

(1995) 11 MP CK 0072
In the Madhya Pradesh High Court
Case No : L.P.A. No. 94 of 1988 (J)

Vinod Kumar Verma

APPELLANT

Vs

Dinesh Kumar Verma

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Letters Patent Act, 1865 — Clause 10

Citation : (1997) 1 MPJR 83

Hon'ble Judges : A.K. Mathur, Acting C.J.; S.C. Pandey, J

Bench : Division Bench

Advocate : B.P. Jain, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is an appeal under Clause 10 of Letters Patent, against the judgment and decree dated 1.11.88, in First Appeal No. 37 of 1982, passed by a learned single Judge of this Court, arising out of judgment and decree dated 10.12.81, passed by Shri V.D. Bajpai, District Judge Seoni.

The learned Trial Judge had decreed the claim of respondent no. 3/plaintiff to the extent of Rs. 1,13,137.00 (Rs. One Lakh thirteen thousand one hundred and thirty seven only) against the appellant and other respondents including one Bhawani Shankar Verma whose name was deleted by order dated 13.8.84 passed by this Court. On this sum the Trial Court had granted future interest at the rate of 3% per annum till realisation.

It is with this interest part of the decree the respondent no. 3/, plaintiff was aggrieved and filed the First Appeal No. 37/1982. The learned single Judge has modified the decree of the trial Court by granting a decree. Whereby rate of interest was enhanced to 3% per annum above the Reserve Bank of India rate from the date of decree till realisation on Rs. 1,13,137.00. In other words, the

learned single Judge, has exercised his powers u/s 34 of CPC and granted a decree in respect of further interest at the rate of interest agreed by the parties when the appellant took loan.

A few facts would be necessary to appreciate the points raised by (he counsel for the appellant in this appeal. Initially the respondent No. 3 advanced a loan of Rs. 1,14,000/- to the appellant for purchasing a truck. The appellant repaid Rs. 39,400/- Only. The total payment of aforesaid amount included repayment of amount due in respect of another soft loan of Rs. 14, 300/-. However, the respondent No. 3 filed Civil Suit on the basis of the original loan due on the date of suit amounting to Rs. 74,295/- to which the Bank added of Rs. 48,455,75/- by way of interest Rs. 4,556.00 by way of insurance charges. Rs. 130.00 as other expenses Rs. 10, 820/- towards Court fee and Rs. 1,100/- towards counsel's fee. Thus a claim of Rs, 1,43,537 was made against the appellant jointly and severally with other defendants. The trial Court decreed the claim to the extent of Rs. 1.13.137.00 plus interest at the rate of 3% per annum from the date of decree till realisation. Here it may be mentioned for clarifying the legal position that in the plaint the amount of Rs. 1,43,537/- was claimed as a lump sum and the break up given up is on the basis of evidence on record. No interest prior to filing of suit was claimed.

As already stated, the respondent No. 3 only filed an appeal against the judgment and decree of trial Court. The appellant did not file any appeal; nor did he file any cross objection against the judgment and decree of trial Court under Order 41 Rule 22 of the Code of Civil Procedure, challenging the grant of sum of Rs. 1. 13.137/- awarded by trial Court. It does not appear from the judgment of learned single Judge that he was invited to exercise his powers under Order 41 Rule 33 of Code of Civil Procedure. In such a situation, the only conclusion that can be drawn is that the appellant was satisfied with the decree of trial Court and he can not challenge the decree of Rs. 1,13,137/- in any manner in this appeal. It is thus clear that the appellant abandoned his right of appeal against the judgment and decree of trial Court amounting to Rs. 1,13,137/-. It appears that this figure was arrived at by the trial Court by simply deducting Rs. 30,400/- deposited during trial from Rs. 1,43.337.00 Thus, the entire claim of bank as to principal as well as interest prior to suit was decreed. No interest appears to have been granted pendente lite as none was claimed. Only interest at the rate of 3% per annum was awarded on the amount decreed by way of further interest from the date of decree till realization of the amount of decree.

It is clear, therefore, the appellant can not attack the decree of Rs. 1,13,137/- on principles of constructive res judicata and estoppel. He can not ask the court to reopen this amount on the ground that the interest charged prior to filing of the suit was excessive and that the incidental charges included by the respondent No. 3 were excessive. The learned counsel for the appellant fairly conceded to this position in law.

The only question survives for consideration in this appeal is whether the learned single Judge rightly modified the decree of trial Court by enhancing rate of 3% per annum on the amount decreed till realization to 3% per annum above the rate fixed by Reserve Bank of India on amount decreed. It is urged by the counsel for the appellant that in view of Section 34 of Code of Civil Procedure, it is open to this Court to find out the principal sum for imposing further interest, the Court can also vary the rate of interest.

We then have to go to section 34 of CPC which reads asunder :-

34. Interest -(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid 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 six percent per annum as the Court deems reasonable on such Principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction the rate of such further interest may exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I - In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970 (5 of 1970).

Explanation II. - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.)

