HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.11771, 12292, 12294, 12296, 12299, 12350 and 12582 of 2008

COMMON ORDER:

1. Since the issue involved in all these writ petitions is one and the same, all these writ petitions are heard together and are being disposed of by this common order.

2. All these writ petitions are filed by the petitioner-Bank challenging the judgments of the 1st respondent-Tribunal to the extent of interest, which was scaled down from 19.5% p.a., with quarterly rests to 12% pa., simple interest from the date of filing of arbitration petition till the date of realization,

3. Brief facts of the case are as follows:

Originally, the petitioner-Bank filed the arbitration petitions against the unofficial respondents before the 2nd respondent herein for recovery of loan amount. According to the petitioner-Bank, the agreed rate of interest was 21% p.a., with quarterly rests. The arbitrator after considering the oral and documentary evidence adduced on behalf of the petitioner-Bank passed the awards against the unofficial respondents for the amounts claimed with further interest at the rate of 19.5% p.a., till the date of realization, while granting liberty to the petitioner-bank to proceed against the movable and immovable properties of the unofficial respondents. Aggrieved by the said award, the unofficial respondents filed appeals before the 1st respondent-Tribunal contending that the award passed by the arbitrator is contrary to law and the interest awarded by the arbitrator is very high. In the appeals, the interest part of the award only was disputed. Therefore, the 1st respondent-Tribunal after considering the material on record allowed the appeals in part with the following terms:

(a) The bank is entitled to claim interest at 21% with quarterly rests from the date of taking loan till the date of filing of arbitration petitions before the arbitrator;

(b) The bank is entitled to claim simple interest at 12% p.a., on the principal amount from the date of filing of the arbitration petitions before the arbitrator till realization;

(c ) The bank has to calculate interest as indicated in the judgments;

(d) The payments made by the unofficial respondents herein prior to and subsequent to the arbitration proceedings shall be credited to their loan account;

(e) If the parties are willing to settle the matter under OTS scheme, the judgments in the appeals will not come in the way, for such settlement;

(f) The bank is entitled to proportionate costs.

Aggrieved by the order passed by the 1st respondent in scaling down the interest from 19.5% p.a., with quarterly rests to 12% p.a., simple interest from the date of filing of arbitration petition till the date of realization, the petitioner-bank filed this writ petition.

4. The learned Counsel for the petitioner-Bank submitted that the petitioner-bank itself paid interest on the deposits at the rate of 16% to 18% to the depositors during the period when the borrowers in these cases took loan and keeping in view the said fact, the rate of interest at 21% p.a., with quarterly rests was fixed and that the reduction in the rate of interest by the Tribunal in this case would cause loss to the petitioner-bank and that the Tribunal has no jurisdiction to interfere with the rate of interest in a commercial transaction. In support of his contentions, the learned Counsel for the petitioner-Bank has relied upon the judgment of the Apex Court in **Hotel Seaking and others Vs. Kerala Financial**

**Corporation[1] ; and A.P. State Co-operative Bank Limited, Hyderabad Vs. Co-operative Tribunal, Hyderabad and others[2].**

5. The unofficial respondents filed counters stating that subsequent to the passing of the judgments by the 1st respondent, the petitioner-bank authorities asked them to pay the amount as per the judgments so as to close the loan accounts and accordingly, with utmost difficulty, they paid the amount in terms of the judgments of the 1st respondent and the said payments were also accepted by the petitioner-bank as full and final satisfaction of the judgments impugned and that the petitioner-bank also returned the title deeds deposited as collateral security for the loan. It is further submitted that the unofficial respondents are not in a position to pay any amount to the petitioner-bank and that the enhancement of interest would cause hardship to them.

6. The main grievance of the petitioner-Bank is that the loan in question relates to a commercial transaction and that the prevailing rate of interest at the time of availing loan was at 21% p.a., with quarterly rests as per the RBI guidelines and that the Tribunal has no jurisdiction to interfere with the agreed rate of interest.

7. The contentions raised by the Counsel for the petitioner herein were considered by the Tribunal. From the judgments under challenge, it is obvious that the mortgaged properties of some of the respondents in the above writ petitions were already put to auction and substantial amount i.e., more than the principal amount was realized by way of sale of the mortgaged property and further, the unofficial respondents expressed their willingness to pay the balance amount, if the interest is scaled down to 6%

[1] (1999) 6 SCC 51
[2] 2002(4) ALT 580.

from the date of filing of arbitration petitions before the Arbitrator. After considering all these aspects and after referring to various judgments, the Tribunal came to the conclusion, that though the Tribunal has no jurisdiction to interfere with the agreed rate of interest i.e., 21% p.a., with quarterly rests from the date of taking loan till the date of filing of arbitration petitions, but it has got jurisdiction to fix the pendente lite interest and post-award interest. In these circumstances, the Tribunal has granted simple interest at the rate of 12% p.a., on the principal amount from the date of filing of the arbitration petitions till the realization. The facts in the judgment cited (1 supra) are different. In that case, considering the nature and status of the financial corporation, the Apex Court held in case of financial corporations, Section 34 CPC was not applicable to the proceedings initiated under Section 31 of the Act. In judgment in **U.P. Financial Corporation Vs. Gem Cap (India) (P) Limited**[3] it was clearly observed that the appellant-Corporation is an instrumentality of the State created under the State Financial Corporations Act and the said Act was made by Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances repayable within a period of not exceeding 20 years from the date of loan. The Corporation is not like an ordinary money lender or a bank, which lends money. It is a lender with a purpose –the purpose being promoting the small and medium industries. The facts in the cases referred to by the learned Counsel for the petitioner cannot be made applicable to the present facts and circumstances of the case.

[3] (1993) 2 SCC 299

8. Admittedly, the loan amount was paid in terms of the judgments passed by the Tribunal. It is the case of the unofficial respondents that they are not in a position to pay any amount further. Having regard to the circumstances of the case and the judgments of the Tribunal, this Court is of the view that the judgments impugned in these writ petitions are in accordance with law and they do not warrant any interference by this Court.

9. Accordingly, the Writ Petitions are dismissed. No Costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

RAJA ELANGO, J

Date: 28th February, 2017
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WRIT PETITION Nos.11771, 12292, 12294, 12296, 12299, 12350 and 12582 of 2008



Date: 28.02. 2017

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