IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.307 of 1997

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Canara Bank, a body corporate, constituted under Banking Company (Acquisition and Transfer of undertaking) Act, (Act V of 1970), having its Head Office at 112 J.C. Road, Banglore and a Branch office amongst other places at Bettiah, West Champaran…………………………………………... ....Plaintiff/Appellant

Versus

1. Raghav Dubey son of Late Rajdevo Dubey, village & Post- Ghogha, Via- Chanpatia, West Champaran
2. Babunandan Shukla, son of Parmanand Shukla, village- Jusi Pakri, P.S.- Bhairoganj, West Champaran….

…………..... .... Respondents

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Appearance :

For the Appellant : Mr. R.K.P.SINGH
Mr. Bal Bhushan Choudhary

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date: 21-08-2017

This appeal is directed against the judgment and decree dated 10.03.1997 decree sealed and signed on 15.03.1997 passed by Sri Gauri Shankar Lal, the then Sub-judge IV, Bettiah in Money Suit No. 14 of 1989 in the matter of Canara Bank vs. Sri Raghav Dubey & Anr. whereby and whereunder the suit was partly decreed on contest with proper cost.

2. The plaintiff-appellant has filed the aforesaid suit for recovery of Rs. 3,12,706.20/- along with interest pendente lite and future till the final realization along with the cost of the suit.

3. Briefly stated, the case of the plaintiff is that the plaintiff at the request of the defendant no. 1 agreed to grant him an advance by way of a term loan of Rs. 1,44,000/-

repayable at Bettiah by specified installments together with interest thereon at the rate of 6% over the bank rate with minimum of 15 per cent per annum or at such rate or rates which may be notified from time to time. The defendant no. 1 is the borrower and the defendant no. 2 is the guarantor who reside and work for gain within the jurisdiction of the court. The plaintiff advanced the loan for the purpose of purchase of Tata Truck, the defendant no. 1 created a first charge by way of hypothecation in favour of the plaintiff on all tangible and moveable property including the Tata Truck bearing Regd. No. 2601 as a security to the repayment at any time with interest thereon. The defendant no. 2 stood as guarantor. This loan was advanced to the defendant no. 1 on 11.07.1981 and the defendants became liable to repay the same to the plaintiff. The rate of interest was charged and raised from 15 % to 17 % and the intimation thereof was given by the plaintiff to the defendant. The defendants admitted and acknowledged that they were liable to pay Rs. 1,62,930.75/- on 12.03.1984, Rs. 1,81,051.45/- on 13.06.1986 and Rs. 1,65,393.45/- in respect of the said term loan. The defendants did not pay the installments as agreed and thereby have failed and neglected to pay the said amount or any interest thereof. Both the defendants are jointly and severally liable to pay the said amount. The said advance was made at Bettiah and are payable at Bettiah. The whole and material part of cause of action has arisen at Bettiah within the jurisdiction of that court.

4. The defendant no. 1 has appeared who filed his written statement and contested the suit. The case of the defendant, in short is that the suit as framed is not maintainable. The plaintiff has got no cause of action for the suit. The claim of the plaintiff is barred by limitation, the claim as put forward is wrong, exaggerated with wrong calculation. The terms of the term loan as per oral assurance of the then Bank Manager was that the plaintiff after delivery of chasis will allow further advance for construction of body of the truck and the interest will run from the date when the truck would began to ply on the road, as the purpose of the loan was to provide job to the unemployed driver. The signatures of the defendants were taken by the then Manager on some blank printed forms, according to his directions and he assured that these forms will be filled up in due course and copies of these forms thereafter, will be supplied to these defendants. But up till now no copy of any paper have been supplied to these defendants. The defendant could not read and understood English language. These papers were not knowingly signed by the defendants. The defendants completely denied the rate of interest was agreed to be the rate of 15 %. It is also denied that any enhanced rate of interest was intimated to the defendants. The defendants had never executed any paper and acknowledgement as alleged. As a matter of fact on 12.06.1986 the plaintiff called the defendants in the bank premises and asked to write whatever he is to dictate. This way the recitals of aforesaid application was never the statement of the defendants rather the plaintiff got the application written on his own dictation under the threat and due pressure, hence, the plaintiff cannot take advantage of the paper and the recitals of that paper would not be the statement of the defendants. No notice was ever served on the defendants, the statement of account has been wrongly and illegally calculated and as such it is not binding on the defendants. All the documents of the plaintiff are fabricated and are not binding on the defendants. The signature of the defendants were taken without dates, playing fraud upon him by taking undue advantage of their being creditors and unemployed and have been converted into the letter of acknowledgement by the plaintiff. The defendants several times approached the plaintiff to grant them further loan as agreed upon, so the body may be constructed. The plaintiff repeatedly refused to do such help. So, the defendant is not liable to pay interest for that period. The amount of interest and rate of interest is also wrong and the plaintiff is not entitled to get the relief claimed in the plaint and the suit is fit to be dismissed with cost.