(2) Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

It may be noticed that Section 34 of CPC was amended in the year 1956 by the CPC (Amendment) Act of 1956 (Act No. LXVI of 1956). The words "with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum" were substituted for the words "with further interest at such rate as the Court deems reasonable on aggregate sum so adjudged." Thus, further interest is to be awarded on principal sum so adjudged as against the aggregate sum so adjudged under newly amended section 34 of Code of Civil Procedure.

A proviso along with two explanations was added to section 34 of CPC by section 13 of CPC (Amendment) Act, 1976. Section 13 was made operative from 1.7.77

by a separate notification dated 27th June, 1977.

We take up the effect of amendment of 1956 before we embark upon the interpretation of proviso and two explanations added in the year 1977 for the simple reason that the amendment of 1977 does not throw any light on the meaning of words we are trying to expound. In order to understand the nature of section 34 of CPC we must first notice that it does not deal with awarding of pre-suit interest which belongs to realm of agreement between the parties, statutory law or equity. So a pre-suit interest, belongs to domain of substantive law, as distinguished from interest awardable u/s 34 C.P.C., which belongs to procedural or adjective law. In AIR 1938 67 (Privy Council) , at p.70, the nature pre-suit interest was thus explained :-

The crucial question however is whether the court has authority to allow interest for the period prior to the institution of the suit; and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law, entitling the plaintiff to recover interest, as for instance, under S. 80, Negotiable Instrument Act, 1881, the Court may award interest at the rate of 6 percent, per annum when no rate of interest is specified in the promissory note or bill of exchange.

Bearing the above distinction of mind, we find ingredients of main part of section 34 of C.P.C. as follows :-

- (1) The decree should be for payment of money.
- (ii) The Court by decree or order may grant reasonable interest from the date of suit to the date of decree.
- (iii) That interest will be on principal sum adjudged.
- (iv) This interest will be in addition to any interest adjudged prior to filing of suit.
- (v) The Court may award further interest not exceeding 6% per annum on the principal sum.
- (vi) Such further interest may be from the date of decree upto realization or earlier.

Section 34 of C.P.C. would be attracted as soon as decree for payment of money is passed. Such a decree may be with or without interest prior to filing of the suit. It stands to reason that the words "principal sum adjudged" used twice in Section 34 of C.P.C. must cover all kinds of suit and not only money suit in respect of loan. Thus, the principal sum adjudged in the first part of Section 34 of C.P.C. cannot be interpreted to mean "loan advanced" only. This would unnecessarily restrict the meaning of these words to loan suits whereas the words "principal sum adjudged" are used in widest signification. The only

prerequisite is that there should be a money decree. It may be based on ascertained money prior to filing of the suit or it may be a suit for unascertained money which the Court determines when it passes the judgment. In second case for obvious reasons there would be no pre-suit interest. Thus the words "principal sum adjudged" are wide enough to include a suit for recovery of loan and the principal sum in that context would mean the initial loan advanced. We now consider the use of words "such principal sum" added by way of amendment of 1956 before we take up the word principal sum in the middle part of Section 34(1) of C.P.C. We must interpret the word "such principal sum" in its widest signification so that all suits become eligible for award of further interest. Thus meaning of "Principal sum" here is same as in the first part.

It may be further pointed out that words "such principal sum" were substituted instead of "aggregate sum so adjudged" by the amendment of 1956 in order to confine the further interest only on "principal sum" and not on total of principal plus interest as it used to be earlier. It must, therefore, bear the same meaning as in first part of sub-section one of section 34 of C.P.C. So the Report of joint committee on the Bill as published in the Gazette of India, Extra-ordinary Part II Section II dated 13th December, 1955, stated regarding the amendment of Section 34 of C.P.C.

Section 34 of the Code empowers a Court to award further interest from the date of the decree up to date of payment on aggregate sum which comprises of principal sum with interest accrued therein. The Committee are of the opinion that interest should not be awarded on interest but only on principal sum. Suitable amendment has accordingly been interpreted in this clause.

The words "in addition to any interest adjudged on such principal sum for any period prior to the institution of suit" occur in the middle portion. Here the words "principal sum" has not the same wide connotation. They are restricted to a suit where the interest on "principal sum" prior to filing of suit is decreed. These words do not cover all kinds of suits.

Thus, having held, that further interest is chargeable on "Principal sum" which can be equated only with "principal sum" adjudged" used in the first part of Section 34(1) of Code of Civil Procedure, we propose to examine the position obtaining in cases of loan advanced by Banks.

The contention of the counsel for the appellant is that the word principal sum should be given the connotation "loan advanced" because on this initial amount the interest becomes due and is calculated prior to filing of the suit. On the other hand, the counsel for the respondent No. 3 contends to the contrary. According to the learned counsel in case of Bank loans the initial "principal sum" is enhanced on non-payment instalment on the date fixed. The agreement provides for quarterly rests and where the instalment is not paid the interest becomes merged in the principal and thus it is capitalised.

