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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4426/2015**

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Date of judgment 15.07.2015

PUNJAB & SIND BANK

..... Petitioner

Through : Mr. Rajinder Wali, Advocate.

Versus

M/S NARAIN DASS AGENCIES (SOUTH) & ORS

..... Respondent

Through : Ms. Meenakshi Arora, Sr. Adv. with Mr. Amol Sinha, Mr. Rahul Kochar, Ms. Isha Aggarwal and Mr. Anshum Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

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1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

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3. Respondent nos. 1 & 2 are unserved. Service report with regard to respondent no. 4 is awaited, however, Ms. Meenakshi Arora, Senior counsel on instructions enters appearance on behalf of all the respondents.
4. The bank had filed an Original Application for recovery of Rs. 10,35,048.50 against the respondents along with *pendente lite* and future interest @ 19.5% p.a. with quarterly rests. The Tribunal allowed the OA but with *pendente lite* and future interest @ 12% with quarterly rests.
5. An appeal was filed by the respondent herein before the Debt Recovery

Appellate Tribunal primarily on the ground that the OA filed by the bank was hopelessly barred by limitation and further it was asserted that with a view to bring the OA within limitation, Rs. 1,000/- was shown to have been deposited in the CC account by signing a Pay-in-Slip towards clearing the liability on 16.02.1996. The bank also relied upon two legal notices dated 05.02.1996 and 30.06.1998 whereby the bank had called upon the respondents to deposit the outstanding amount. It was argued before the Appellate Tribunal that there was no cogent evidence on record to show that Pay-in-Slip related to the CC account was signed by any of the respondents. Another grievance was made that no receipt of the legal notice dated 05.02.1996 was produced on record nor a copy of the notice was proved and only a photocopy was placed on record. It was also pointed out to the Appellate Tribunal that there was no reference of the legal notice dated 05.02.1996 in the subsequent notice of 30.06.1998, which would show that no legal notice of 05.02.1996 was either issued or was in existence.

6. None was present on behalf of the bank to contest the appeal. The Appellate Tribunal after making a note of the submissions made by counsel for the respondents herein and also observed that the Tribunal ought to have examined the evidence minutely but in the later part of the order, the Tribunal had noted that respondents (appellants before the Appellate Tribunal) wanted to buy peace and wished to settle the matter with the bank and adjournment was sought to take proper instructions and thereafter the respondents herein expressed their willingness to discharge their liability and sought time upto 31.03.2015 to pay the balance amount by reducing the rate of interest making it 12% p.a. simple from the date of filing the OA. The concluding part of the judgment of the Appellate Tribunal reads as under :

“No one has appeared on behalf of the bank and thus there is no opposition to this prayer. Since the appellants have already deposited a substantial sum of Rs. 10 lacs which is the principal amount due, and now only interest remains to be paid, I deem it appropriate to consider the prayer made by the appellants sympathetically. Let the appellants now pay the balance amount with interest @ 12% p.a. simple from the date of O.A. till the date of realization. The necessary payment due may be made on or before 31.3.2015. If the appellant fails to make the payment as decided then the Bank shall be at liberty to realize the amount due at the rate of interest as allowed by the Tribunal below. The appeal is accordingly disposed of in above terms.

7. Mr.Wali, counsel for the bank has contended that the Appellate Tribunal has committed an error in further reducing the pendente lite and future period interest to 12% p.a. simple ignoring that grant of contractual interest is the rule and any deviation thereof is an exception which has to be judicially exercised with reasoned order.
8. Ms.Meenakshi Arora, learned Senior Counsel appearing for the respondents submits that a complete reading of the order would show that the OA filed by the bank was patently barred by time but to buy peace the borrower agreed to pay the balance amount. She also submits that it is highly unusual that the bank would not seek formal documents from the borrower to extend the period of limitation.
9. Counsel submits that to prove the *bona fides* the respondents have cleared the outstanding based on the order of the Appellate Tribunal.
10. We have heard counsel for the parties and carefully examined the order passed by the Debt Recovery Tribunal as also the impugned order passed by the Debt Recovery Appellate Tribunal. The Debt Recovery Tribunal had allowed the OA of the bank. The borrower (respondents herein) had approached the Debt Recovery Appellate Tribunal. The main argument

raised by the borrower before the Debt Recovery Appellate Tribunal was in relation to the OA being hopelessly barred by limitation. It may be noticed that as per the bank the period of limitation was extended by deposit of Rs.1000/- on 16.2.1996. The objection of the borrower was that the pay-in-slip was a forged and fabricated document and the bank had failed to prove the pay-in-slip in accordance with law. The Debt Recovery Appellate Tribunal has also noticed in the impugned order that one of the courses available to him was to remand the case back to the Tribunal for re-considering the evidence and to examine as to whether Ex.AW-2/10 (pay-in-slip) was proved in accordance with law or not. It is at that stage the borrower made an offer to make the balance payment with interest @12% p.a. simple.

11. *Prima facie* there is force in the submission of counsel for the respondent that a nationalized bank in the ordinary course of business would extend the period of limitation by seeking usual documents like a balance confirmation slip or revival letter, but it is highly unusual that a borrower would deposit Rs.1000/- in the loan account. We may also notice that the Tribunal while relying on the judgment of the Supreme Court of India in the case of ***Central Bank of India Vs. Ravindra & Ors.*** reported at AIR 2001 SC 3095, the held that the contract between the bank and the respondent comes to an end after filing of the OA, as per the provisions of Section 19 (20) of The Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 (amended 2000), which is analogous to Section 34 of the CPC, and the Tribunal / Court has discretion in awarding *pendente lite* and future interest. The order of Tribunal has attained finality. For the same reason and especially in the peculiar facts and circumstances of the case, we are of the view that the order of the Debt Recovery Appellate Tribunal requires no interference. Resultantly the present petition is

dismissed.

12. We make it clear that in case any amount remains unpaid by the respondent, in terms of the order of DRAT, it would be open for the bank to seek appropriate remedy as available in law.

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13. In view of the order passed above, the present application also stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 15, 2015

sc/ssn