5. Learned trial judge on the basis of the pleadings of the parties framed following issues on re-cast:-

(a) Is the Suit as framed maintainable in its present form ?

(b) Has the plaintiff got valid cause of action for the suit ?

(c) Is the suit barred by the law of limitation ?

(d) Whether agreement and letters of hypothecation were signed by the defendant on blank paper and if so what will be its legal effect ?

(e) Was there any assurance for further advance for construction of body of Truck and was there also any oral agreement, that the interest would run from the date of the truck plying on road ?

(f) Whether letter of acknowledgment dated 12.06.86 was signed by loanee and written by guarantor under undue pressure ?

(g) has there been any supervision or inspection of the Truck or the security under hypothecation ?

(h) Was there any agreement for DIC G.C. Insurance ?

(i) Whether the account submitted by bank is correct or exaggerated ?

(j) Is plaintiff entitled to a decree as prayed for in the plaint ?

(k) Is plaintiff entitled to any other relief or reliefs ?

6. Learned trial court took up issue no. (d), (e), (f) and

(g) at first together and decided the same against the plaintiff and in favour of the defendants. Thereafter, issues no. (h), (i) and (j) have been taken and held that the accounts submitted by the bank is not correct, it is exaggerated and the plaintiff is entitled to a part decree in the suit and accordingly, decided these issues. Issues no. (a) (b) (c) and (k) have been taken together and the suit has been decreed in part holding that the plaintiff is entitled to recover Rs. 24,248.90/- as principal amount on the date of filing of the suit and total interest Rs. 84,846/- till filing of the suit and thereafter with 6.5 % simple interest per annum on total principal amount of Rs. 24,248.90/- since the filing of the suit till realization pendente lite and future interest and accordingly decreed the suit in part on contest with proportionate cost.

