
(2007) 08 JH CK 0060
In the Jharkhand High Court

Vaishali Enterprises and Another

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
COMPANIES ACT, 1956 — Section 291

Citation : (2008) 1 BC 527 : (2008) 4 JCR 706

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—This appeal is filed against the judgment-dated 27.6.1998 and its corresponding preliminary decree dated 10.7.1998 passed by the Sub-Judge-IIInd, Bokaro at Chas in Title (Mortgage) Suit No. 31 of 1996, whereby the suit filed by the plaintiff/ respondent for recovery of a sum of Rs. 5,60,346/- was decreed in favour of the plaintiff/ respondent against the defendants / appellants. Pendente-lite and future interest charged @21.75% per annum was also awarded in favour of the plaintiff against the defendants till full realization of the decretal amount.

2. The plaintiffs case was based on the following facts:

Defendants had approached the plaintiff bank for a loan of Rs. 2,35,000/-. The loan for the said amount was sanctioned by the bank on 22.12.1988 as term loan with the stipulated rate of interest @ 13.5% per annum with quarterly rest. A separate cash credit facility was also extended to the defendants to the extent of Rs. 4.00 lakhs with interest @ 15.25% per annum with quarterly rest. By way of security against the loan advance, defendants had executed all relevant documents in favour of the plaintiff bank including the demand promissory note, letter of hypothecation of property. In addition, defendant No. 2 being the proprietor of defendant No. 1, had executed a mortgage deed of immovable property in favour of the plaintiff bank by deposit of title deeds. The defendants had availed the term loan of Rs. 2,35,000/- and also used to operate the cash

credit account. The defendants had also acknowledged their liability of the plaintiffs dues by their letters issued on 26.12.1989, 30.10.1991 and 13.6.1994. It was when the defendants became irregular in re-payment of their loan, that the bank had requested the defendants to regularize their loan account for making payments, but the defendants did not do so. The bank issued pleader's notice to the defendants demanding regularization of the loan accounts, but when the defendants had failed to pay their dues, the cause of action accrued to the bank for filing the suit.

The defendants had contested the suit by taking the plea that the suit is barred by law of limitation and also on the plea that the amount claimed by the plaintiff, is not correct. Defendants denied to have executed any letter of acknowledgement of debt. The defendants had pleaded that the amount was needed for setting up a Small Scale Unit within Bokaro Industrial Area. The plaintiff bank had failed to lend the requisite finance as per financial requirements and due to this, the defendants had suffered financial constraints in making the Unit viable so as to meet the work orders from the Bokaro Steel Plant and eventually, Unit of the defendants went into loss. Defendants had further admitted that in response to the bank's demand, they had stated that it was on account of the financial difficulties, that the loan amount could not be repaid by them and they had expressed their preparedness to pay all their legitimate dues to the bank, but despite such entreaties, the bank had proceeded to file the suit. Though the defendants have acknowledged in their written statement to have taken the loan amount from the bank, but they have disputed about the maintainability of the suit as the same being hit by law of limitation.

3. The Trial Court formulated various issues on the basis of rival pleadings of the parties.

- 1) Is the suit maintainable in its present form?
- 2) Has plaintiff any valid cause of action for the present suit?
- 3) Is the suit barred by law of limitation and principles of estoppel, waiver and acquiescence?
- 4) Is the plaintiff entitled to get a decree as have been prayed by the plaintiff in its plaint?
- 5) Is the plaintiff entitled for any other reliefs, if so then to what reliefs or reliefs the plaintiff is entitled there to?

On issue No. 3 relating to the ground of limitation, the learned court below had recorded its findings that in response to the application filed by the defendants for a loan on 15.7.1988, a term loan amount was sanctioned by the bank on 28.12.1988. The defendants had confirmed their balance amount as per the bank's account by executing confirmation letters on 26.12.1989 (Ext.-7 and 7/A) and also by similar such letters executed on 30.9.1991 (Ext.-7/B and 7/C) and again on 31.3.1994 (Ext.-8/D and 7/E). Since the mortgage suit was filed as title

mortgage suit and the period of limitation being 12 years from the date of execution of the mortgage deed and suit having been filed on 19.4.1996, the court below has recorded its findings that the suit was not barred by law of limitation or by principles of estoppel, waiver and acquiescence.

On the issue whether the plaintiff was entitled for a decree as prayed for, the learned court below by taking into consideration the evidences adduced on behalf of the plaintiff both oral and documentary, had recorded its findings that a sum of Rs. 67,527/- was due from the defendants to the bank under the term loan account and a sum of Rs. 4,92,819/- together with the interest calculated at the contractual rate till 18.4.1996 in the cash credit account was due from the defendants to the bank and thus, total outstanding amount of Rs. 5,60,346/-, as confirmed by the statement of account (Ext.-9/a), was due to the plaintiff bank from the defendants. The learned court below had come to the aforesaid findings relying not only on the evidences adduced by the plaintiff bank, but also on the evidences of the defendants' witness No. 1 who happens to be the husband of defendant No. 2 and who has testified that the amount claimed by the plaintiff bank was actually due from his wife namely, defendant No. 2 and he himself had offered to pay back the dues of the plaintiff bank.

