IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.17 of 1998

State Bank of India, a body corporate, incorporated under the Banking Companies Acquisition and Transfer of Undertaking Act, 1970 and constituted 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 Agriculture Development Bank, District- Katihar…………………………………...... ... Appellant

Versus

1. Sita Ram Yadav sonof Sohan Lal Yadav,
2. Baidya Nand Yadav, sonof Late Fatu Yadav
3. Nathu Ram Yadav, son of Turai Prasad Yadav

all R/o village- Merhaul, P.O.- Durgaganj, P.S.- Kadwa, District-Katihar

... ... Respondents

Appearance :

For the Appellant/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Alok Kumar Agrawal, Advocate

For the Respondent/s : Mr. Sudhir Kumar Bijpuria, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 03-11-2017

The instant appeal has been preferred against the part of the judgment and decree dated 22.09.1997 and 13.11.1997 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. 85 of 1993 / 20 of 1994 whereby and whereunder the suit was decreed on contest with cost for Rs. 2,40,144.85/- and it was held that the plaintiff Bank is entitled to charge interest on principal sum of Rs. 89,500/- in term loan amount and on Rs. 4000/- in cash credit account from 15.03.1993 til realization at contractual rate only on principal sum along with compound interest with annual rest along with other charges without interest. Lawyer's fee of Rs. 75 and Lawyers clerk's fee at Rs. 10/- were also allowed.

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

3. The plaintiff has filed the suit for a joint money decree of Rs. 2,40,144.85/- against the defendants with interest pendentilite and future at contractual rate of interest on the decreetal amount till realization and also for the cost of the suit.

4. The case of the plaintiff, briefly stated, 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. The Government of Bihar by gazette notification dated 07.03.1976 has exempted all banks constituted under Act of 1976 from all provisions of Bihar Money Lenders Act. The defendants no. 1 and 2 applied for a medium term loan for the purchase of a tractor and agricultural cash credit loan of Rs. 5,000/- on 27.06.1986 to the plaintiff bank on the condition that the tractor with accessories would be hypothicated in favour of the plaintiff bank as security for the loan and the loan would be repaid in seven years in 14 equal installments with interest and charges. Usual loan documents would be executed in favour of the plaintiff bank. They would mortgage suitable immovable properties in favour of the plaintiff bank as security for the loan amount. The defendants agreed to the terms and conditions of the bank and after the execution of the documents, term loan was sanctioned and defendants no. 1 to 4 executed the documents. The defendants executed the agreement for hypothication of tractor in prescribed form AB-I and other of the crop in favour of the bank on 27.06.1986. Defendants no. 3 and 4 executed the guarantee agreement form AB II on 27.06.1986. It is also stated that the interest was agreed at 11.5 % per annum on cash credit amount and 12.5 % on agricultural term loan account subject to 4 % above and below as per the State Bank of India rate of interest as per Reserve Bank of India Rules on the amount sanctioned to defendants no. 1 and 2. The defendants no. 3 and 4 under took to pay jointly and severally and executed Form AB-II in favour of the bank. After the sanction of the loan, a loan account was opened in the name of defendants no. 1 and 2 from which the loan was advanced to them. The defendants utilized the tractor in the development of his cultivation but did not deposit the bank installments regularly and therefore, on demand from time to time jointly and severally executed revival letters on 01.05.1989, 20.06.1989 and 12.10.1991 acknowledging the dues of the bank and assured to repay the same with interest. But they did not repay the dues with interest. The plaintiff bank maintained the regular and continuous account for the advance to the defendants no. 1 and 2 and all the withdrawals made by them have been debited in their account from time to time in ordinary course of business. After adjusting the payment made by defendants no. 1 and 2 a sum of Rs. 2,40,144.85/- in term loan account and agricultural cash credit loan became due and the interest calculated up to 30.01.1993 and the same is payable by the defendants as per accounts and the ledger of the bank which is maintained in ordinary course of business. The defendant no. 1 for the last time on 01.06.1991 paid Rs. 1,000/- in term loan account and nothing in cash credit account. Legal notice dated 11.09.1993 was also sent to the defendants but of no effect hence, the suit.

5. The defendants appeared and filed the written statement contesting the suit. According to the defendants, the suit as framed is not maintainable for want of cause of action for the suit. The suit is barred by law of limitation, estoppel, waiver and acquiescence.

The plaintiff has not complied with the mandatory provisions of order 7 rule 14 of the C.P.C. hence, the plaint is fit to be rejected. The plaintiff has not mentioned the date of application and there was no agreement to realize the charges. They further stated that they were not given opportunity to know the contents of the forms rather their signatures were obtained on blank printed forms. The agreement was not duly executed by them. They have also denied to have agreed to pay the cost, charges and all other expences. They were directed to put their respective signatures on blank printed forms. They could not utilize the tractor due to its mechanical defects and continuous flood situation. They were asked to pay the simple interest at the rate of 6 % per annum. They are ready to pay the genuine and legal dues in reasonable installments but the plaintiff has calculated the interest wrongly including the other charges. They have stated that they could not deposit the dues due to regular flood. Accordingly, the defendants have prayed for dismissal of the suit with cost.

6. On the basis of the pleadings of the parties the following issues were framed for adjudication:-

(i) Is the suit as framed maintainable ?

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

(iii) Is the suit time barred ?

(iv) Is the suit barred under Order 7 Rule 14 of the C.P.C. ?

