IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2572 of 1998 (O&M)
Date of Decision: 18.09.2017

UCO Bank ... Appellant

Versus

Labh Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Mahajan, Advocate,
for the appellant.

Mr. P.S. Rana, Advocate,
for the respondents.

***

RAJIV NARAIN RAINA, J.

1. Early January 1981 farmer Sarwan Singh applied for a loan to buy an Escort-345 Tractor with tools and accessories for his agricultural purposes. The loan was sanctioned in June 1981. The debtor took the tractor home. He was yoked by the loan agreement to repay the sum with interest in ten half yearly installments starting June 30, 1981 with the last installment payable on December 31, 1985. His friends Dayal Singh and Mewa Singh stood guarantors for him.

2. The loan amount suffered the rate of interest at 2.35% over and above the Reserve Bank of India rates and subject to the minimum of 11.35% per annum with half yearly rests or at such other rates as may be notified by the Bank. The default clause stipulated interest rates increased to 4.35% per annum subject to a minimum of 13.35% with half yearly rests.

3. Sarwan Singh was unable to repay the debt and faced with mounting interest increased to 15 ½ % per annum and in case of default meaning thereby adding up to 17 ½ % per annum with half yearly rests w.e.f. October 09, 1991 as per the notification of the Reserve Bank of India. He was stuck with a huge amount without resources left to pay back and discharge the debt.

4. The borrower died before the loan was recalled and the tractor was inherited by his legal heirs. His wife Bant Kaur expired in January 1993 and her property was also inherited by defendants No.1 to 6.

5. In the suit filed by the Bank for recovery of money along with interest from the successors-in-interest of late borrower Sarwan Singh the balance due on the date of the suit instituted on May 17, 1993 was `3,49,574.60. The Bank had taken collateral security for repayment of loan of Sarwan Singh's land measuring 52 Bighas 14 Biswas with Khewat/Khatauni No.22/38 to 42 situated in the revenue estate of Village Dhagrauli, PO Ahru Kalan, Tehsil & District Patiala. Sarwan Singh was credited a minor debt relief of ₹10,000/- as per law which was reduced by the bank from its accounts when the suit was filed. Sarwan Singh was dead when the suit was brought. It may be mentioned that on October 16, 1987 the bank took a promissory note from Sarwan Singh borrower for return of debt.

6. On notice, the defendants put in appearance and denied the debt and set up a defence plea that property was co-parcenary in nature and, therefore, could not be attached for satisfaction of debt. The defendants relied upon <u>Corporation Bank v. D.S. Gowda</u>, (1994) 5 SCC 213 a case in

which the Supreme Court dealt with Sections 21 and 35-A the Banking Regulation Act, 1949, regarding agricultural loans and whether the banks would be entitled to claim compound interest. The Supreme Court observed that having regard to the agricultural loans it has special characteristics and the time factor relating to the farmer's capacity to meet his financial obligations, and it was realized that farmers would not be in a position to pay interest at short periodical rests and if their inability to do so is vested with compounding of interest it would be too harsh and unjust on the farmers. The Supreme Court read the circulars and banking directives in this regard according to which loans for agricultural purposes at best, could interest be charged with yearly rests and may be compounded if the loan/installment becomes overdue.

7. On the other hand, the plaintiff-Bank urged that charging of interest with annual rest is allowed in cases where there is only one crop in a year but in the State of Punjab farmers reap two crops annually hence half yearly rests are applied. These arguments were accepted upon proof of debt and the trial Court decreed the suit against defendants No.1 to 6 the LRs of late Sarwan Singh and ex parte against the guarantors who had not come forward to defend the suit. The learned Additional Civil Judge (Senior Division), Patiala pronounced his judgment and decree on August 29, 1996.

8. The unsuccessful defendants carried an appeal in the Court of the learned District Judge, Patiala. The bank also filed an appeal against the judgment and decree dated August 29, 1996 and both have been decided by a common judgment dated December 24, 1997, from where this appeal arises.

9. The case of the bank in the first appeal was that the trial Court should have passed a preliminary decree and in case of failure of appellants to repay the amount, to have proceeded to pass a final decree for the sale of the mortgaged property which was given as security for loan. The bank also submitted that the trial Court ought to have awarded interest at the agreed rate of 17.5% with half yearly rests for the period commencing from the filing of the suit till realization, which was the penal rate of interest on the defaulted account.

10. Before proceeding to answer the appeal, the learned District Judge examined whether the suit was barred by time even though no issue regarding this was framed by the trial Court. The Appellate Court held that the suit was within time since filed after the death of Sarwan Singh on April 17, 1992. This was because one of the legal heirs executed a pronote on the asking of the bank on October 12, 1992 promising to repay a sum of ₹2,27,568.27 paisa and had also furnished an undertaking in writing to the bank confirming the amount with liability to pay as was agreed. These documents were exhibited on record. Accordingly, the legal heirs and representatives of late Sarwan Singh had stepped into his shoes and hence the suit filed on May 17, 1993 was well within time.