7. The plaintiff being partly aggrieved with the judgment and decree has preferred this appeal challenging the legality, correctness and propriety of the same on the grounds that the finding given by the trial court is not only arbitrary but perverse also. No oral evidence is admissible in the face of documentary evidence and to vary the contents of such documents. The finding is confused one and is not based on any cogent reliable and admissible evidence. The entire observation of the trial court is contrary to the settled principle of law and all the issues right from d to j have been improperly framed to deviate the main issue. The trial court acted as an agent of the defendants in calculating the principal sum claimed by the plaintiff as well as the interest payable by the defendants as per the terms of the agreement in respect of the period before filing of the suit as well as the pendente lite and future interest. The learned court below in arbitrary manner has made the calculation of principal sum as well as the interest which is against the directives of the Reserve Bank of India. The loan transaction is admitted and the defendants signed on all the documents in which rate of interest and compounding of interest and loan amount are mentioned but learned court below by ignoring all such factual aspects of documents adopted a novel practice unknown in law to calculate the amount payable by the defendants on the basis of vague pleadings of the defendants and uncorroborated and highly discrepant statements of the defendants and his witnesses. The entire calculation and discussions made in paragraph 19 and 20 of the judgment are absurd, illegal and baseless and perverse as well as beyond the jurisdiction of the court. A commercial transaction between the bank as creditor and any person as debtor cannot be reopened by any court of law nor the rate of interest can be scaled down. Hence, the findings which is material in respect of liabilities of the defendants to pay the due amount of loan to the bank has been wrongly arrived at by the learned court below and as such the same is not sustainable and fit to be set aside. The documentary evidence adduced on behalf of the plaintiff are admitted, legal, valid and enforceable in law which have been properly admitted in evidence but the learned court below failed to consider and appreciate the evidentiary value of the exhibited documents on the basis of which the suit of the plaintiff has to be decreed in toto. The loan transaction between the bank and defendants is admitted transaction, the amount of loan is also admitted, therefore, the suit must be decreed in respect of the entire claim of the plaintiff. The plaintiff is a nationalized bank in which public money is involved. The bank officers are supposed to act in accordance with the banking norms and recognized procedure of bank law as per the guidelines of the Reserve Bank of India. The defendant no. 1 has filed the written statement with misleading and evasive statement, hence, under the law evasive denial in respect of rate of interest and compounding of interest is no denial under the law in view of the provisions of order VIII rule 5 of the C.P.C. The denial in the written statement must be specific and categorical otherwise evasive denial of a fact is deemed to be admitted and for that reliance has been placed upon a judgments reported in **AIR 1964 Patna page 348** in the case of **Punit Rai and Anr. Vs. Mohammad Majid and Ors.** and **AIR 1966 Supreme Court page 292** in the matter of **Tek Bahadur Bhujil v. Debi Singh Bhujil and Ors**. It has been argued that in view of the said provision of law, the entire claim of the plaintiff is fit to be decreed and there is no scope of passing decree by scaling down the rate of interest and changing the compounding interest to simple interest. Learned court below committed grave error by adopting novel system of accounting without any foundational fact and thereby arrived at a wrong and perverse conclusion. The statement of account, Ext. 9, cannot be ignored by the court below nor the court can act beyond it. Ext. 9 is the certified copy of bank ladger which is banker's book as defined under Section 2 (3) read with Section 2 (8) of the Bankers' Books Evidence Act, 1891. Section 4 of the Act makes Ext. 9 as an admissible and reliable document and the contents thereof shall be presumed to be correct and as such no finding contrary to Ext. 9 is permissible under the law. As per Ext. 9, the principal sum adjudged before filing of the suit till 30.11.1989 is Rs. 3,12,706.20/- which has been claimed by the plaintiff bank along with pendente-lite and future interest till final realization along with the cost of the suit which cannot be scaled down to Rs. 24,248.90/- in arbitrary manner as has been done by the court below erroneously. All the documents proved that the principal amount of loan shall carry interest at the rate of 15 % per annum compounded quarterly which was further enhanced to 17 % as per circular of the Reserve Bank of India and the terms of the agreement Ext. 3 but the court below has wrongly calculated simple interest at the rate of 12.5 % per annum before the filing of the suit which had been scaled down to 6.5 % simple interest per annum on total principal sum, wrongly adjudged by him to Rs. 24,248.90/- for the pendente lite period. Such exercise by the trial court is highly absurd, illegal and contrary to law. Section 21 (A) of the Banking Regulations Act has taken away the power of the court to re-open the commercial transactions of the bank with any party and to scale down the rate of interest as well compounding of the interest. Reliance has been placed upon a judgment reported in **1994 (5) SCC page 213** in the case of **Corporation Bank Versus D.S. Gowda and Anr**. In a commercial loan transaction interest with quarterly rest is permissible if charged as per circular of the Reserve Bank of India and the court cannot interfere with the same under Section 21 (A) of the Banking Regulation Act. Further reliance has been placed upon a judgment reported in **(2002) 1 SCC page 367** in the case of **Central Bank of India Versus Ravindra and Ors**. The banking transactions cannot be reopened by any court on the ground of interest being excessive. Section 21 (A) of the Banking Regulation Act has been validly enacted upon interest being a matter of contract can be charged by bank and as such the judgment and decree passed by the learned court below is fit to be set aside and the suit is fit to be decreed in full with pendente-lite and future interest shall be payable at the rate of 15 % per annum compounding quarterly on the total sum of Rs. 3,12,906.20/- as well as further enhanced rate of 17 % from the date of enhancement as reflected in Ext. 9 even as per the provision of Section 34 of the C.P.C. The plaintiff-appellant is also entitled to the cost throughout and this appeal is fit to be allowed with cost.

