attachment before the Judgment, against the amount of Leave Salary and Gratuity, payable to Defendant No. 3 by his Employer J.C. Mills, Gwalior, for realization of due amount and the Trial Court allowed the Application of Defendant No. 4 by an Order Dated 05.08.1988 and issued an Attachment Order for the amounts payable to the Defendant No. 3.

Mr. Vishwamitra Gaur-Respondent No. 3 preferred a Miscellaneous Appeal against the Order of Attachment before the High Court, where this Court, while disposing of Miscellaneous Appeal No. 106/88 (V.M. Gaur v. United Commercial Bank) observed in its Order Dated 06.03.1991 as follows;

It is undisputed fact of the case that the amount claimed in the suit as principal and interest has been duly deposited. The question which remains only to be decided is that of interest pendente lite and that of costs. In regard to those two questions there can be no scope for any evidence of any party to be taken and it is a question of discretion merely of the trial Court to be exercised in deciding the claim of the plaintiff for interest and costs.

A perusal of the Order passed by this Court reveal that the Trial Court was directed to decide the claim of the Bank in relation to the interest and costs only, in view of deposit of the entire Suit amount, therefore, the Trial Court focused only on the issue of interest and costs (as none of the parties challenged High Court's Order further) and the impugned Judgment came to be passed by the Vth Additional District Judge on Date 12.04.1991, only in relation to the issue of pendente lite interest and costs, where the Court instead of awarding contractual interest, has awarded 5% interest for the period commencing from Date 12.09.1983 till 03.02.1988, on the due amount quantified in the Suit at Rs. 1,68,593.91 Paise.

I have heard Shri R.K. Patni, Learned Counsel for the Appellant and perused the

entire record of the case and since none appeared on behalf of the Respondents, the matter was carefully examined and considered.

The record reveal that in the event of deposit of the entire suit amount and in view of an Order passed by this Court on Date 06.03.1991, the Plaintiff and the Defendant did not lead any evidence (Oral or Documentary) in support of their respective contentions, therefore, the Agreement or the Conditions of Loan including the rate of interest could not be proved by the Plaintiff-Bank or the Defendants leaving this Court with no choice except to read the contents of the unexhibited documents filed by the Plaintiff-Bank alongwith the Plaint. The Loan Saction Order Dated 10.10.1977 simply provides for the Conditions for grant of loan and it nowhere mention about the rate of interest, but the Agreement executed between the Plaintiff and the Defendant contain a condition in Clause (6) that the Borrower shall pay interest @ 13% over the Reserve Bank Rate subject to a minimum of 13% interest per annum, but the other Columns which provide for other exigencies, when a Borrower would fail to discharge his liability, remained blank, as the Bank Officials did not mention any amount or rate of interest in the other Columns of the Agreement, which makes it difficult for this Court to ascertain, even while perusing the Agreement, as to what was the rate of interest, for which the parties had agreed, which would become "contractual rate of interest" for the purposes of ascertaining the rate of interest, leviable on the principal sum, advanced on behalf of the Bank. In this circumstance, it cannot be said that the contractual rate of interest in the present case would be 13% or 15%, in absence of a definite proof about the Agreement of the Parties, on a particular rate of interest.

Shri P. K. Patni Learned Counsel for the Appellant-Bank has placed reliance on a Judgment of the Supreme Court reported as State Bank of India Vs. Yasangi Venkateswara Rao, to demonstrate that when a contract exists between the Parties regarding the rate of interest, then the compound interest can be charged in respect of the amount advanced against a mortgage and the Court cannot interfere in the matter. With great respect, this Judgment has no application to the controversy at hand, in as much as there exists no specified rate of interest, for which the parties of the present Suit had agreed to abide themselves and unless there exist a mutual agreement for the payment of rate of interest, the analogy propounded in the Judgment could possibly be not pressed into service. Shri P.K. Patni has placed reliance on a similar Judgment of the Supreme Court reported as Deepa Bhargava and Another Vs. Mahesh Bhargava and Others, , which also propound for an analogy, where the Parties agreed for a particular rate of interest, but this Judgment, with great respect, has no application to the present controversy as there exist no proof of mutually agreed rate of interest.

