

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.758 of 2010

Date of Decision: 27.09.2016

State Bank of Patiala

... Appellant

Vs.

M/s Ganesh Metal Industries through its partners UGF-3 Indira Parkash, 21,  
Barakhamba Road, New Delhi-110001 and others.

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Deepak Thapar, Advocate  
for the appellant.

Respondents already proceeded against *ex parte*.

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**Amol Rattan Singh, J.**

This is an appeal by the State Bank of Patiala, arising from a suit filed by the Bank against the respondents-defendants herein, seeking recovery of Rs.4,24,518/-, alongwith interest @ 18% per annum, the total amounting to Rs.7,11,55.27 Paise.

The suit was decreed by the learned Additional Civil Judge (Senior Division), Jalandhar, in favour of the appellant bank but that judgment and decree was reversed by the Additional District Judge, Jalandhar, on a first appeal filed by two of the respondents herein

Consequently, the Bank is now in appeal against that judgment

and decree, before this Court.

2. The facts, taken from the plaint filed by the Bank, are that respondent-defendant No.1 is a partnership firm, with respondents-defendants No.2 and 3 being the partners of the said firm.

The firm availed of two loans of Rs.3,00,000/- and Rs.60,000/- from the banks' branch at Guru Tegh Bahadur Nagar, Jalandhar, for the construction of a building in Jalandhar, which was then rented out to the bank itself.

As per the agreement executed between the parties, the loan advanced was to be returned with interest on it at the rate of 15.5% per annum, compounded quarterly on the amount of Rs.3,00,000/- and 18.5% per annum, also compounded quarterly, on the amount of Rs.60,000/-, subject to variation from time to time as per directives of the Reserve Bank of India.

3. Thereafter, upon a judgment of the hon'ble Supreme Court having been delivered in State Bank of Patiala v. Harbans Singh (1994) 3 SCC 495, the defendants represented to the Bank to recast the loan by charging simple interest @ 15% per annum, on both the loans, instead of compound interest.

The Bank accepted the representation and consequently refunded a sum of Rs.4,24,518/- to the defendants, on 21.05.1997.

However, it was thereafter contended by the Bank that the refund had been made on account of a mistaken impression of the law, as otherwise the payment was not legally due. This was because of the fact that in a subsequent judgment of the Apex Court in Canara Bank v. P.R.N. Upadhaya (1998) 6 SCC 526, it was held that a Bank can charge the agreed

rate of interest even from a borrower from whom it had taken a building on lease and that such interest can be calculated on quarterly rests at a compounded rate.

*Harbans Singhs'* case (supra) was held to be confined to its own facts and was not to be treated as having laid down the law on the subject, as the circulars/directives of the RBI, on the issue of charging of interest from a landlord, had statutory force but were not brought to the notice of the Court.

4. Therefore, in view of the law laid down in the *Canara Bank* case, the appellant bank herein, issued a legal notice to the respondents, demanding a refund of the refunded amount, alongwith interest @ 18% per annum thereupon.

The defendants having refused to pay the amount demanded, the suit was filed by the Bank.

5. Upon notice issued to them, the defendants filed a written statement raising preliminary objections of estoppel, conduct, admission of the Bank and acquiescence. It was stated that the Bank being fully satisfied that the loan case of the defendants was covered by the facts of *Harbans Singhs'* case, which was a case of the State Bank of Patiala itself, the amount had been correctly refunded to the defendants and in fact, a 'No Dues Certificate' was issued to them on 22.05.1997.

Hence, it was contended that simply because the law was subsequently changed, would not entitle the plaintiff Bank to reopen the matter all over again, especially as the refund case of the defendants was examined by the legal branch of the Bank, and other than that, even the hon'ble Supreme Court, in the *Canara Bank* case, had not specifically held that interest could be calculated at quarterly rests on compounded rates but

had actually remanded the case to the Banking Ombudsman, to decide the matter in accordance with law.