8. The respondent did not appear to argue in this appeal, resulting, the appeal was heard ex-parte.

9. The only point for consideration in this appeal is as to whether the plaintiff is entitled for decree in full as claimed in the plaint and whether the judgment and decree passed by the learned trial judge is fit to be set aside or not ?

10. The plaintiff to prove his case has examined altogether two witnesses. PW 1 Jayant Bandhopadyaya and PW 2 is Purandar Bhushan Prasad. PW 1 could not be cross-examined by the defendants. the plaintiff could not produce that witness in court for cross-examination by the defendants. Therefore, his evidence was expunged vide order sheet dated 25.02.1997. Thus, PW 2 is the only witness of the plaintiff. He has come to prove the case of the plaintiff and has proved the filed documents. Ext. 1 is the loan application/Sanction letter dated 30.07.1981, Ext. 2 is Pronote dated 11.07.81 for Rs. 1,44,000/- in which rate of interest is 15 % per annum compounded quarterly, Ext. 3 is the Hypothecation agreement dated

11.07.1981 in which rate of interest has been mentioned as 15 % per annum compounded quarterly or at such other rate/rates as notified by the bank. Ext. 4 is the guarantee letter dated 11.07.87 with covering letter in which also rate of interest has been mentioned as 15 % per annum compounded quarterly. Ext. 5 is the authorization letter dated 11.07.81, Ext. 6 is acknowledgement of debt and security dated 31.12.1983. Ext. 6/A is the acknowledgment of debt and security dated 13.06.1986 and Ext. 6/B is acknowledgment of debt and security dated 01.04.88, Ext. 7 is legal notice, Ext. 8 and 8A are registration receipts. Ext. 9 is the statement of accounts from 11.07.81 to 30.11.89 in respect of the loan amount LHV 10/81 in the name of Mr. Raghav Dubey the defendant no. 1 which also contains the other expenses and charges payable by the defendant to the bank and as per the agreement.

11. The aforesaid documentary evidences adduced on behalf of the plaintiff have been properly admitted in the evidence but the learned court below failed to consider and appreciate the evidentiary value of the exhibited documents on the basis of which he came to the wrong finding. The learned court below has come to the conclusion that loan application is not filled up by the defendant Raghav Dubey. Raghav Dubey has only signed the loan application form and someone has filled up in English. Signing of loan application by Raghav Dubey is admitted one, it is not denied. The loan transaction between the bank and defendants is admitted transactions and amount of loan is also admitted. The defendant no. 1 has filed written statement with evasive denial, hence, under the law evasive denial in respect of rate of interest and compounding interest is no denial under the law in view of the provisions of order VIII Rule 5 C.P.C. The denial in the written statement must be specific and categorical otherwise the evasive denial of the fact is deemed to be admitted. The rulings relied upon by the learned counsel for the appellants reported in **AIR 1964 Patna page 348** (Supra) and **AIR 1966 Supreme Court page 292** (Supra) are fully applicable in the present case.

12. On behalf of defendants DW 1 is Ram Ayodhya Sharma. He has come to say that in his workshop Raghav Dubey has brought chasis of the truck in Asharh and Sawan month in the year 1981 and for four months the same remained in his workshop and when money was demanded he told that bank will give money then he will pay the same but the bank did not give money and then he arranged the money on interest from market.

