IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5853 of 2013 (O&M)
Date of decision: February 10,2016

Haryana Khadi and Village Industries Board and another
........Petitioners

VS.

Maha Laxmi Gramodyog Mandal

.........Respondent

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr.Tribhuvan Dahiya, Advocate
for the petitioners.

Mr. Baldev Singh, Advocate
for the respondent.

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

K.KANNAN,J (Oral)

1. The revision is against the order of the trial court directing the discharge of mortgage and delivery of all documents to the plaintiff. The petitioner is aggrieved that the court has not examined the actual matter of compromise brought before the Mediator. It was only accepted before the Mediator that there have been delay of 1 year 2 months and 16 days in the distribution of the machinery and working capital and consequently the calculation of interest during this period of delay was required to be waived. Consequently, a levy of penal interest for repayment was also bound to be waived for the period when the loan had not

actually been disbursed and then there was a delay.

2. In the manner of reckoning the mutually agreed settlement before the Mediator, the branch office had given a proposal for receipt of sum of ₹ 28100/-as constituting a discharge of loan through its letter dated 29.03.2013. The Head Office found the proposal to be erroneous and not in sync with the settlement before the Mediator. The Head Office was trying to make a fresh calculation and demanded that an amount of ₹ 12,99,798/- was required to be still paid. When this objection was taken before the court below, at the time when the plaintiff was seeking for release of the documents, the court was bound to examine whether the calculation has been done in the manner agreed before the Mediator on 13.08.2012. That exercise has not been undertaken.

3. I made an endeavour before this court to elicit the actual amount which, according to the petitioner, would still become payable and wanted information on the actual number of days of delay for the loan disbursement that took place on 14.08.1997 and 30.10.1998. Apart from saying that there have been a delay of 1 year 2 months and 16 days in the distribution of machinery and working capital, the learned counsel does not have the information on the actual amounts disbursed and how a penal interest has still been reckoned as 13,38,725/- in the calculation made on 20.06.2013. I do not think it is necessary for this court to detain this case, apart from setting out the nature of inquiry that has to be undertaken and the manner of calculation that it has to secure itself before admitting or rejecting the plaintiff's claim:

(i) The Mediators record of proceedings on 13.08.2012 shall be taken as the benchmark upon which the calculations will have to be worked.

(ii) The period of 1 year 2 months and 16 days, referred to above, as the delay will have to be matched with the actual amounts disbursed and the actual date when it ought to have been disbursed so that no interest is claimed for the said sum, in terms of the understanding between the parties.

(iii) The next step shall be to also ensure that in the manner of repayment, there shall be no penal interest levied during the period when there was a delay and the actual amounts which were liable to be repaid during the said period.

(iv) The final reckoning will be made by taking note of the remittances made by the plaintiff on various dates and appropriation shall first be done to any outstanding interest for the remaining period, which is not covered under the delay and if there is any penal interest payable for any period other than the period of delay identified and if there is still balance of sum due, the said sum will be appropriated towards the principal. In other words, the first appropriation shall be for the interest, second towards the penal interest and finally towards the principal.

4. The fresh reckoning is to be made by gathering the details as I have set out above and the court will pass a fresh order thereon.

5. The impugned order is set aside and the matter is remitted to the trial court for fresh disposal in the light of the above directions.

FEBRUARY 10, 2016 **(K.KANNAN)**
Rajeev **JUDGE**