IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.73 of 1998

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State Bank of India, a body corporate, incorporated under the State Bank of India Act, 1955 having its Central Office at Bombay, Head Office amongst the other places at Patna, Regional office at Purnea and branch all over India and including Sonaili Agriculture Development Bank, District- Katihar, through its Branch Manager………………………………..... ... Appellant

Versus

1. Sk. Shamiruddin
2. Sk. Hasimuddin
3. Sk. Azad Hussain

all sons of late Sk. Jamiruddin, R/o village- Makarchallah, Tola Bangrua, P.S.- Mahadeopur, P.S,- Pranpur, District- Katihar

... ... Defendants Ist Set / Respondents

4. Abdul Wahab, son of Hazi Ayub ali
5. Md. Amiz hussain, son of Late Hazi Abdul Raut

Both R/o village- Bangrua, P.O.- Mahadeopur, P.S.- Pranpur, District- Katihar

……..Defendants 2nd Set / Respondents

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Appearance :

For the Appellants	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Alok Kumar Agrawal, Advocate Mr. Rajiv Ranjan Tiwary, Advocate
For the Respondents	:	None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
Date : 21-11-2017

The instant appeal has been preferred against the part of the judgment and decree dated 29.11.1997 and 12.12.1997 respectively, so far as that is against the appellant, passed by Shri Satyendra Prasad Singh, the then learned Sub-Judge III, Katihar in Money Suit No. 17 of 1995 whereby and whereunder the suit was decreed on contest with cost but the principal amount was adjudged Rs. 90,000/- and the plaintiff Bank was directed to charge simple interest at contractual rate of half yearly rest and compound interest at annual rest and further it was directed that the plaintiff Bank is not entitled to charge any interest on other charges even prior to the institution of the suit and also during the pendency of the suit and after decree on other charges. Simple interest has been awarded at the rate of 6 % per annum after the date of the decree, lawyer's fee of Rs. 75 and Lawyers clerk's fee at Rs. 10/- have also also allowed as part of the cost.

2. The plaintiff is the appellant and the defendants are the respondents.

3. The plaintiff Bank has filed the suit for a Money Decree of Rs. 2,62,640.50/- together with contractual rate of interest 4 % above and below of Reserve Bank of India advance rate of interest minimum 12.5 % pendentilite and future till realization. The plaintiff has also prayed that till the disposal of the suit the defendants be restrained from removing movable and immovable properties and hypothicated goods and from disposing of the tractor already hypothecated and cost of the suit.

4. Briefly stated, The case of the plaintiff is that it is a nationalized scheduled commercial bank constituted under the Bank Companies Act and has been carrying on its banking business all over India and abroad and also at Sonaili, P.S.- Kadwa, District- Katihar within the jurisdiction of the court. The plaintiff further stated that the Government of Bihar by gazette notification dated 07.03.1976 has exempted all banks from all provisions of Bihar Money Lenders Act 1976.

5. The defendants first party are individual borrowers and defendants second party are individual guarantors. The defendants first party applied on 01.08.1996 to the plaintiff Bank for agricultural loan to purchase a tractor and the plaintiff bank after execution of the documents by the defendants, sanctioned the loan of Rs. 90,000/- on 08.08.1996. It is stated that the rate of interest was agreed on the loan at the rate of 12.5% per annum with half yearly rest with interest thereon at the rate of 4 % above and below of the Reserve Bank of India rate of interest future and pendentilite. The defendants second party stood as guarantor for the defendants first party. The defendants agreed to the terms and conditions of the Bank and with all interest, cost, charges and expenses. The defendants first party executed the agreement for hypothication of the tractor in AB Form I on 09.08.1986, with this agreement that defendants fist party will repay the loan by half yearly installments of Rs. 5,000/-, with this condition that if defendants first party failed to repay any installments or interest, in that case, they would be liable to pay and the plaintiff would be entitled to recover the same. Form AB-I was filled up in the presence of the defendants at the their request by the official of the