Still further, it was submitted by the defendants as a preliminary objection, that the principle of prospective overruling, laid down in the case of **Golak Nath v. State of Punjab (AIR 1967 SC 1643)** would apply, and as such, on that ground also, the Bank could not reopen the case, it having reached finality with the issuance of the 'No Dues Certificate'.

It was further pleaded that this was even more so because the case of the refund to the defendants was approved by the Banking Ombudsman, Chandigarh, and the Award of the Ombudsman was also approved by the law department of the RBI itself and in fact, in the award, interest for delayed refund, was also awarded.

6. On merits, the essential facts with regard to the loan having been taken and the terms of the agreement etc. were not seriously refuted but essentially, the aforesaid pleadings taken in the preliminary objections were reiterated, by the defendants.

7. Upon these pleadings, the following issues were framed by the learned Additional Civil Judge (Senior Division), Jalandhar:-

- “1. Whether the plaintiff is entitled for recovery of Rs.7,11,551.27 Ps. alongwith interest? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff is estopped from filing the present suit by its own act and conduct? OPD
4. Whether the suit based on mis-conceived interpretation of law? OPD
5. Whether the plaintiff has no locus standi to claim the return of the refunded amount in question? OPD
6. Relief.”

By way of evidence, the plaintiff Bank examined its Branch Manager as PW1, to prove their case and also exhibited documents, Exs.P1 to P6.

The defendants examined the 2<sup>nd</sup> defendant, Anil Kumar, to prove their stand and relied on documents, Exs.D1 to D13.

8. Having appraised the aforesaid evidence and having considered the pleadings and arguments, the learned Civil Judge eventually came to the conclusion that as the refund was made to the defendants only on the basis of what was held in *Harbans Singhs'* case and the ratio of that judgment subsequently having been virtually overruled by the Supreme Court in the *Canara Bank* case, holding it to be confined to the facts of that case only, i.e. only applicable in *personem*, the law laid down in the later case was actually the law which would be held to be prevailing prior to the *Harbans Singhs'* case also and therefore, the Bank was within its right to seek a refund of the amount refunded to the defendants. Having held as above, however, the rate of interest awarded by the learned Civil Judge to the appellant-plaintiff Bank, on the amount to be recovered from the respondent-defendants, was 6% per annum and not 18% compounded, as had been prayed for.

9. The defendants having appealed against that judgment, the learned Additional District Judge, upon noticing the facts and the judgment of the learned Civil Judge, first recorded a finding that the defendants were the landlords of the plaintiff Bank, which had loaned the two loan amounts to them, with which the building was constructed and thereafter it had been rented/leased out to the Bank. At that time, the loan contracted by the parties, was to be paid back with the interest compounded quarterly.

That was on 19.03.1983; however, on 14.02.1994, the judgment of the Supreme Court was pronounced in *Harbans Singhs'* case and subsequent thereupon, the defendants represented several times to the Bank, between 14.09.1995 and 14.03.1997, to recast their loan, which representation was finally accepted on 21.05.1997 and the refund made, with a 'No Dues Certificate' (Ex.D1) issued on 22.05.1997.

On 06.01.1998, the defendants filed a complaint with the Banking Ombudsman, seeking further interest upon the refunded amount, which complaint was decided in their favour on 24.06.1998.

On 25.08.1998, the judgment of the Supreme Court in *Canara Banks'* case was pronounced and thereafter, on 15.02.2000, the plaintiff Bank issued a notice to the defendants (Ex.P6), to refund the amount earlier refunded to them, with interest thereupon.

The suit was thereafter filed by the Bank, on 02.06.2000.

10. The first appellate Court found that it was because of the delay in the refund made to the defendants, that the learned Ombudsman had directed the Bank to pay interest @ 15% per annum on the refunded amount of Rs.4,24,518/-, w.e.f. 14.11.1995 to 20.05.1997 (i.e. for a period starting two months from the date of the first representation by the defendants for recast of loan, till one day before the actual payment of the refund to them by the Bank).