11. The learned District Judge identified the principal dispute arising for determination which was with respect to rate of interest with rests applicable to calculate the element of interest of the loan in default. Bank asserted the rate of interest is 17.5% with half yearly rests.

12. The claim is based on the pronote Ex.PW-4/C executed by the appellants where the rate of interest is mentioned as 15.5% + 2% with half

yearly rests due to default in repayment of loan. The trial Court awarded rate of interest at the agreed rate in the original agreement mentioned as 2.35% over and above the RBI rate and subject to minimum of 11.35% but no rests are mentioned in the judgment and decree of the trial Court as it is silent on this aspect. The learned First Appellate Court accepted the well settled principle that interest is repayable in respect of agricultural loans with annual rests and the agreed rate between the parties was minimum 11.35%. There was no doubt that the statement of accounts Ex.P-12 reflected that at no time any repayment of loan was made and interest simply kept galloping.

13. Nevertheless, the learned District Judge veered to the view that the appellants deserve some relief and their case ought to be considered sympathetically. In order to meet the ends of justice the Court thought that if the amount carries interest at 17.5% with half yearly rests it would completely overwhelm an already deeply indebted family which relies primarily on agricultural income for its sustenance and in reaching this conclusion, the learned District Judge relied on the ruling of the Supreme Court in *Corporation Bank* case (Supra). On these premises, the learned District Judge partly accepted the borrowers appeal that account would bear interest at 11.35% with annual rests and not at 17.5% with half yearly rests as claimed by the bank.

14. As a result, the appeal filed by the bank regarding enhancement of rate of interest was dismissed. It was directed that the rate of interest on the decretal amount would stand restricted to 11.35% from the date of decree till payment. But this would be possible only after the account of the borrowers is over-hauled in terms of the judgment of the learned District

Judge, Patiala and the trial Court was directed to draw a preliminary decree against the borrowing appellants and they would have six months' time thereafter to repay the decretal amount, failing which the decree shall be passed for sale of the mortgaged property to recover the said amount.

15. At one stage, the matter was put before the Lok Adalat which proposed on February 23, 2001 indicating as follows:-

> *"There are instructions of the Reserve Bank of India to settle outstanding disputes like the one involved in the present appeal. Sh. S.K. Gupta has been advised to work out a statement of account showing the principal amount and interest accrued as on 31.3.1997 and the balance amount due after adjusting the amount already paid by the respondent in view of the policy instructions of the Reserve Bank of India on the next date of hearing so that a compromise can be effected.*
>
> *The matter is adjourned to 5.4.2001."*

16. When the matter came up before the Lok Adalat-1 on April 05, 2001 the Assistant Manager of UCO Bank appeared and stated that the opposite party had come forward for effecting a compromise with the bank and the proposal given shall be sent to the Head Office for its approval. Time was sought and granted till July 10, 2001. On October 29, 2001 while the matter still rested with the Lok Adalat-1 of this Court the learned counsel for the parties stated that a compromise is about to be effected between the parties. An adjournment was asked for and granted to make room for a settlement. Even till July 18, 2002 the Lok Adalat was given out that efforts were on for settlement with the bank. Even till January 14, 2003 the matter of settlement was under active consideration. The case kept lingering on till October 15, 2003 and on that date the learned counsel appearing for the borrowers made a statement that no compromise could be

arrived at in this appeal and that is how the matter was returned to the High Court for a decision on merits.

17. Having heard the learned counsel for the parties I find myself in agreement with the judgment of the learned District Judge, Patiala in restricting the interest to 11.35% and discarding the onerous assertion of the bank that it was entitled to interest on the debt @17.5% with half yearly rests. This line of thinking is clearly in favour of indebted farmers which cause has been a matter of grave concern over the years reflecting in farmers suicides reeling under unbearable debt they were unable to pay from crop to sale with farmer under an obligation and moral duty to support his family. Here is a case of a marginal farmer who died before the suit was brought and his family left holding the debt. The philosophy injected by the learned District Judge to save the family from further ruin is one that has to be supported from the heart.

18. As a result of the discussion, the appeal is dismissed and the judgment in appeal is affirmed. The case is remanded to the trial court for drawing a preliminary decree before proceeding further. Parties are directed to appear before the trial court on October 3, 2017.

(RAJIV NARAIN RAINA)
JUDGE

18.09.2017
manju

Whether speaking/reasoned	Yes
Whether reportable	No