Bank. The defendants second party executed the letter of guarantee on 09.08.1986 in AB Form II which was filled up by Bank officials at their request in their presence who were jointly and severally liable to pay the loan amount with interest and charges in the event of non-payment of the same by the defendants first party. After execution of the aforesaid documents a loan account was opened in the name of defendants first party from which the loan was advanced to them. The defendants first party purchased the tractor but they did not deposit the dues of the Bank regularly as per terms and conditions. The defendants by letter of acknowledgment of indebtness/revival letters executed on 05.08.1989, 02.08.1992 and 03.08.1992 in favour of the Bank and admitted to pay the loan of the Bank. The plaintiff Bank maintained a continuous account for the loan in which all the withdrawal and all the deposits made by the defendants have been credited in the deposit column of the ledger time to time in ordinary course of business and copy of the statement of the account is annexed with the plaint. Inspite of demand, the defendants did not pay the dues of the Bank and a sum of Rs. 2,62,640/- with interest and charges calculated up to 12.06.1995 are due till the date of filing of the suit. It is further stated that the original documents are with the plaintiff. The defendants lastly deposited Rs. 22,000/- on 25.09.1993 in term loan account thereafter, they did not deposit the installments. Cause of action for the suit arose on 09.08.1986 when the loan documents were executed by the defendants and also on the date when they confirmed the balance of debts was acknowledged and lastly on 25.09.1993 when the defendants deposited the installments and also on 25.07.1995 when the officials of the Bank approached the defendants no. 1 to 5 to pay the standing amount remained due. The Branch Manager of the Bank is authorized to file the suit and hence the suit was filed.

6. The defendants appeared and contested the suit by filing the written statement. The case of the defendants is that the suit as framed is not maintainable and it is barred by law of limitation, estoppel, waiver and acquiescence. The defendants first party applied to the bank for agricultural term loan to purchase a tractor and the Bank sanctioned a sum of Rs. 90,000/- on 08.08.1986. The plaintiff Bank sanctioned insufficient amount to purchase HMT Tractor but they have purchased Zetor Tractor which is technically bad. There was talk for 12.5 % simple interest per annum, they have to repay the loan amount with interest at the rate Rs. 600/- in 14 equal installments. No documents were filled up in their presence and they could have filled up the documents. The defendants first party executed the documents by putting signatures on several blank printed forms supplied by the Bank without any date below their signatures. The interest was not to be charged half yearly rather the Bank has charged interest at the rate of 20 % per annum. The terms and conditions of the loan was not explained to them and no regular demand was made by the Bank to repay the loan. The Bank officials obtained their signatures on several blank forms and they used the same as per their requirements by putting the dates below those signatures. After sanction of the loan amount they have not given any signature on any papers nor any bank officials visited them to demand the repayment of loan. They are not willful defaulter and they could not repay the installments due to natural calamity. The statement of account is defective and interest has not been properly calculated and only a sum of Rs. 15731.79/- has been debited from there on different dates. The claim amount is incorrect, wrong and excessive. The plaintiff has charged illegally when the loan amount has been transferred to PB account then, the plaintiff Bank cannot charge DICG charge from the borrowers. The defendants have admitted the claim of the Bank with difference that the Bank has to charge interest at the rate of 12.5% per annum. The plaintiff did not send any notice of demand to them and they did not execute legally and properly document on 09.08.1986. The Bank should charge simple interest on loan amount at half yearly rest without any compound interest half yearly because it is an agricultural term loan. The suit of the plaintiff is fit to be dismissed with cost.

7. On the basis of the pleadings of the parties learned Sub-Judge framed the following issues on re-cast:-

(i) Is the suit as framed maintainable ?

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

(iii) Is the suit time barred ?

(iv) Whether the plaintiff Bank advanced the loan to defendants first party after the execution of the loan document or not ?

(v) Whether the defendants signed on blank printed forms of the Bank or whether they executed the documents properly ?

(vi) Whether the statement of account is correct ?

(vii) Whether the interest charged and other charges are correct or not in the statement of accounts as per the agreement between the parties ?

(viii) Is the plaintiff entitled to get a decree as claimed for ?

(ix) To what other relief or reliefs, if any, the plaintiff is entitled to get ?

8. The learned Sub-Judge took up the issue no. iii at first and held that the suit is not barred by law of limitation. Thereafter, issues no. iv and v were taken together and held that the stand of the defendants has got no merit and these issues were accordingly disposed of in favour of the plaintiff. Thereafter, issues no. vi, vii and viii were taken up together and the learned Sub-Judge came to the conclusion that on the date of filing of the suit i.e. 01.08.1995 the principal sum was Rs. 90,000/- and thereafter, the Bank is not entitled to charge interest on principal sum plus interest, in other words, the plaintiff is entitled to charge interest after 01.08.1995 on the principal sum only at the contractual rate of interest simple at half yearly rest. The plaintiff Bank is not entitled to charge interest on other charges also like inspection, insurance DICG, etc. even prior to the institution of the suit and thereafter, directed the Bank to charge simple interest at half yearly rest and compound interest at annul rest because the loan is overdue and the Bank is not entitled to charge compound interest on other charges and also compound interest after the filling of the suit till today i.e. the date of judgment and thereafter, simple interest at the rate of 6 % at half yearly rest and disposed of those issues partly in favour of the plaintiff Bank. Issues no. i and ii were taken up together and it was held that the plaintiff has got cause of action and there is no defect in the frame of the suit. Issue no. ix was taken thereafter, and it was held that the plaintiff has been able to prove its case and the plaintiff is entitled to decree as claimed for.