Thus, it was concluded by that Court, that in the period of one and half years that it took for the Bank to recast the loan and to make the refund, obviously sufficient deliberations were entered into and as such, in any case, there being no mis-representation by the defendants, the refund was made on 21.05.1997, when the judgment in *Harbans Singhs'* case was still

holding as good law. Thereafter, even the Banking Ombudsman, by inference, upheld the refund, by awarding interest @ 15% per annum as aforesaid.

11. Thereafter, upon examining as to whether the principle relied upon by the bank, that a mistake of law had led to the refund, it was held by the learned first appellate Court that there was no mistake of law at the time when the refund was made, as the law then prevailing was what was held in *Harbans Singhs'* case and subsequently even a 'No Dues Certificate' had immediately thereafter been issued to the defendants.

Hence, holding that it would open up a '*Pandoras*' box' if all decided cases were allowed to be reopened on the basis of law subsequently changed, the stand of the Bank was rejected.

12. Further, viewing it from the point of limitation, it was held that the cause of action for refunding the money to the appellants arose immediately upon the refund having been made to them on 21.05.1997, which could be recovered upto 21.05.2000. However, the suit having been filed only on 02.06.2000, it was beyond limitation and simply a demand notice issued on 15.02.2000 (Ex.P6), would not extend the period of limitation.

Still further on this, it was also held that the Bank cannot start counting limitation from the time of the verdict in the *Canara Bank* case, that being a completely different *lis* altogether.

13. Consequently, holding against the plaintiff Bank, both on account of the fact that a subsequent change of law did not entitle it to make a recovery from the defendants, and the suit having been filed beyond limitation, the appeal of the defendants was allowed and the suit filed by the

Bank dismissed with costs.

14. When this appeal came up for hearing and notice was issued on 23.07.2010, the respondents could not be served, as respondent No.1 (i.e. the firm), was stated to have been closed.

Many opportunities were granted to the appellant bank to supply the correct address of the respondents but eventually it not having been able to obtain the addresses, on an application made under Order 5 Rule 20 CPC, the appellant was permitted to serve the respondents herein by way of substituted service, i.e. by way of publication in a newspaper.

That also not having been done for a long time, eventually the appeal was dismissed for non-prosecution on 10.11.2014, after which it was restored on 04.12.2014 on an application made for that purpose and thereafter, the respondents having been shown to have been served by way of publication in a newspaper, but they still not having appeared, they were ordered to be proceeded against *ex parte*, vide an order dated 02.03.2015, with liberty still given to them to join proceedings before the next date of hearing.

None having even then appeared, eventually arguments of learned counsel for the appellant were heard and judgment reserved.

15. Mr. Deepak Thapar, learned counsel for the appellant, submitted that firstly, on the issue of limitation, the first appellate Court wholly erred in holding the suit to have been filed beyond the period of limitation, as the delay if any in filing the suit, was only a consequence of a mistake of law and when such mistake was realised, after the judgment in *Canara Banks'* case, the suit was filed well within three years from the date of realization of the mistake.

Thus, he submitted that Section 17(1) (c) of the Limitation Act, 1963, would be wholly applicable.

Mr. Thapar further submitted that the defendants having duly replied to the notice dated 15.02.2000, vide a reply dated 04.03.2000, Section 18 of the Limitation Act would also be applicable, as Explanation (a) thereto, stipulates that even where the acknowledgment of the liability is accepted by a party, with a refusal to pay, the limitation would stand extended till the date of such acknowledgment.

Hence, the respondents-defendants having acknowledged the notice of the demand, limitation would begin to run only from that date and thus, the suit filed within 3 months thereafter, was very much within limitation.

16. As regards the main issue of the applicability of the law, Mr. Thapar submitted that *Harbans Singhs'* case was a single judgment which laid down that a loan taken by a landlord from a bank, for constructing a premises thereafter leased out to the Bank, would not attract interest for more than 15% on it and that it would not be calculated at quarterly rests.

