IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.09.2017

RSA No.3786 of 2017 (O&M)

M/s Jai Durga Rice Mill Private Limited ...Appellant

Vs.

M/s Shiv Narain Goyal & Company ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parvez Chugh, Advocate, for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

1. The question of reducing the rate of interest from 12% per annum on the principal debt in this second appeal is a principal argument against the money decree is not a sustainable contention when among other things defendant/appellant is in the business of running a rice mill. He would know the fallout of not returning borrowed money and the ensuing consequences facing a suit for recovery of money. This is an appeal against a money decree preceded by a sound judgment on proven facts. Besides, the impugned judgment and decree is dated 03.08.2015 and there is a delay of 633 days in re-filing the appeal apart from the infirmity of non-deposit of deficient court fee to maintain the appeal. The appeal may have been filed within limitation, but the conduct of the appellant in retaining the file and not presenting the same before this Court for consideration for an inordinate long time after removing objections speaks volumes about the non-preparedness for satisfying the decree by delaying tactics with the interest meter running.

2. Learned counsel submits that as against the outstanding amount of ₹7,37,625.08 paise; an amount of ₹10,00,000/- has been deposited with the Executing Court by the appellant judgment- debtor. The additional interest, which has accrued has become the debt of the defendant/appellant. Both the Courts below have decreed the suit against the appellant rendering him a judgment debtor after appreciating the evidence of lending and borrowing between the parties. The evidence has been evaluated in its correct perspective and findings of fact recorded, which are not open to challenge on the grounds taken in appeal.

3. In the absence of rate of interest determine in writing at the time of loan/s agreed upon by the parties, the duty fairly fell upon the Court to apply proper rate of interest with regard to the year of the transaction/s and hence apropos levy of interest has decreed money to earn 1% per month i.e. 12% per annum with the principal amount outstanding in the year 2007. The rate of interest for those years on loans is appropriate to the period in question and cannot be said to be extortionate and usurious. The interest has not exceeded the principal and, therefore, no relief can come to the appellant for a reduction in rate.

4. Thus, I find no reason to disturb the findings of fact in the concurrent judgments or the law points involved recorded by the Courts below in a second appeal, when there is no error apparent on the face of the record or any legal infirmity or improper appreciation of documentary evidence on record dully supported by the oral testimony of the plaintiff and insufficient rebuttal by the defendant, all of which not giving rise to a question of law, much less a substantial one arising for consideration of this Court under Section 100 of the CPC or Section 41 of the Punjab Courts’

Act, 1918. The case has been concluded on facts which are not open to be disturbed on the second appeal side of this Court.

5. Accordingly, the appeal is found devoid of merit and is ordered to stand dismissed.

28.09.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*