

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1)

CWP No. 1821 of 2015
DATE OF DECISION : 10.08.2016

M/s Amar International and another

.... PETITIONERS

Versus

Union Bank of India and others

..... RESPONDENTS

(2)

CWP No. 17317 of 2015
DATE OF DECISION : 10.08.2016

Union Bank of India

.... PETITIONER

Versus

M/s Amar International and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Jyoti Sareen, Advocate,
for the petitioners in CWP No. 1821 of 2015, and
for respondents No.1 to 3 in CWP No. 17317 of 2015.

Mr. Aalok Jagga, Advocate,
for respondent No.1 Bank in CWP No.1821 of 2015, and
for the petitioner Bank in CWP No. 17317 of 2015.

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RAMENDRA JAIN, J.

1. This order shall dispose of CWP Nos. 1821; and 17317 of 2015, filed by M/s Amar International and Smt. Sanyogita Shoor, one of its partners; and Union Bank of India, respectively, under Articles 226/227 of the Constitution of India, as the common questions of law and facts are involved in both these petitions.

2. For brevity, the facts are being taken from CWP No. 1821 of 2015. In the year 1997, petitioner No.1 M/s Amar International, a partnership firm, availed credit facilities to the tune of ₹ 35 lacs from respondent No.1 bank, against mortgage of some properties, i.e. residential house of petitioner No.2 and proforma respondents No.2 and 3, as well as factory, land and building of proforma respondent No.2. However, for various reasons, including the acute financial crunch in the market, petitioner No.1 firm could not adhere to the financial discipline of the respondent bank. Therefore, the respondent bank filed OA No. 148 of 2000 before the Debts Recovery Tribunal, Chandigarh (hereinafter referred to as 'the DRT') for recovery of ₹ 45,99,510.88 along with interest @ 16.25% per annum with quarterly rests, which was contested by the petitioners and proforma respondents No.2 to 5. According to the petitioners, since the respondent bank was threatening to take physical possession of the residential house of petitioner No.2 and proforma respondents No.2 and 3 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'), therefore, they requested the respondent bank to sell the mortgaged factory, land and building, instead of taking physical possession of their residential house. On refusal of the respondent bank to accept this offer of petitioner No.2 and proforma respondents No.2 and 3, during the pendency of OA, they filed CWP No. 19256 of 2009, which was dismissed vide order dated 15.12.2009. LPA No. 1432 of 2009 filed by them met the same fate being withdrawn. The said OA of the respondent bank was allowed by the DRT vide order dated 02.03.2012 (Annexure P-11) holding

the petitioners and proforma respondents No.2 and 3 liable to pay a total sum of ₹ 45,99,510.99 to the respondent bank jointly and severally with costs along with current and future interest @ 16.25% per annum with quarterly rests from the date of filing of the OA till the date of realisation.

3. Feeling aggrieved, the petitioners and proforma respondents No.2 and 3 preferred appeal before the Debts Recovery Appellate Tribunal, New Delhi (hereinafter referred to as 'the DRAT'), which was partly allowed by the DRAT vide order dated 08.10.2014 (Annexure P-15), reducing the interest from 16.25% per annum with quarterly rests to 13% per annum simple for the period *pendente lite* and future till realisation. Thereafter, the respondent bank issued a letter dated 15.12.2014 (Annexure P-16) to petitioner No.2 and proforma respondent No.2 being partners of petitioner No.1 firm, asking them to make payment of balance amount of ₹ 17,31,823.14.

4. By way of CWP No. 1821 of 2015, the petitioners have prayed for issuance of a writ in the nature of certiorari to quash the order dated 08.10.2014 (Annexure P-15) passed by the DRAT, to the extent of awarding *pendente lite* and future interest @ 13% per annum on the amount found due by the DRT vide its order dated 02.03.2012 (Annexure P-11) from the date of filing of OA No. 143 of 2000 till realisation, with a prayer to reduce the *pendente lite* and future interest. Further prayer has been made for issuance of a writ in the nature of certiorari to quash the letter dated 15.12.2014 (Annexure P-16) issued by the respondent bank claiming exaggerated amount in an arbitrary and illegal manner.

5. On the other hand, the respondent bank, in its CWP No. 17317

of 2015, has prayed for issuance of a writ in the nature of certiorari to quash the order dated 08.10.2014 passed by the DRAT, modifying the order dated 02.03.2012 passed by the DRT to the extent of reducing interest from 16.25% per annum with quarterly rests to 13% per annum simple for the period pendente lite and future till realisation, in contravention of Order 34 Rule 11 CPC.