Thereafter, in the *Canara Bank* case, the instructions and rules of banking having been duly noticed by their Lordships, the contractual obligation of the 'loanee' to repay the loan, in terms of the contract, were upheld by the Supreme Court and as such, the law having been laid down actually overruling the judgment in *Harbans Singhs'* case, such law laid down by the Supreme Court would be held to have been the law on the subject as it always existed and consequently, the Bank was very much within its right to rectify the mistake made by it and enforce the contractual and legal obligation of the respondents herein.

17. Mr. Thapar also cited a judgment of the Supreme Court in Sarwan Kumar v. Madan Lal Aggarwal (2003) 4 SCC 147, to submit that it was held by their Lordships as follows:-

“Invocation of the doctrine of “prospective overruling” is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding *Gian Devi Anand case* did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand case* would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand case* or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in *Gian Devi Anand case* by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.”

(Reference para 15, SCC citation)

18. Having heard learned counsel for the appellant, as regards the first issue that would arise in this appeal, i.e. whether or not the judgment in the *Canara Bank* case was to apply only prospectively or retrospectively also, I am in agreement with Mr. Thapar, that without the Supreme Court having specifically held in the said judgment that the ratio of the law pronounced would operate only prospectively, such ratio would be deemed to be the law as it was always in existence, especially with the judgment in *Harbans Singhs'* case having been held to be applicable only to the facts and circumstances of that particular case.

19. Having said that, the question then would be as to whether the appellant could have taken advantage of Section 72 of the Indian Contract Act to demand a recovery from the respondents, on the ground that the refund made to the respondents, was under a mistaken impression of law.

Undoubtedly, Section 72 does lay down that a person to whom money has been paid by a mistake, must repay or return it.

Such a mistake may be a mistake of fact or a mistake of law. Such being the case, it would seem that the judgment of the learned Civil Judge, decreeing the suit of the appellant-plaintiff, was based on sound principles.

Yet, though the principle may be sound, in the circumstances of the present case, would it be open to the appellant to ask for a recovery of the refund, from the appellants, the Bank itself having made the refund, on the basis of the law as it was then existent, on 21.05.1997, when the refund of Rs.4,24,518/- was made to the respondents, in terms of *Harbans Singhs'* case?

20. It needs to be noticed here that the ratio of the said judgment was overruled only one year and three months later, in the *Canara Bank* case, on 25.08.1998. The appellant bank thereafter served a legal notice, for recovery, on the respondents, about one and half years later, on 15.02.2000.

Thus, as regards the issue of limitation, since Section 17(1)(c) of the Limitation Act stipulates that in a case of a suit or application for relief from the consequences of a mistake, limitation would start running from the date when such mistake was discovered, in my opinion, learned counsel for the appellant is correct in contending that the period of limitation would not expire at least till 24.08.2001, i.e. three years from the date when the

judgment of the Supreme Court was pronounced in *Canara Bank* case.

Though I do not agree with Mr. Thapar that Section 18 of the Limitation Act would also be applicable, because in their reply to the notice issued by the appellant-bank, the respondents had nowhere admitted that the sum demanded by the bank was due from them, however, as regards Section 17(1)(c), I see no fault in that reasoning.

21. Thus, if the suit was filed within three years from the discovery of the mistake, i.e. upon deliverance of the judgment of the Supreme Court in *Canara Bank* case, and further, such mistake was not discovered beyond the period of limitation that would apply to a case of recovery of money, then in the opinion of this Court, the Bank was within its right to demand such recovery also.

It would have been a different matter if the judgment of the Supreme Court had come more than three years after the refund was made to the respondents herein, i.e. more than three years after 25.05.1997, or the Bank had exceeded the period of limitation beyond the date of the judgment in the *Canara Bank* case. Thus, in the first situation, with the refund having been made on 25.05.1997, no recovery would have been possible, in the opinion of this Court, had the judgment of the Supreme Court come after 20.05.2000, the limitation for filing a suit for recovery having expired.