9. The plaintiff Bank being aggrieved and dissatisfied with the rate of interest calculated on the loan amount has filed this appeal challenging that part of the judgment not sustainable. According to the appellant, the loan document is admitted one and as such the rate of interest as incorporated in the loan document should be awarded. The learned court below has failed to appreciate the evidence with correct angle of vision. The judgment and decree in part under appeal is bad in law against the materials on record and is fit to be set aside. The suit should have been decreed in totality. The reasons implied in the impugned judgment are erroneous in respect of the interest. The plaintiff has discharged the onus but inspite of that the learned court below has given wrong finding in respect of interest. The learned court below has applied such law which is not in countenanced by the statute in respect of interest. The learned court below has acted on misconception of law and facts. The defendants respondents had received the loan amount on a condition to pay it preferabley in installments and has not paid and thus, accrued to the extent of Rs. 2,62,640.50/- at the time of filing of the suit on which the interest were calculated as per the contract and Reserve Bank of India's guidelines and thus, for the entire amount the respondents are liable to pay the interest minimum at the rate of 12.5 % per annum pendentilite with half yearly rest and on such other rates as per Reserve Bank's guidelines till the date of realization. The learned counsel for the appellant has submitted that the learned court below has acted illegally with respect to interest and as such the suit be decreed in its totality.

10. No one has appeared on behalf of the respondents to argue in this appeal.

11. The only point for consideration in this appeal is as to whether the findings given by the learned Sub-judge regarding principal amount and interest calculated thereon is sustainable.

12. Admittedly, this is an agricultural term loan, therefore, the Bank has to calculate simple interest in view of the direction and circular of the Reserve Bank of India dated 05.10.1974, 13.03.1976 and 17.08.1976. The Reserve Bank of India vide its directives dated 13.03.1976 stated that the interest has to be charged with quarterly rests. It is made clear that its direction will not apply to agricultural advance in respect of which the instructions issued in letter dated 14.03.1972 and 05.10.1974 will continue to prevail. In other words the payment of interest on agricultural advance should be insisted upon only at the time of payment of principal, interest on correct due and should not be compounded. The learned Sub-Judge has relied upon the decision of Supreme Court in the case of **State Bank of India Versus Tractors Owners and others** reported in 1**994 (5) SCC 238,** wherein it has been held that agricultural debt should not be treated at par with commercial transaction so far as the rate of interest thereon is concerned. In case of agricultural term loan interest should be charged half yearly rests and compound interest at annual rests if the loan is overdue. Further the learned Sub-judge has relied upon the case of **Muthian and anr. Vs. Sindicate Bank reported in AIR 1987 Page 248** in which It has been held that if on the whole the interest charged is found to be unreasonable and harsh, the court should reduce the rate of interest appropriately and give relief to the debtor. The learned Sub-Judge has held that interest on principal sum of Rs. 90,000/- has not been charged in accordance with law. The Bank should have charged interest when the farmers are fluid but the interest have been charged twice in calendar year and other charges likewise inspection, DICGC and insurance have also been charged and same has been merged in the principal for the purpose of charging compound interest. The learned Sub-Judge has further relied upon the full Bench decision of Bombay High Court reported in AIR 1992 Bombay page 482. The learned Sub-Judge has rightly come to the conclusion that the principal sum was Rs. 90,000/- on the date of filing of the suit i.e. on 01.08.1995 and the plaintiff is entitled to charge interest after 01.08.1995 on the principal sum only at the rate of contractual rate of interest simple at half yearly rests. The plaintiff Bank is not entitled to charge interest on other charges also like inspection insurance, DICGC etc. even prior to the institution of the suit. The Bank has charged interest twice in a year and has charged compound interest on other charges also, therefore, the learned Sub-Judge has rightly directed the Bank to charge simple interest at half yearly rests and compound interest at annual rests because loan is overdue and the Bank is not entitled to charge compound interest on other charges and also compound interest after filing of the suit till the date of judgment. The learned Sub-Judge has rightly decided issue no. vi, vii and viii and there is no need of any interference by this Court and accordingly, the point is decided against the appellants.

13. In the result, finding no merit in this appeal the same is hereby dismissed but without cost.

avin/- **(Jitendra Mohan Sharma, J)**

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