(v) Is the statement of account correct and whether the money decree for the aforesaid amount be passed against the defendants with contractual rate of interest pendentilite and future till its realization ?

(vi) Whether the defendants signed on blank printed forms or not ?

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

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

7. The learned court below took up issue no. (iii) at first and after proper discussion of the materials available on the record held that the suit is not barred by law of limitation and accordingly the issue was decided in favour of the plaintiff appellant. Thereafter, issue no. (iv) was taken and that was also decided in favour of the plaintiff appellant. Issues no. (v) and (vi) were taken up together by the learned court below and after discussing the pleadings and evidences of the parties came to the conclusion that the loan is overdue against the defendants. The defendants duly executed the documents of loan in favour of the plaintiff bank and they did not sign on blank printed forms. The plaintiff bank is also entitled to pendentilite and future interest at contractual rate but directed the plaintiff bank to calculate simple interest at contractual rate half yearly on principal sum of Rs. 89,500/- in term loan and in cash credit at contractual rate on Rs. 4000/- with compound interest at annual rest which was the principal sum on the date of filing of the suit. The plaintiff bank is not entitled to claim any interest or other charges but the plaintiff bank has realized other charges also and accordingly decided those issues in favour of the plaintiff bank. Thereafter, issue no. (vii) was taken and held that the plaintiff bank is entitled to get a decree with contractual rate of interest. Plaintiff bank is entitled to interest at the contractual rate prior to the filing of the suit and on the date of filing of the suit on Rs. 89,500/- and 4,000/- in cash credit where the principal sum and after the filing of the suit the plaintiff bank is entitled to calculate simple half yearly interest at contractual rate at compound interest with annual rests only on the principal sum adjudged. It was also made clear that after the date of the decree the plaintiff bank is also entitled to get future interest on principal sum adjudged at contractual rate with compound interest with annual rests because the debt of the bank is overdue. Thereafter, issue no. (i) and (ii) were taken up together and it was held that there is no defect in the frame of the suit and the plaintiff has cause of action for the suit after the default made by the defendants in the deposit of installments and accordingly, these issues were decided in favour of the plaintiff bank. Issue no. (viii) was taken, thereafter, and it was held that the plaintiff has been able to prove its case and in case of bank loan borrowers and guarantors are jointly liable to pay the debt of the bank and accordingly, the suit was decreed on contest with cost as stated above.

8. The plaintiff appellant being aggrieved and dissatisfied with the part of the judgment and decree, so far that was against the appellant, has filed this appeal challenging the maintainability of the same on the grounds that the suit should have been decreed in totality and the reason stated in the impugned judgment are erroneous in respect of the interest. The findings recorded by the learned court below are contrary to the materials available on record in respect of interest. Pleadings were not correctly appreciated in their proper perspective. The grounds which are not germane and relevant for the consideration for the point in issue has illegally been weighed by the learned court below in respect of the interest. The respondents are liable to pay the interest at the rate of 11.5 % in agricultural cash credit account and 12.5 % on agricultural term loan amount pendentilite interest till the date of realization. The learned court below ought to have allowed the suit in toto and the interest as prayed for.

9. Learned counsel for the appellant arguing in this appeal has stated that findings of the learned court below regarding interest is otherwise, bad in law and on facts and as such that finding is fit to be set aside.

10. On the other hand, learned counsel for the respondents submits that it was the agricultural loan and in case of agricultural loans/advances interest can be fixed with annual rests coinciding with the time when the farmer can repay and if thereafter, the farmer fails to pay the interest, it would be open to compound the interest on the crop loan and installments upon the term loan becoming overdue. Learned counsel has relied upon a judgment reported in (**1994) 5 Supreme Court Cases page 213** in the matter of **Corporation Bank Vs. D.S. Gowda and Anr. With Bank of India Versus Karnan Raja Rao and Ors**. According to the learned counsel for the respondents, the interest granted by the learned court below is quite correct and needs no interference of this Court.

11. Having considered the submissions of the parties, going through the records and impugned judgment, it is manifest that the suit has been decreed on contest with interest for Rs. 2,40,144.85/- and for that relief the suit has been filed. The learned court below has further made it clear that the plaintiff bank is entitled to charge interest on principal sum of Rs. 89,500/- in term loan account and on Rs. 4000/- in cash credit account from 15.09.1993 till realization at contractual rate only on principal sum along with compound interest with annual rests along with other charges without interest. Thus, it is evident that the learned court below has not granted interest on other charges which appears quite proper, legal and justified. The learned court below has granted cost also to the appellant. The findings of the learned court below appears quite proper, legal and justified and there is no need of any interference of this Court. The learned counsel for the appellant has not pointed out any infirmity in the impugned judgment with respect to the interest. All the issues have been decided in favour of the plaintiff appellant but only it has been made clear that the plaintiff bank is entitled to charge pendentilite interest on principal sum of Rs. 89,500/- in term loan account and on Rs. 4000/- in cash credit account from 15.09.1993 till its realization at contractual rate only on principal sum along with compound interest with annual rests along with other charges without interest. The learned court below has granted the relief to the plaintiff appellant properly.

12. In the result, the impugned judgment and decree passed by the learned court below is hereby affirmed and finding no merit in this appeal the same is hereby dismissed but, under the circumstances without cost.

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

AFR/NAFR	NAFR
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