To put it differently:-

i) if three years had already lapsed from the date of payment, till the date of discovery of the mistake of law, i.e. till the law was reinterpreted, such recovery would be barred in terms of the limitation to sue for recovery of money, in terms of Article 25 or Article 26 of the Schedule to the Limitation Act;

ii) if the appellant-bank had allowed three years to lapse from the date of pronouncement of the judgment in the *Canara Banks'* case, i.e. if the suit had been filed after 24.08.2001, again such a suit would have been barred, even in terms of Section 17 of the Limitation Act.

As regards (i) above, in the opinion of this Court, if Section 17 (1)(c) is allowed to be interpreted so as to enable recoveries even beyond three years from the date that the moneys were paid, simply on account of the law being interpreted more than three years later, then it could lead to a situation where even 20 year old cases would be reopened by different financial institutions and others, which again in the opinion of this Court, would actually be wholly against the basic concept of the law of limitation.

However, that not being the case in the present *lis*, the learned lower appellate Court erred in holding that the suit was filed beyond limitation on 02.06.2000, with the refund having been made by the appellant to the respondents on 20.05.1997.

This is so as the judgment of the Supreme Court in the *Canara Bank* case having come within one year and three months of the refund having been made in the light of *Harbans Singhs'* case, such mistake of law, on the basis of which the refund was made, having been discovered in the light of the judgment, within three years of 21.05.1997, then Section 17(1)(c) of the Limitation Act would become applicable, thereby giving a lease of life to the appellant-bank to sue for recovery, within three years of the discovery of the mistake, even if the amount sought to be recovered was paid prior to three years from the date of the filing of the suit.

The limitation to file such a suit having got extended by virtue of the discovery of the mistake within one and half years of 21.05.1997, i.e.

on the date of the pronouncement judgment in the *Canara Bank* case on 25.08.1998 (even giving reasonable time for the ratio of the judgment to permeate down to financial circles), Section 17(1)(c) would come into play and thereafter, limitation to file a suit for recovery of an amount paid under a mistaken impression of the law, would start running from that date, or within a reasonable time thereafter.

To finally repeat, the suit in the present *lis* having been filed within one year and ten months of the extended period of limitation from 25.08.1998, it was not barred by limitation.

22. Thus, having reversed the finding of the learned lower appellate Court on the issue of limitation, it may still be necessary to refer to Section 62 of the Indian Contract Act 1872, which provides that when parties to a contract substitute a new contract for the original contract, the original contract need not be performed. Though since none has appeared for the respondents, obviously, no such argument has been raised, however, this Court finds it necessary to deal with such an argument which could have been raised, in view of the fact that once the appellant-bank refunded the amount to the respondents, the original contract by which the respondents were bound to pay interest at compounded rates, on quarterly rests, actually stood altered by way of a novation.

However, it is also a fact that the novation itself was the result of a mistake of law, arising from the judgment in *Harbans Singhs'* case.

In such a case, in my opinion, it would be Section 72 and not Section 62 of the Contract Act, that would prevail and apply.

Thus, the principle of in *pari delicto*, would also not apply, on the same reasoning, i.e. even though both parties were equally 'convinced' of

the position of law, that would still not bar a party that realised the mistake, from seeking to rectify it, in terms of Section 72.

23. This appeal is therefore allowed and the impugned judgment and the decree passed by the learned first appellate Court is set aside, with that of the learned Additional Civil Judge (Senior Division), Jalandhar, dated 01.02.2007, reinstated. The suit of the appellant-plaintiff is accordingly decreed with costs through out, the costs being confined to the amount of Court fee paid at each stage, by the appellant-plaintiff.

A decree-sheet be accordingly drawn up.

**September 27, 2016**

*dinesh*

**(AMOL RATTAN SINGH)  
JUDGE**