4. The appellants have reiterated the same grounds in the present appeal claiming that the suit was barred by law of limitation. A new ground which was not earlier taken at the trial, has also been advanced by the appellants, claiming that the persons who had filed the suit on behalf of the plaintiff bank, had not been authorized by the bank, as required u/s 291 of the Indian Companies Act and, therefore, the suit as filed before the court below ought to have been rejected as not maintainable. A further ground, which was also not taken at the trial, has been advanced in this appeal that the plaint was not accompanied by the copies of the documents referred to and relied upon by the plaintiff, which was required in accordance with the provisions of Order 7 Rule 14 of the CPC and, therefore, the plaintiffs suit ought to have been dismissed.

5. In course of hearing of this appeal, learned Counsel for the appellants however confined his arguments disputing the amount of money as decreed by the court below. The contention of the learned Counsel is that the learned court below has erred in fixing the rate of interest @ 21.75% per annum with quarterly rest, which is contrary to the contractual rate of interest. Learned Counsel explains that even according to the plaintiffs own case, the contractual rate of interest on the money borrowed under the term loan account, was 13.5% per annum, while the rate of interest in respect of the sum borrowed under the cash credit account was 15.25% per annum, but the plaintiff bank has illegally clubbed the dues of the defendants in both accounts and has also clubbed the interest at much higher rate than what was stipulated in the contract. It is further stated that the learned court below ought to have considered in its discretion that the interest pendente-lite and future interest should not have been awarded at a rate more than the contractual rate.

6. Learned Counsel for the respondent claims, on the other hand, that the clubbing of the entire loan amount under both the accounts is not illegal and rate of interest as awarded by the learned court below, was within the discretion of the learned court below u/s 34 of the Code of Civil Procedure.

7. The limited point for determination in this appeal is, whether the rate of interest both pendente-lite and future as awarded by the court below @ 21.75% per annum was justified?

8. Section 34 of the CPC provides for interest to be awarded on the principal sum adjudged from the date of the suit to the date of decree and further interest on the principal adjudged from the date of the decree to the date of payment. Section 34 of the Code does not deal with the interest prior to the date of the suit. The provision of this section enables discretion of the court in the matter of awarding interest. However, where under the contract the payment of interest is at a fixed rate, the court has no discretion in fixing the rate of interest. Provision of Section 34 of the Code lays down that the rate of interest shall not exceed the contractual rate. In the instant case, the learned court below has awarded the interest at the rate of 21.75% per annum with quarterly rest by way of pendente-lite and future interest.

9. From the perusal of the plaint read with the evidences of the plaintiff, it appears that the dues as claimed under the term loan account till the date of filing of the suit was Rs. 67,527/-, for which contractual rate of interest was @ 13.5% per annum with quarterly rest. The amount due in the cash credit account was claimed at Rs. 4,92,819/-together with interest calculated at the contractual rate at 15.25% per annum. The clubbing of both the amounts under separate accounts and claiming interest on the total amount i.e. Rs. 5,60,346/- @ 21.75% per annum by way of pendente-lite and future interest, is certainly unjustified since it is more than the contractual rate. Learned court below has not assigned any reason as to why the interest has been fixed at such an enhanced rate. On equitable consideration, the plaintiff bank cannot, in any event, realize interest more than what was stipulated in the contract.

10. It also appears from the facts and circumstances of the pleadings of the defendants, that the loan was obtained for the purpose of establishing Small Scale Unit and despite submission of project report showing the amount of finance, which would be required for making the Unit viable, and to meet the requirements of the orders obtained, defendants had repeatedly requested the bank to release funds, but the bank had refused to cooperate and consequently, the defendants' Unit began to suffer loss and had eventually become sick. Though, these aspects do not strictly bear upon adjudication of the claim of the plaintiff bank, it can certainly be taken into consideration while exercising discretion to award interest on the amount adjudged.

11. After taking into consideration the entire facts and circumstances of the case, judgment and decree as passed by the court below, is modified, as follows:

a. Respondent shall pay interest from the date of filing of the suit till the date of decree on the amount dues under the term loan account and future interest till realization of the said amount at the rate of 13.50% per annum.

b. Respondent shall pay interest in respect of the amount due under the cash credit account at the rate of 15.25% per annum commencing from the date of institution of the suit till realization of the amount under the said account.

In the premises, the judgment dated 27.6.1998 and its corresponding decree dated 10.7.1998 stands modified to the extent indicated above.

This appeal is disposed of accordingly. Parties shall bear their own cost.