13. During cross-examination he has become incompetent. He has stated that he works in the said workshop as carpenter and owner is Mustaque Miyan. He has stated further that in his presence no talk was made regarding payment of money. DW 2 is Raghav Dubey himself. He has come to support his case as made out in the written statement. He has stated that the bank manager got his signature on all the papers in blank forms. In paragraph 13 he has stated that he has taken loan of Rs. 1,44,000/- from the bank in pursuance thereof papers were prepared. One truck gives income of Rs. 6,000/- per month. Bank loan was to be repaid per month in installments but how much installment was to be paid he cannot say. In paragraph 15 he has stated that from whom he has taken the money for construction of the body he has not given in writing and he cannot produce that man for evidence. In paragraph 17 he stated that he cannot say as to what money he has repaid to the bank since 1981. He has seen the statement of accounts but what is stated regarding interest he cannot say. Thus, this witness evidence is not reliable. DW 3 is Babu Nandan Shukla. He is the guarantor. He has also come to say that on plain paper his signature was obtained at the dictation of bank manager. In paragraph 2 he has stated that the bank manager did not give money for construction of the body, resulting, there was delay of six months in construction of the body. During cross-examination he has admitted his signature on the agreement. In paragraph 6 he has stated that he has got no concern with the affairs of Raghav Dubey. He cannot say as to what amount Raghav Dubey has deposited in the bank. During cross-examination he has become incompetent witness.

14. By way of documentary evidence Ext. A and A/1 are the signatures of Raghav Dubey on agreement, Ext. B is the owner book and Ext. C is the letter of Canara Bank.

15. The evidence adduced on behalf of the defendant is not reliable and does not appear that the defendant has not admitted the loan amount. The learned trial court committed grave error in calculating the principal sum adjudged by legal scrutiny of the loan amount on the basis of legal engineering which is impermissible in the law. He committed grave error by adopting novel system of accounting without any foundational fact and thereby arrived at a wrong and perverse conclusion. The statement of account, Ext. 9, cannot be ignored by the court below nor the court can go beyond it. Ext. 9 is the certified copy of the bank ledger which is banker's book as defined under Section 2 (3) read with Section 2(8) of the Bankers' Book Evidence Act 1891. Section 4 of the Act makes the Ext. 9 as admissible and reliable document and contents thereof shall be presumed to be correct and as such no finding contrary to Ext. 9 is permissible under the law. As per Ext. 9, the principal sum adjudged before filing of the suit till 30.11.89 is Rs. 3,12,706.20/- which has been claimed by the plaintiff bank along with pendente lite and future interest till final realization along with the cost of the suit which cannot be scaled down to Rs.

24,248.90/- in arbitrary manner done by the court below erroneously. All the documents proved that the principal amount of loan shall carry interest at the rate of 15 % per annum compounded quarterly which was enhanced to 17 % as per circular of the Reserve Bank of India and the terms of agreement, Ext. 3, but the court below has wrongly calculated simple interest at the rate of 12 % per annum before the filing of the suit which has been scaled down to 6.5 % simple interest per annum on total principal sum wrongly adjudged by him to Rs. 24,248.90/- for the pendente lite period. Such exercise by the court below is illegal and contrary to the law. In the case of **Corporation Bank Versus D.S. Gowda and Anr**. (Supra) It has been held that in a commercial loan transaction interest with quarterly rate is permissible if charged as per circular of the Reserve Bank of India and court cannot interfere with the same under Section 21A of Banking Regulation Act. Further in the case of **Central Bank of India Versus Ravindra and Ors**. (Supra) it has been held that the banking transaction cannot be re-opened by any court on the ground of interest being excessive. Section 21A has been validly enacted. Compound interest being a matter of contract can be charged by bank.

16. Under the facts and circumstances narrated above, the plaintiff is entitled to get a decree in full as claimed in the plaint. Accordingly, the judgment and decree passed by the court below is hereby set aside. The pendente-lite and future interest shall be payable at the rate of 15 % per annum quarterly compounded on the total amount of Rs. 3,12,906.20/- as well as further enhanced rate of 17 % from the date of enhancement as reflected in Ext. 9. The plaintiff-appellant is also entitled to cost throughout. In the result, this appeal is allowed but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	31.07.2017
Uploading Date	21.08.2017
Transmission Date	21.08.2017