The CPC contains specific provisions in Section 34 which clothe a Court with the power to order for payment of interest, (including interest pendente lite), where the Legislature has provided that the Court may order payment of interest at such rate as the Court deems reasonable to be made 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 6% per annum and the Proviso appended to Section 34 meet such exigencies, when the rate of interest is specified or not specified in an agreement. Similar is a provision of payment of interest, contained in Order 34 Rule 11 of the CPC, where the Legislature has empowered the Court to order for payment of interest, at the rate, agreed between the parties or failing such rate, at such rate not exceeding 6% per annum, as the Court deems reasonable. A comparative analysis of Section 34 and Order 34 Rule 11 of CPC. provide sufficient guidance to the Court for ordering interest and pendente lite interest to the Plaintiff. In the present case, the Plaintiff-Bank could not establish as to what was the contractual rate of interest and similarly the Bank has also not established as to what was the rate of interest, prevailing at that point of time, at which a Nationalized Bank was charging interest in relation to the commercial transactions. Therefore this Court feels that where there exists no evidence about the mutually agreed rate of interest, or contractual interest or the rate at which the Nationalized Bank charge interest, on the commercial transactions, the Court can conveniently award pendente lite interest upto a maximum of 6% per annum.

The provision of CPC and Interest Act and the provisions of Usurious Loans Act had come up for consideration before the Supreme Court in a case reported as N.M. Veerappa Vs. Canara Bank and Others, , where the Supreme Court had analyzed the scope of all these provisions, while screening the effect of the amendment made in the Year 1929 and concluded in relation to the payment of interest, qua the discretion of the Court to award interest pendente lite that the Court shall have the discretion to award interest, lessor than the rate of contractual rate of interest. The relevant Paragraph (18) of the Judgement is quoted herein below;

18. From the aforesaid rulings the following principles can be summarised. (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c)(i) or Order 34 Rule 4(1) or Order 34 Rule 7(c)(i), respectively in suits for foreclosure, sale or redemption. (b) But after the 1929 Amendment, because of the words used in the main part of Order 34 Rule 11, namely that "the Court may order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It has been so held in Jaigobind case by the Privy Council and by this Court in S.P. Majoo case that the new provision gives a certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned. (c) It is no longer obligatory to award the contractual rate after date of suit and up to the date fixed for redemption as above stated even though there was no question of the contractual rate being

penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from date of suit under Order 34 Rule 11(a)(i) up to date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable - on the principal amount found or declared due on the mortgagor is concerned. (e) The Court has also power to award from the date of suit under Order 34 Rule 11(a)(iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate not exceeding 6%. This is the position of the discretionary power of the Court, from the date of suit up to the date fixed in the preliminary decree as the date for payment. (f) Again under Order 34 Rule 11(b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest up to date of realization or actual payment, on the aggregate sums specified in Clause (a) of Order 34 Rule 11, could award interest at such rate as it deemed reasonable.

The aforesaid view is holding good uptill now as in a recent Judgment reported as Central Bank of India Vs. Ravindra and Others, , the Supreme Court has observed that the award of interest pendente lite is the discretion of the Court, as it is essentially governed by Section 34 CPC, dehors the contract between the parties. The Relevant Paragraph (8) of this Judgment is quoted herein below;

(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

The analogy of charging of interest in respect to recovery of a debt or damages, had been examined by the Supreme Court in yet another case reported as Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, Thazhathe Purayil Sarabi and Ors. v. Union of India and Anr. to ascertain as to whether the Court possess the power and discretion to grant interest u/s 34 of CPC, wherein the Court has found that Section 34 of CPC empowers the Court to grant interest at the current rate of interest or contractual rate as deemed reasonable to be paid on the principal sum adjudged to be payable and/or awarded from the date of claim or from the date of the order or decree for recovery of the outstanding dues. The Supreme Court has ruled that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants and since in the present matter the entire principal sum adjudged to be paid by the Defendants-

Respondents was paid during the pendency of the suit itself, the issue of interest pendente lite would certainly be governed by the peculiar facts and circumstances of the case and the Court would be justified in exercising its discretion to award pendente lite interest, at a rate found reasonable, in the discretion of the Court.

