

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.1115 of 1997

Judgment:

The plaintiff-Bank is the appellant. This appeal is filed against the judgment and decree dated 15-7-1997 in O.S.No.278 of 1991 passed by the Principal Subordinate Judge, Ranga Reddy district at Saroor Nagar, Hyderabad.

2. For the sake of convenience, the parties will be referred to as the plaintiff and the defendants.

3. It is the version of the plaintiff-Bank that it sanctioned a loan to the 3rd defendant for the purpose of Water Drilling Rig under Industrial Development Bank of India (IDBI) Scheme and the 3rd defendant was allowed by the IDBI to 5 years deferred payments subject to other terms and conditions. The 3rd defendant is a small scale industry registered with the Director of Industries, Maharashtra State. The 3rd defendant approached the 2nd defendant for supply of water drilling rigs together with accessories. The 2nd defendant is the customer of the plaintiff which is extended with the bills discounting limits by the plaintiff. As per the scheme and arrangement, the 3rd defendant informed the IDBI that the bills raised by the 2nd defendant shall be rediscounted on the guarantee of

the 1st defendant i.e., the bank of the 3rd defendant. As per the scheme, the 2nd defendant supplied one WDS 450 rig machine with all its accessories on 16-7-1985. In turn, the 2nd defendant handed over the hundi or bill of exchange for Rs.1,54,900/-. The bills were agreed to be paid by the 3rd defendant after 36 months from the date of the hundi. According to the plaintiff-Bank, the bills were rediscounted on the guarantee of the 1st defendant bank and hence the 1st defendant is under an obligation to pay the bill amount as per the arrangement and as per the scheme of IDBI. The 2nd defendant addressed a letter on 16-7-1985 stating that in respect of the bills of exchange executed by the 2nd defendant in favour of the plaintiff-Bank, the defendant shall waive their right to take advantage of any default in presenting of the said bills of exchange to them required under law.

4. The 1st defendant failed to remit the 6th, 7th and 8th instalments. Thereafter, the plaintiff-Bank issued a registered notice to the 1st defendant on 12-8-1989 calling upon the Chairman of the 1st defendant bank to remit the due amount together with interest at 21.5% per annum from the date of the instalments till the date of remittance. The 1st defendant failed to remit the

subsequent instalments and the plaintiff-Bank issued a notice to the 1st defendant on 25-7-1990 calling upon the defendants to clear the liability with interest at 21.5% per annum from the due date till the date of remittance. The 1st defendant bank failed to clear its liability under the scheme and the plaintiff-Bank issued a notice dated 15-10-1990 calling upon the defendants to pay the bill amount together with accrued interest as per the Reserve Bank of India (RBI) instructions till the date of remittance. As the defendants failed to pay the amounts inspite of receipt of notices, it is the version that the dues became a clean liability and the plaintiff-Bank is entitled for interest at 21.5% per annum and the suit is filed for recovery of a sum of Rs.1,06,604/- from the defendants.

5. The defendants 2 and 3 remained *ex parte* before the trial Court.

6. The 1st defendant bank filed a written statement contending as follows:

(a) The entire transaction is admitted by the 1st defendant. The 1st defendant, however, contended that it honoured the guarantee and it is not a party to the correspondence between the 2nd defendant and the plaintiff-Bank. The fact of non-payment of 6th, 7th and 8th instalments was denied by the 1st defendant. It is further

contended by the 1st defendant that the plaintiff-Bank has no right to claim interest over and above the rate of interest agreed to at 13.5% per annum and that the 1st defendant has right to adjust the loan of the 3rd defendant and has remitted the balance to the plaintiff-Bank. The amount remitted by the 3rd defendant did not meet the liability of the plaintiff-Bank and as such the 1st defendant has paid the monies of its own source in order to meet the commitment.

The 1st defendant is not liable to pay the expenditure said to have been incurred by the officials of the plaintiff-Bank.

The 1st defendant sent a Demand Draft of Rs.8,59,613/- on 22-3-1991 towards the full and final payment of dues from the 6th to 10th hundies.

The 1st defendant also calculated the interest at 13.51% per annum as per the agreement from the due date of the hundies. The covering letter which has been sent along with the Demand Draft clearly indicates the principal amount and the amount of interest against each hundi i.e., 6th to 10th instalments and the plaintiff-Bank was asked to issue a certificate for the receipt of the total amount of Rs.12,41,029/- for the instalments of 4th to 10th which have been paid by the 1st defendant on behalf of the 3rd defendant to the plaintiff-Bank.