6. Learned counsel for the petitioners contended that petitioner No.2 and respondent No.2, being partners of petitioner No.1 firm, availed credit facilities of ₹ 35,00,000/- from the respondent bank in the year 1997. Undisputedly, they had already made payment of ₹ 95,89,000/-, i.e. more than double the principal amount, to the respondent bank, during the pendency of OA. While referring to Section 34 CPC, she argued that the awarding of pendente lite and future interest @ 13% per annum simple by the DRAT vide the impugned order dated 08.10.2014 is on the higher side and is liable to be reduced further, as the respondent bank itself delayed the realisation of the amount by not allowing petitioner No.2 and proforma respondents No.2 and 3 to sell their other property i.e. factory, land and building. Therefore, the petitioners cannot be burdened with excessive interest on account of delays caused by the respondent bank itself. Even otherwise, in the loan documents, it was not mentioned as to whether the rate of interest will be chargeable at simple interest or compound interest. In such circumstances, the chargeable rate of interest would always be simple interest only. In support of her arguments, learned counsel relied upon decisions of the Apex Court in **Central Bank of India vs. Ravindra and**

others, AIR 2001 Supreme Court 3095; **C.S. Sasankan vs. The**

Dhanalakshmi Bank Ltd., 2009 (2) RCR (Civil) 436; and *Rampur Fertiliser vs. Vigyan Chemicals Industries*, (2009) 12 Supreme Court Cases 324.

7. On the other hand, learned counsel for the respondent bank submitted that in the impugned order dated 08.10.2014, the DRAT did not give any reason for reducing the rate of interest from 16.25% per annum with quarterly rests to 13% per annum simple. The rate of interest has been reduced in contravention of Order 34 Rule 11 CPC, which provides that while reducing the pendente lite interest, the court is required to give due consideration to the agreed rate of interest between the parties, and if no rate of interest is agreed, the court would exercise discretion to grant interest which is deemed to be reasonable. The provisions of Sections 79 and 80 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') have not been adhered to. As per Section 79 of the Act, where the payment of interest has been agreed between the parties, the same shall be calculated at the rate specified, whereas Section 80 of the Act deals with the cases in which rate of interest is not agreed between the parties. Further, the DRAT has reduced the rate of interest in contravention of Section 21-A of the Banking Regulation Act, 1949, which provides that a transaction between the Banking Company and its debtors shall not be reopened by any Court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

8. We have given our thoughtful consideration to the submissions made by learned counsel for the parties.

9. It is needless to mention here that award of pendente lite and

post-decree interest falls under absolute discretion of the Court being governed by Section 34 of the Code of Civil Procedure. In case, the Court finds that in the principal amount adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, the Court may exercise its discretion in awarding pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. However, such discretion has to be exercised fairly, judiciously and on sound legal principles within the scope and ambit of Section 34 CPC; and not in an arbitrary or fanciful manner.

10. Perusal of the impugned order dated 08.10.2014 shows that after considering almost similar arguments raised by learned counsel for the parties, the DRAT reduced the rate of interest from 16.25% per annum with quarterly rests to 13% per annum simple for the period *pendente lite* and future till realisation. Each case has its own peculiar facts. In **C.K. Sasankan's case** (supra) and in **Rampur Fertiliser Limited's case** (supra), relied upon by learned counsel for the petitioners, keeping in view the peculiar facts of the respective cases, the Apex Court reduced the *pendente lite* and future interest to 9% per annum. However, the above dictum has no universal application. In the facts and circumstances of the case in hand, we do not find any illegality or perversity in the impugned order of the DRAT, whereby it has reduced the rate of interest from 16.25% per annum with quarterly rests to 13% per annum simple for the period *pendente lite* and future till realisation. Hence, the same, in our opinion, is justified and reasonable, and is neither on excessive nor on lower side.

11. Learned counsel for the petitioners states that as far as the letter

dated 15.12.2014 (Annexure P-16) issued by the respondent bank allegedly claiming exaggerated amount is concerned, since it was issued after the passing of the impugned order dated 08.10.2014 by the DRAT, therefore, the petitioners do not want to press the same. However, they may be granted liberty to avail alternative remedy to challenge the said letter in accordance with law. This prayer has not been opposed by learned counsel for the respondent bank.

12. Consequently, the order dated 08.10.2014 (Annexure P-15) passed by the DRAT is upheld, and both the writ petitions are dismissed. However, CWP No. 1821 of 2015 with regard to challenge to the letter dated 15.12.2014 (Annexure P-16) is dismissed as not pressed with liberty to the petitioners to avail alternative remedy to challenge the said letter in accordance with law.

**(RAMENDRA JAIN)
JUDGE**

August 10, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes