IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No.6117 of 2016 in/and
CWP No. 23321 of 2013(O&M)
Date of decision:19.10.2016

AK Garg … Petitioner

Versus

The State of Haryana & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manish Soni, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.6117 of 2016

This is an application for early hearing of the case. Allowed as prayed for. Main case is taken up for final disposal.

CWP No. 23321 of 2013(O&M)

When the petitioner took a loan from his department to buy a car the only sin he committed was he bought one second hand in the year 1996. He repaid the loan with 10% interest plus 4% penal interest in addition and one other 6% component to total up 10% by way of penalty interest. To justify this demand, the department cites the instructions dated August 23, 1993 at Annex R-1. This demand of penal interest rests on the ground that he misutilized the loan by buying a car for himself which was not brand new.

It is argued by the learned counsel for the petitioner that the loan was covered by the instructions dated November 30, 1983 which levied 4% interest over and above the interest payable on the loan. The petitioner took a loan in 1996. The loan was sanctioned on June 12, 1996. The 1986 instructions were either superseded or partially modified to accommodate an enhanced penal interest, over and above the interest payable on the loan from 4% to 10%. This was in 1993. The loan documents were signed between the department and the petitioner. After the loan was sanctioned in 1996, the instructions dated August 23, 1993 were not cited and the earlier ones alone were stipulated in the terms of loan These loans fall in the realm of contract and are governed by the terms and conditions agreed and signed by the parties and no new concept can be introduced in a validly executed contract.

I had occasion to examine an identical issue in CWP No.8865 of 2012 in Ram Pal v. State of Haryana & ors., decided on December 3, 2013 which was a case raising similar demand of penal interest as in this case. I had noticed the executive instructions dated August 23, 1993 issued by the Finance Department, Haryana which are at Annex R-1 in the present petition. After hearing the State, I had observed in the order as follows:-

> "No doubt, Para 5 of Annexure P-1, vide which the loan was sanctioned makes a provision that in case of misutilization of the loan, penal interest of 10% per annum over and above the normal rate of interest shall be charged from the date of drawl of the loan, but I find that this action on the part of the respondents is not fair. Even if it be construed that the petitioner has misutilized the loan, which is being inferred as such only from act of buying a second hand car, directing him to pay 10% interest per annum over and above the normal rate of interest then I think the course

> adopted is unreasonable and unfair. To balance the equities, the interest charged for misutilizing the amount even assuming it to be so in its pristine state is reduced from 10% to 2% to serve the ends of justice. Buying a new or old car from government loan is not the essence of the loan contract but returning it is and on time. The loan amount stands paid without dispute within the time frame. Levy of penal interest element is the lis here. I am not prepared to saddle the petitioner for utilizing the loan to purchase a used car instead of a new one with such oppressive condition which appears unconscionable to me when demanded by the employer/ State department behaving like an ordinary commission agent in a market yard. Therefore, the respondents shall be at liberty save and limited to charge penal interest only at the rate of 2% per annum over and above the normal rate of interest as agreed to by the petitioner his for minor deviation and in case the amount has already been recovered then the excess amount so recovered shall be refunded to the petitioner within a period of two months from the date of receipt of a certified copy of this order after adding the 2% simple interest component."

As a result of the above discussion, this petition is allowed. The impugned demand of 6% interest above the normal rate of interest in the demand notice dated December 6, 2012 (Annex P-7) is quashed. In an identical case, this Court in CWP No.20205 of 2006, Ram Singh Jakhar v. The State of Haryana & ors., decided on August 4, 2009, reduced the penal interest for alleged misutilization of the amount of loan for purchasing a second hand car instead of a brand new one from 10% to 2%. Twice over two Courts have come to the same conclusion applying principles of equity and therefore, to maintain parity of treatment and uniformity of decisions, the penal interest element of 4% is reduced to 2 %. As a result the 2% held in excess by this order are directed to be refunded to the petitioner within 2 months with statutory interest.

(RAJIV NARAIN RAINA)
JUDGE

19.10.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *No*