The 1st defendant also requested the plaintiff-Bank to

send receipt for the above amount along with the bills of exchange duly discharged so as to enable the 1st defendant to recover from the 3rd defendant.

It is further contended that the plaintiff-Bank has clandestinely adjusted the amount of Rs.8,59,613/- towards the principal and interest on the 6th to 9th instalments by charging rate of interest at 21.5% per annum. The plaintiff-Bank has no right to adjust according to its choice. It cannot charge interest at the rate of 21.5% per annum as against the agreed rate of interest at 13.5% per annum treating it as a clean liability.

(b) Nextly, it is contended that the 1st defendant paid an excess amount of Rs.13,365/- to the plaintiff-Bank and made a counter-claim for the same. Therefore, according to the 1st defendant, the plaintiff-Bank is not entitled to claim any amount, much less the suit amount of Rs.1,06,604/-.

7. In response to the counter-claim, the plaintiff-Bank filed a rejoinder reiterating the contents of the plaint contending that the 1st defendant failed to remit the 6th, 7th and 8th instalments which have fallen due on 16-7-1988 and that the counter-claim made by the 1st defendant cannot be entertained and that the defendants are liable to pay interest at the rate of 21.5% per annum.

8. On the Basis of the pleadings, the trial Court settled the following issues:

- (1) Whether the 1st defendant has the right to adjust the loan account of the 3rd defendant and has remitted the balance to the plaintiff?
- (2) Whether the 1st defendant is entitled to the counter claim of Rs.13,365/-?
- (3) Whether the plaintiff is entitled to recover the suit amount?
- (4) To what relief?

9. Before the trial Court, P.W.1 was examined and Exs.A-1 to A-36 were marked on behalf of the plaintiff-Bank. Whereas, D.W.1 was examined and Exs.B-1 to B-12 were marked on behalf of the defendants.

10. It was contended by the plaintiff-Bank before the trial Court that the loan is a clean loan, except the counter guarantee of the 1st defendant, there is no guarantee of any sort and for all clean loans as per the RBI guidelines, the minimum rate of interest is 21.5% per annum. Since the defendants did not repay the instalments within time, the amount has become overdue and therefore, the plaintiff-Bank is entitled for interest at 21.5% per annum.

11. On the other hand, it was contended by the 1st defendant that when the borrower had asked the creditor to appropriate the amount in a particular fashion, the creditor is under an obligation to credit the amount as suggested by the borrower and the amount cannot be

appropriated only towards interest though the amount was deposited towards the instalment of the principal amount.

12. P.W.1 in his evidence admitted that except on these hundies, the rate of interest is not mentioned on any of the documents whereby the 1st defendant is under an obligation to pay the interest. In the hundies under Exs.B-3 to B-12, the rate of interest is mentioned as 13.5% per annum. There is no other agreement filed by the plaintiff-Bank to saddle the 1st defendant for payment of interest at 21.5% per annum for the deferred payments. Ex.B-2 is the statement sent by the 1st defendant to the plaintiff-Bank whereunder they calculated the rate of interest at 13.5% per annum and they have shown the payment of Rs.13,365/- as excess interest for the first 3 instalments.

13. The trial Court expressed the view that in view of the admission made by P.W.1 that there is no other document except the hundies whereby the 1st defendant agreed to pay the interest and the rate of interest shown in the hundi is 13.51% per annum, consequently, the trial Court arrived at the conclusion that the 1st defendant cannot be saddled for the payment of commercial rate of interest at 21.5% per annum claimed by the plaintiff-Bank without there being any contract for the said rate of interest between the parties. The learned trial Court also observed that the plaintiff-Bank did not file

any agreement between the parties showing that the plaintiff-Bank can claim penal interest at the rate of 21.5% per annum in case of deferred payments. Ultimately, the trial Court held that the claim made by the plaintiff-Bank for penal interest at 21.5% per annum is not tenable and accordingly negated its claim.

14. The trial Court further held that the claim made by the plaintiff-Bank for the amount due on 10th hundi is not tenable and the claim of the plaintiff-Bank is only based on the assumption that it is entitled to the interest at the rate of 21.5% per annum and the trial Court disallowed the said interest on the ground that it is not the contractual rate of interest and the contractual rate of interest is only 13.5% per annum. Consequently, the trial Court dismissed the suit of the plaintiff-Bank for an amount of Rs.1,06,604/- and allowed the counter-claim of Rs.13,365/- and the claim of Rs.1,23,600/- made by the 1st defendant together with interest at the rate of 13.5% per annum from the date of counter-claim till the date of realisation.

15. Feeling aggrieved, the plaintiff-Bank preferred the present appeal.

16. I have heard Sri Deepak Bhattacharjee, learned counsel appearing for the appellant-plaintiff and

Sri Madan Mohan Lal, learned counsel appearing for the 1st respondent-1st defendant.

17. The only question which arises for consideration in the present appeal is whether the plaintiff-Bank can claim interest at the rate of 21.5% per annum in case of deferred payments?

18. Under Section 34 of the Code of Civil Procedure, where the liability is in relation to the commercial transaction the rate of further interest may exceed 6% per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which monies are lent or advanced by the nationalised banks in relation to commercial transactions.

19. In the instant case, the contractual rate of interest is 13.5% per annum. The contention of the 1st defendant is that since the contractual rate of interest is 13.5% per annum, the plaintiff-Bank is entitled to charge only the interest at such rate and not at 21.5% per annum.

20. On the other hand, it is the contention of the plaintiff-Bank that as per the RBI guidelines it can charge interest at the rate of 21.5% per annum in case of deferred payments.

21. To arrive at an appropriate decision on this aspect, it is necessary to peruse the judgments relied on by the defendants.

(1) **Syndicate Bank, Shevapet Branch, Rep. By its Branch Manager v. S.R. Subramaniam**^[1], wherein the Madras High Court held that since the appellant established the contractual rate of interest, as per the memorandum of agreement, the bank is entitled to claim the said contractual rate of interest.

(2) **INDUSTRIAL CREDIT AND DEVELOPMENT SYNDICATE, NOW CALLED I.C.D.S. LIMITED v. SMITHABEN H.PATEL**^[2], wherein the Supreme Court held as follows:

“4.

Where the debtor claims to be discharged by reason of payments which were not specially made in respect either of the principal or the interest of the mortgage, the rule is that a general payment shall be applied in the first place to sink the interest, before any part of the principal is discharged.

The judgment of the Lahore High Court is based upon sound principle and has kept in mind the intention of the Legislature in enacting Sections 59 to 61 of the Act. We do not agree with the learned counsel of the respondents that Section 60 of the Contract Act has to be read independently excluding the provisions of Section 59. Accepting such

an argument would amount to doing violence to the language employed in the Section and the purpose sought to be achieved by it. Besides, it would also be contradictory in terms. Section 60 if applied independently, cannot be held to be conferring any right upon the judgment debtor as it confers a discretion in favour of the creditor to apply such

deposited amount to any lawful debt actually due and payable by the debtor when such debtor omits to intimate the discharge of the debt in the manner envisaged under Section 59. We are of the opinion that Sections 59 and 60, Contract Act, would be applicable only in pre decretal stage and not thereafter.

5.

6. we are of the opinion that the learned Judge was not justified to hold “where a debtor makes payment without making any indication as to how the payment is to be adjusted, it is the option of the creditor to make adjustment first of the interest and then of the principal, but if the debtor has indicated the manner in which the appropriation is to be made, then the creditor has no choice to apply the payment in a different manner. But however he may not agree to the mode of the payment, in which case he must not accept the payment and refund the amount to the debtor.””

22. In view of the above judgments, the plaintiff-Bank is not entitled to claim interest more than the contractual rate of interest, the plaintiff-Bank is not entitled to appropriate the payment made by the 1st defendant in whichever manner it chooses. Therefore, the trial Court did not commit any error in dismissing the claim made by the plaintiff-Bank and allowed the counter-claim of the 1st defendant.

23. The appeal is, therefore, without any merit and the same is dismissed. The miscellaneous petitions, if any, pending in this appeal suit shall stand closed.
No costs.

R.KANTHA RAO, J.

09th May, 2016.

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(Ak)

[\[1\]](#) LAWS (MAD)-2007-12-176

[\[2\]](#) LAWS (SC)-1999-2-73