In some of the Judgments of the Madhya Pradesh High Court, it has been observed that it is the discretion of the Court u/s 34 of CPC to award pendente lite interest and it is not a mandatory requirement of law to grant interest at the contractual rate, as the same rest with the discretion of the Court, to prescribe the rate of interest, for the period during which the suit remained pending with the Court. In a Judgment of this Court, reported as 1990 J.L.J. 139 Punjab National Bank v. Shri Jukhtar Singh and Anr., the Court has found that it possess the discretion to award pendente lite interest u/s 34 of the Code and when it is not a commercial transaction for the Guarantor, the Court would be justified in its discretion to award a lesser rate of interest, when it deals with the case of a guarantor. The other Judgment of this Court is reported in Union Bank of India Vs. Chhatarpur Siliment Sales Corporation and Others, , wherein a similar view has been taken by this Court.

The facts of the present case reveal that the Borrower-Defendant No. 2 had almost not contested the suit, but his father-in-law being Defendant No. 3 and Guarantor had contested the suit and in absence of Defendant No. 2, had paid the entire suit amount, out of his Life Time Savings, received from his Employer at the time of retirement from service and had paid interest on the principal sum uptill Date 03.02.1998, when an amount of Rs. 1,68,593.91 Paise was tendered by payment of Cheque, during the pendency of the Suit. The Learned Trial Court had considered the financial constraints of the retired litigant, who had suffered five heart attacks and operated upon twice for subdural haematoma and other ailments while remaining in the Hospital for several months and for also getting operated for cataract of both eyes and complete loss of monthly income. The Court has considered that Defendant No. 3-Vishwamitra Gaur being retired employee and sole bread earner of the family had paid the entire suit amount, by adjusting his pensionary service benefits against the debts of his son-in-law and in those peculiar circumstances, the Trial Court had found that the pendente lite interest at the rate of 5% per annum would be the most appropriate rate of interest, for the period commencing from Date 12.09.1983 to 03.02.1988. The Trial Court has also taken into consideration that the Bank has failed to make any efforts to find out the person or property of Defendant No. 2, who was the Principal Borrower, whereafter it could not be said that without considering the facts of the case or the surrounding circumstances, the Court has passed an order granting 5% interest as pendente lite interest on the principal sum, while allowing the payment of costs of the suit in proportion to the suit amount. Therefore, this Court find that the Trial Court has properly exercised its discretion in the peculiar facts and circumstances of the case.

It would not be out of place to mention that the entire suit amount tendered by the Defendant No. 3 through a Cheque was accepted by the Counsel for the Bank and the Cheque was not encashed for quite sometime by the Bank and that might have persuaded the Bank Officials to ask for a higher amount of rate of interest as pendente lite interest, but when the Bank has failed to encash the Cheque issued for the entire due amount, for the recovery of which, the suit was filed, it could not be understood as to why 5% rate of interest as pendente lite interest would be inappropriate in the peculiar facts and circumstances of the case.

The Scheme of the payment of interest as reflected in Section 34 and Order 34 of CPC provide for payment of 6% interest as the outer limit for the rate of interest therefore it could not be said that the Trial Court had erred in awarding 5% rate of interest on the principal sum for the period commencing from 12.09.1983 to 03.02.1988, in the event when the Bank had failed to establish the prevailing rate of interest or contractual rate of interest and this Court feel that even without this evidence, the Trial Court was justified in awarding 5% pendente lite interest, while exercising its discretion in the background of peculiar facts and circumstances of the case. Therefore the Appeal preferred on behalf of the Bank being bereft of any merits, deserves to be dismissed and accordingly the Appeal is dismissed. However, there shall be no order as to Costs.