

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

RSA No.1957 of 2009 (O&M)

Date of Decision.04.11.2016

M/s Pragati Steels through its partner Smt. Pragati Gupta.....Appellant

Vs

Smt. Nirmala Devi and others

.....Respondents

2. RSA No.4278 of 2009 (O&M)

Smt. Indu Lekha

.....Appellant

Vs

Pragati Gupta

.....Respondent

3. RSA No.4281 of 2009 (O&M)

Smt. Nirmala Devi

.....Appellant

Vs

M/s Pragati Steels through its partner and others

.....Respondents

Present: Mr. Rakesh Bhatia Advocate
for the appellant in RSA No.1957 of 2009 and
for respondent in RSA No.4278 and 4281 of 2009.

Mr. Aman Bahri, Advocate
for the appellant in RSA Nos.4278 and 4281 of 2009 and
for respondent No.1 in RSA No.1957 of 2009.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.14506-C of 2016 in RSA No.1957 of 2009

C.M. No.14319-C of 2016 in RSA No.4281 of 2009

The applications for impleading the legal representatives of
deceased-respondent No.1, Nirmala Devi in the second appeal bearing
No.1957 of 2009 and appellant in RSA No.4281 of 2009 are allowed
subject to all just exceptions and the legal representatives are ordered to be

brought on record.

Amended memo of parties are taken on record and the registry is directed to put them at the appropriate place in the respective cases.

Main cases

This order of mine shall dispose of three regular second appeals. RSA Nos.1957 of 2009 and 4281 of 2009 are the appeal and cross appeal arising out of filing of Civil Suit bearing No.449 of 2006 titled as “Smt. Nirmala Devi Vs. M/s Pragati Steels and others” (hereinafter called as the 1st suit). The former second appeal is filed at the instance of the company and the latter one is filed by the plaintiff whereas the RSA bearing No.4278 of 2009 is at the instance of the plaintiff in Civil Suit No.444 of 2006 titled as “Indu Lekha Vs. Pragati Gupta” (hereinafter called as the 2nd suit).

In the first suit, the claim made was for recovery of ₹3,74,076/- as principal plus interest @₹11,223/-, total ₹3,85,299/- and future interest and in the second suit, recovery of ₹49,500/- as principal plus interest @₹6870/-, total ₹56,370/- with future interest on the premise that the plaintiff in the respective cases lent family loans to the defendant for running the business of the firm under the name and style of M/s Pragati Steels through its partner Smt. Pragati Gupta, 166, Industrial Area, Phase-II, Chandigarh. According to the averments in the plaint, the loan had been extended by way of cheque and the interest accrued was 18%. The contention of the defendant before the Court below was that the amount had been repaid to the plaintiff(s) but the plaintiff(s) did not appropriate the same towards the principal but towards the interest and in this backdrop of the matter, the suit had been filed, though there was no outstanding due required to be recovered. The trial Court dismissed both the suits, however,

the lower Appellate Court by taking into consideration certain facts, much less, of equity, granted 6% interest on the total amount and not on principal. In this backdrop of the matter, the present appeals are filed before this Court.

Mr. Rakesh Bhatia, learned counsel appearing for the appellant in RSA No.1957 of 2009 submits that except the payment of loan by way of cheque and return of the same through cheque, there was no other written agreement of charging of interest @18%, in essence, the plaintiff has failed to discharge the onus with regard to the rate of interest. There is no evidence to that effect. It was not a commercial transaction and rightly so, the Courts below have awarded interest @6%. During the pendency of the aforementioned appeals, the matter was even referred to the Mediation and conciliation Centre of this Court wherein the defendant in Civil Suit bearing No.449 of 2006 had offered to pay a sum of ₹1,14,000/- assessed as interest @6% by the lower Appellate Court but the plaintiff refused to receive the same. He says his client is willing to pay the sum *viz-a-viz* the other suit also.

Mr. Aman Bahri, learned counsel appearing for respondent-plaintiff submits that the lower Appellate Court, much less, the trial Court have abdicated in not appreciating the pleadings, much less, the evidence both oral and documentary. There is a categoric averment in the plaint, much less, in the examination in chief with regard to the charging of interest @18% and there is no cross-examination and in view of the aforementioned position, the suit was liable to be decreed for the principal amount and the interest as claimed. It is in this backdrop of the matter, the plaintiff had to file the appeal seeking the aforementioned relief.

The amount was extended for running the firm as noticed above. Even in the absence of agreement, the appropriation of amount towards principal would not be applicable in view of the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **Gurpreet Singh Vs. Union of India and others 2008(2) RCR (Civil) 207** wherein it has been held that as and when the payment is made, it has to be appropriated towards the interest and thereafter, the principal amount, thus, urges this Court for modifying the judgment and decree passed by the lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that much water has flowed during the pendency of the appeals. The regular second appeals are of the year 2009 and the parties are unnecessarily litigating for a paltry sum. Though the Legislature in its wisdom has amended the provisions of Section 102 CPC for putting an embargo on filing of second appeal where the amount to be recovered in the original suit is not exceeding ₹25,000/-, I am of the view that it should have been more. In the RSA bearing No.4278 of 2009, it is less than ₹25,000/- i.e. ₹15,000/-. Be that as it may be. The fact remains that in the absence of agreement, the lower Appellate Court has rightly granted the interest @6%. In fact there are no written terms and conditions qua charging of interest and the loanee cannot apply the law of damdupst as recognized in the judgment of Hon'ble Supreme Court in **Mhadagonda Ramgonda Patil Vs. Shripal Balwant Ranado AIR 1998 SC 1200**. The aforementioned law of damdupst came to be debated upon as the private persons have been extending loans and had been charging interest on interest. At the best, the plaintiff is entitled to the simple rate of interest and in the absence of any

proof qua commercial transaction, I am of the view that the finding of the lower Appellate Court awarding interest @6% is perfectly legal and justified.

For the reasons aforementioned, I do not intend of differ with the finding rendered by the lower Appellate Court as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. All the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 04, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No