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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8562/2015

PUNJAB & SIND BANK ..... Petitioner

Represented by: Mr.Pallav Saxena, Ms.Bindu Das, Advs.

versus

VINOD KUMAR JAIN & ORS ..... Respondent

Represented by: Mr.Praveen Kapoor, Adv. for R-1.
Mr.Rajiv Bahl for Official Liquidator.

\+ W.P.(C) 8566/2015

PUNJAB & SIND BANK ..... Petitioner

Represented by: Mr.Pallav Saxena, Ms.Bindu Das, Advs.

versus

VINOD KUMAR JAIN & ORS ..... Respondent

Represented by: Mr.Praveen Kapoor, Adv. for R-1.
Mr.Rajiv Bahl for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **01.03.2016**

1. The grievance of the petitioner Punjab & Sind Bank in the two writ petitions is common. Vide the two impugned orders dated February 24,

2015 the DRAT reduced the rate of interest from 14% p.a. simple to 11% p.a. simple and the recovery has been kept in suspended animation until receipt of the balance proceeds pursuant to the orders of the Company Court.

2. A brief background of the two petitions is that the bank granted credit facility to respondent No.2. Under the said facility, documents were negotiated between the parties and payments were made against the bills duly acknowledged. The respondents executed loan and security documents. The respondents also availed overdraft facilities. Number of securities as well as personal sureties collaterally for securing the credit facilities were created. Since the respondents failed to maintain financial discipline and contravened the terms and conditions governing the credit facility, the petitioner instituted two suits, Suit No.2147/1986 for recovery of ₹4,50,76,141.84 and Suit No.2194/1986 for recovery of ₹8,16,58,516.84 along with pendentelite and future interest thereon @ 19.50% per annum with quarterly rest and cost. The suits were transferred to the DRT and registered as OA Nos.341/95 and 1250/95 respectively. The DRT vide orders dated May 08, 2012 and March 02, 2012 disposed of the two OAs i.e. 341/95 and 1250/95 respectively. It held the bank entitled to recover the amount from the defendants jointly and severally with simple interest @ 14% p.a. from October 10, 1986 onwards until realization. In the two appeals filed by Vinod Kumar Jain, respondent No.1 herein, the DRAT passed the impugned orders dated February 24, 2015 reducing the rate of interest from 14% p.a. simple to 11% p.a. simple and suspending the recovery till the decision of the Company Court.

3. On the plea of the respondents that the rate of interest be reduced the DRT held that the rate of interest has to be determined having due regard to

the facts and circumstances of the case. It noted that present was a case where after availing huge amount of loan and admitting the liability in the balance sheets, there is complete denial of availing the loan facility. Thus the conduct of the party does not entitle it to grant reduction of the rate of interest at 10% per annum. It being public money usurped through the bank and the company having gone into liquidation, the DRT after considering the various decisions of this Court, held that the rate of interest at 14% simple would be appropriate. In O.A.No.341/1995 the DRT also noted that the company was declared a sick company, the capital was eroding and the suit amount itself covers at least 33% of the interest on the original principal amount.

4. The DRAT vide the impugned orders reduced the rate of interest from 14% per annum to 11% per annum without assigning any reasons and also erroneously kept the liability under suspended animation.

5. The Constitution Bench in the decision reported as (2002) 1 SCC 367 *Central Bank of India Vs. Ravindra & Ors.* held that under Section 35-A of the Banking Regulation Act, 1949, the RBI has been issuing directions/circulars from time to time which have statutory force and deal with the rate of interest which can be charged and even for transactions which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

6. While exercising the discretion with respect to rate of interest, the DRAT ought to have noted the facts and circumstances of the case. The prime lending rates of the RBI in the year 1986 when the two suits were instituted were 16.50% p.a. to 17.50% p.a. The DRT awarded interest

@14% p.a. for the reasons as noted above. No appeal against the said order was filed by the bank. However, on an appeal of Vinod Kumar Jain, the rate of interest was reduced to 11% p.a. without assigning reasons. Considering the facts that suits for recovery were instituted in the year 1986 and the respondents after admitting their liability failed to discharge the same and protracted the proceedings, the DRT committed no error in awarding interest at the rate of 14% p.a. simple. No case was made out before the DRAT for reduction of the rate of interest to 11% p.a.

7. Consequently, the impugned orders dated February 24, 2015 passed by the DRAT in Appeal Nos.47/2015 and 83/2013 are set aside.

8. Writ petitions are disposed of.

9. No costs.

<u>CM 18495/2015 (stay) in W.P.(C) 8562/2015</u>
<u>CM 18506/2015 (stay) in W.P.(C) 8566/2015</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 01, 2016
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