

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 21st November, 2011

+ RFA(OS)36/2002

State Bank of Patiala Appellant
Through: Mr.Narinder Pal, Advocate.

versus

Anant Raj Agencies (Properties) Respondent
Through: Mr.Gaurang Kanth, Mr.Rahul Kumar
and Ms.Snigdha Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P.GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.P. GARG, J. (Oral)

1. Appellant State Bank of Patiala has challenged the judgment and decree dated 01.02.2002 passed by learned Single Judge whereby suit filed by the respondent was decreed for a sum of ₹2,61,571.31/- with proportionate cost.

2. The respondent had filed the suit for recovery of a sum of ₹15,37,857.18/- against the appellant. The circumstances which led the respondent to file the said suit are precisely noted.

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3. The respondent let out the second floors of premises No.C-31 and C-32, Connaught Place, New Delhi to the appellant for a period of five years w.e.f. 01.09.1980 with one renewal option for five years at 10% increase in the rent. Again, the respondent let out first floor of C-32, Connaught Place, New Delhi to the appellant w.e.f. 08.04.1981 for five years with one renewal option of 10% enhancement. The appellant vide letter dated 29.09.1980 agreed to grant to the respondent an overdraft facility of ₹15 lakhs at interest rate of 14% per annum at the time of letting out the second floors of C-31 and C-32, Connaught Place, New Delhi. Similarly, at the time of letting first floor at C-32, the appellant vide letter dated 10.03.1981 agreed to grant to the respondent overdraft facility of ₹15 lakhs at interest rate of 15% per annum + interest tax.

4. The respondent enjoyed both the limits of ₹15 lakhs each. Later on the appellant bank withdrew the first overdraft facility of ₹15 lakhs which was granted at the time of letting out second floor of C-31 and C-32, Connaught Place, New Delhi. Thereafter the respondent enjoyed only one facility of overdraft limit of ₹15 lakhs given at the time of letting out of first floor of C-32, Connaught Place, New Delhi. The appellant was to charge interest at the rate of 14% and 15% with interest tax, respectively per annum at the simple rate in respect of the aforesaid facilities.

5. Case of the respondent before the learned Single Judge was that subsequently it came to his knowledge that the appellant bank was unauthorizedly charging interest at the rate of 16.5% with quarterly rests for some time and at the rate of

17.5% with quarterly rests at other time and had subsequently started charging the interest at the rate of 19% per annum with quarterly rests. The appellant thus overcharged a sum of ₹15,37,857.18/- which was in violation of the terms of letters dated 29.09.1980 and 10.03.1981.

6. The appellant contested the suit and in the written statement pleaded that the interest was charged in accordance with the agreement and documents executed by the respondent.

7. After settlement of issues, the case was fixed for recording evidence of the parties. The respondent examined Mr.Pankaj Nakra to support his case. The appellant failed to adduce any evidence despite various opportunities given and ultimately the evidence of the appellant was ordered to be closed.

8. After hearing the learned counsel for the parties, the learned Single Judge decided that the claim of the respondent for recovery of the overcharged interest till 26.09.1988 was barred by limitation and he was not entitled for the refund of the same. Accordingly, the impugned order was passed whereby the appellant was directed to refund the amount of ₹2,61,571.31/- being charged unauthorizedly after 26.09.1988. The appellant is before us in appeal.

9. Learned counsel for the appellant has urged before us that the respondent had paid interest as per the bank rates prescribed by RBI from time to time. The interest was charged from the respondent as per agreement. The respondent was aware of the rate interest being charged from him and had

made acknowledgment of that by executing various documents from time to time.

10. On scanning the record, it reveals that the parties are not at issue on material facts. It is not in controversy that second floors of premises at C-31 and C-32, Connaught Place, New Delhi were let out by the respondent to the appellant bank. No formal lease deed was adduced into writing. It is not in dispute that letters Ex.P-1 and P-2 dated 29.09.1980 and 10.03.1981 respectively were written by the appellant bank to the respondent whereby overdraft facilities of ₹15 lakhs each was granted to the respondent on the terms and conditions mentioned therein. It is also not in dispute that after the expiry of five years of initial lease, no fresh terms and conditions under the renewal clause were reduced into writing.

11. Documents Ex.P-1 and P-2 proved on record by PW1 Mr.Pankaj Nakra in his deposition before the Court reveal that the rate of interest agreed upon between the parties for the overdraft facilities was categorically mentioned therein. The appellant was charging that rate of interest from the respondent for the initial period of five years of lease. Subsequently on expiry of the initial period of five years, the appellant of his own started charging interest from the respondent on the overdraft facilities earlier granted at the rate above 14% and 15% as was prevalent for the subsequent period as per the RBI's rates. When the respondent came to know about the unauthorized interest being charged by the appellant over and above the agreed one in Ex.P-1 and P-2, the respondent filed the suit in question for refund of the same.

12. The learned counsel for the appellant has failed to impress us as to how and under what circumstances the appellant started charging interest at the rate of 16½ % to 17½ % and 19% at different periods from the respondent. Nothing has come on record to show if the appellant ever intimated the respondent of his intention to charge enhanced rate of interest over and above the agreed one at the time of providing overdraft facilities given as per documents Ex.P-1 and P-2. Again, no evidence whatsoever was adduced by the appellant before the learned Single Judge, if the respondent had ever consented to enjoy the overdraft facility on the enhanced rate of interest. In the absence of any contract/agreement, the appellant of his own, unilaterally, had no authority to charge the respondent at the enhanced rate of interest. In Ex.P-1 and P-2 there is no indication if after the expiry of initial period of lease, the respondent was liable to pay the rate of interest as prevalent in the market from time to time as per the RBI instructions. The appellant without seeking acceptance of the respondent to pay enhanced rate of interest could not have fastened the additional liability upon the respondent. There was never consensus after the expiry of the initial period of five years between the parties to charge a specific rate of interest on the overdraft facility. There was no meeting of mind between the parties whereby the respondent had agreed to enjoy overdraft facility on the enhanced rate of interest.

13. We find no substance in the plea of learned counsel for the appellant that the respondent was liable to pay the enhanced rate of interest as he had executed number of

documents from time to time extending the period of limitation. On scanning the documents referred by the learned counsel for the appellant, it transpires that these documents i.e. acknowledgments, revival letters and statement of account etc. have not been proved during judicial proceedings before the learned Single Judge as the appellant failed to produce any witness in his favour. These documents were not put to PW1 Mr.Pankaj Nakra in his cross-examination. These documents were exhibited only during admission/denial. The representative of the respondent had admitted signatures thereon but had denied the contents of these documents. In the plaint as well as in the deposition of PW1 Mr.Pankaj Nakra, it was specifically asserted that at the time of providing the overdraft facility, the appellant bank had got signatures on blank documents. It was thus imperative for the appellant to prove as to how and under what circumstances, all these documents happened to be executed by the respondent. Possibility of the appellant bank to have got signatures on blank documents to use them subsequently for extension of limitation on the basis of acknowledgment can't be ruled out.

14. Moreover, when the appellant was not liable legally to pay the enhanced rate of interest unauthorizedly charged by the appellant without his consent/acceptance, his admission/acknowledgment would not stop him from claiming the refund. The appellant bank can't be permitted to claim unjust enrichment and is under obligation to refund the amount paid due to bona-fide mistake by the respondent on the principles of 'quasi contracts' as dealt in Section 68 to Section

72 of the Contract Act. The appellant has succeeded in retaining huge amount of unauthorized payments of interest made by the respondent due to his negligence in instituting the suit for recovery within limitation.

15. We see no merits in the appeal preferred by the appellant and the same is dismissed, but without any order as to costs.

(S.P.GARG)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

November 21st, 2011
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