We have already indicated earlier that interest prior to filing of suit belongs to

the province of substantive law. It may either be governed by agreement, law or equity. Therefore, we must examine the agreement between the parties. The plaintiff allegation in para 8 of the plaint is that the loan of Rs. 1,14,000/- was advanced on 4.11.1976 on executing a promissory note agreeing to interest at the rate of 3% above the Reserve Bank of India rate, per annum subject to minimum of 12% per annum till the date of payment of full with quarterly rests. The appellant in his reply to this paragraph admitted his signature on a document which appeared to him be a promissory note but denied advancement of loan. In this helting defence, the appellant did not say anything about quarterly rests. In his evidence P.W. 1. S.S. Mathur stated when that an agreement as aforesaid was executed the loan was granted at a rate of 3% above the rate fixed by Reserve Bank of India subject to a minimum of 12%. The loan was to be repaid every three months. Every three months the interest was added to principal. The appellant himself admitted in evidence his signature on Ex. P-4, the promissory note which contains all these conditions the payment of loan including "quarterly rests".

Thus, we find that the agreement Ex. P-4 is for quarterly rests. We do not find that this agreement is hit by any law or is illegal in any manner. On the other hand, we find such an agreement can be justified on the basis of Banking Practice. So in the case of E. Paton Vs. Land Revenue Commissioner 1938 A.C. 341 : (1938) 1 All E.R. 786 Lord Atkin gave his opinion as follows :-

The privilege of a banker to balance the account at the end of the year, and accumulate the interest with principal, is founded on this plain ground of equity, that the interests ought then to be paid, and, because it is not paid, the debtor becomes thence forth debtor in the amount, as a principal sum itself bearing interest.

Similarly, Lord Macmillan opined that:

Now it may well be that as between a bank and its customer this method of dealing may have the result that the accrued interest which the bank has with the customer's assent added to the principal loan thereby ceases to be due or recoverable as interest but becomes merged in the principal loan.

We are not impressed by the argument that Bank is adding to the principal the interest prior to filing of the suit and claiming interest pendent lite and further interest on its basis. Since there is an agreement of quarterly rests which minas that the un-paid interest is automatically capitalized and becomes principal amount, it can not be said that Bank made the claim of Rs. 1,43,537.00/- by including pre-suit interest in the original loan. This would be travesty of facts. The agreement itself allowed, the loan to be converted into principal. The break up given by P.W. 2 N.P. Sharma in paragraph 14 is only to show how the principal claimed was calculated. The learned counsel for the appellant cited Union Bank of India Vs. Daloo AIR 1992 Bom 482 (F.B.) in support of his contention with great respect, we are unable to agree. The decision of Bombay High Court does not

consider that section 34 of C.P.C. is only a procedural section whereas determination of pre-suit interest is a question of substantive law. If the parties agree among themselves that on non-payment of interest in a quarter, it would be merged in principal, then the question of breaking of principal sum so claimed does not arise. Such an agreement is not prohibited by law. On the other hand as pointed out by the English decision cited earlier that such transactions are honored by time honored banking practice. Indeed Lord Alton thought that such a practice is based on equity. The reason for this approach is that a bank is run on a depositor's money and this money should be used for best business. Otherwise the Bank suffers in competition and ultimately the honest depositor. For this reason, the stringent clause of "quarterly rests" is added so that the loan is repaid in time.

We, therefore, agree with the view taken by the learned Single Judge of Delhi High Court in *Syndicate Bank vs/ M/s. West Bangal Cement Co. Ltd. & others* AIR 1989 Del, 107 and by the learned Single Judge of Orissa High Court in *Indian Bank Vs. Kamalalaya Cloth Store and Another*, Similar view appears to have been taken by Division Bench of Calcutta High Court in the case of *Bank of Rajasthan Bank Ltd. Vs. B.K. Trading Co.* 1996 BJ 677. Consequently we maintain the legal position that respondent No. 3 is entitled to interest till realization from the date of decree on Rs. 1,13,137.00.

The other part of the question that survives for determination "whether is" the appellant was required to pay higher rate than the should have been awarded by way of further interest. The answer to this question is to be found in the proviso to section 34 of C.P.C. and the explanations, appended to it. This obviously a commercial transaction involving a Nationalized Bank. Since the loan was taken for buying a truck, it is definitely related to trade or business. Thus the proviso becomes operative. The interest can be awarded at contractual rate which should be 3% more than rate fixed by the Reserve Bank of India at the time of passing of the decree. There is no merit in the contention that the rate of Reserve Bank of India is not known. It is duly notified. Moreover, interest was being calculated by the Bank as per the rate fixed by the Reserve Bank of India as per Ex. P-25 and Ex. P-26 as well as by several documents acknowledged by the appellant. The appellant never raised any objection. A similar contention was rejected by a Division Bench of this Court in the case of *Punjab National Bank Vs. Shyam Sunder Gupta and another* F.A. 163/77 decided on 18.4.80, on the same ground.

We do not see any reason to interfere with the exercise of discretion by the learned Single Judge in respect of rate of interest and, therefore, we affirm his judgment. The appeal is hereby dismissed but there shall be no order as to costs.