THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.C.C.A.No.44 of 1999 &
CROSS OBJECTIONS (SR) No.36250 of 2000

COMMON JUDGMENT:

This appeal, under Section 96 of the Code of Civil Procedure, 1908, by the appellants-defendants 1 to 3, is directed against the decree and judgment, dated 21.03.1997, of the learned VII Additional Judge, City Civil Court, Hyderabad, passed in O.S.No.521 of 1993.

2. I have heard the submissions of Sri *S.Malleswara Rao,* learned counsel representing Sri *P.V.S.S.S.Rama Rao,* learned counsel appearing for the appellants-defendants 1 to 3, and of Sri *A.H.Rama Krishna Rao,* learned counsel appearing for the 1st respondent-plaintiff. I have perused the material record.

3. The parties in these proceedings shall hereinafter be referred to as appellants-defendants 1 to 3 and the 1st respondent-plaintiff as arrayed in the original suit, for convenience and clarity.

4. Before proceeding further, it is necessary to refer to the cases of the parties.

5. The case of the plaintiff, in brief, is this: - 'The plaintiff is a Bank, constituted under the State Bank of India Act, 1955, carrying on business of banking amongst other places at Saifabad, Hyderabad. The 1st defendant is a company established, on 31.01.1979, dealing in manufacture of paper pulp egg trays. These trays will be used to transport eggs to various distances from poultry farms. The 1st defendant company, represented by its

Managing Director, that is, the 2nd defendant, approached the State Bank of India, SS & SB, Banking Division, Main Branch, Hyderabad, with a request to sanction credit facilities in the nature of cash credit for the purpose of meeting its working capital requirements. The plaintiff Bank sanctioned Cash Credit (Medium Term) limit of Rs.1,35,000/- and Cash Credit (Outward Bill) limit of Rs.2,40,000/- to the 1st defendant, on 26.05.1982. The 1st defendant accepted various conditions stipulated in the letter of sanction and availed the credit facilities by accepting the terms and conditions stipulated in this behalf. The 1st defendant, represented by the 2nd defendant, executed an Agreement, dated 26.05.1982, in favour of the plaintiff Bank for the working capital facilities sanctioned in favour of the 1st defendant for an amount of Rs.3,75,000/- agreeing, *inter alia,* to repay the advances together with interest @ 0.5% below the bank rate, subject to a minimum of 16% per annum with quarterly rests and also together with all costs, charges and other expenses. In terms of the said agreement, the 1st defendant also hypothecated the entire moveables, book debts and other assets in favour of the plaintiff Bank for due repayment of the outstanding due amount under the loan facility. The 1st defendant, represented by the 2nd defendant, also executed several ancillary agreements relating to the working capital finance sanctioned by the plaintiff Bank to the 1st defendant. The 2nd defendant also stood as a guarantor and executed an Agreement of Guarantee, on 26.05.1982, in favour of the plaintiff Bank agreeing to guarantee the due repayment of the amounts due and payable by the 1st defendant together with interest, costs, charges and other expenses. The advances sanctioned by the plaintiff Bank to the 1st defendant are primarily secured by pledge of all stocks of raw materials, such as paper and chemicals, semi-finished and finished goods and collaterally secured by personal guarantee of the 2nd defendant. The plaintiff Bank had second charge on the assets financed by the 4th defendant. A registered Mortgage Deed was duly executed, on 26.05.1982, and a Certificate of Registration of Charge was issued, on 02.11.1982. The 1st defendant, subsequently, on 15.06.1985, executed an Agreement of Hypothecation in favour of the plaintiff Bank, hypothecating the assets of the 1st defendant by way of second charge subject to the first charge in favour of the 4th defendant, for the aggregate amounts due and becoming due. Subsequently, the Cash Credit Account of the 1st defendant had been transferred to the plaintiff Bank. Since its inception, the 1st defendant has not been conducting its affairs on sound business lines. The 1st defendant was irregular in complying with the stipulations, terms and conditions undertaken under the loan documents executed in favour of the plaintiff Bank, as a result of which the Cash Credit Account has become highly irregular. The 1st defendant has not evinced any interest for the improvement of its affairs and it has become sick. Subsequently, the 1st defendant sought for additional working capital limits for the purpose of reviving the sick unit by way of rehabilitation package. The plaintiff Bank, under the Rehabilitation Scheme, enhanced the working capital limits from Rs.3,75,000/- to Rs.5,52,000/- [Cash Credit (Medium Term) limit to Rs.2,08,000/- and Cash Credit (Outward Bill) limit to

Rs.3,44,000/-]. The afore-said credit facilities were secured primarily by pledge of stocks of raw material, semi-finished and finished goods and first charge on receivables in course of collection and collaterally secured by personal guarantees of the defendants 2 & 3 and second charge on the assets financed by the 4th defendant. The Board of Directors of the 1st defendant passed a Resolution, on 06.02.1989, authorising the 2nd defendant to execute necessary documents in favour of the plaintiff Bank in connection with the enhanced working capital limits. Accordingly, on 07.02.1989, the 1st defendant, represented by the 2nd defendant, executed a supplemental agreement to the General Agreement, dated 26.05.1982, in favour of the plaintiff Bank for additional advances of Rs.1,77,000/-. In terms of the said agreement, the entire moveables, book debts and other assets of the 1st defendant stood hypothecated and charged to the plaintiff Bank for due repayment of the outstanding due amounts under the credit facility. The 1st defendant also executed several ancillary agreements relating to the additional working capital finance sanctioned by the plaintiff Bank to the 1st defendant. The defendants 2 & 3 also agreed to guarantee the due repayment of credit facilities sanctioned to the 1st defendant, together with interest, costs, charges and other expenses. In pursuance thereof, the defendants 2 & 3 have executed Guarantee Agreements on 07.02.1989. The 1st defendant executed a letter of undertaking, on 07.02.1989, declaring that no mortgage, charge, lien or encumbrance of any kind other than mortgage of factory and buildings of the 1st defendant, in favour of the 4th defendant, has been made or allowed over or affecting its undertaking property (movable or immovable) and assets including uncalled capital or any part thereof. It also undertook that no such mortgage, charge, lien or encumbrance should be made or allowed in any manner without the plaintiff's previous written consent while it remained indebted or liable to the plaintiff. The 1st defendant also executed an agreement of hypothecation, on 07.02.1989, in favour of the plaintiff, hypothecating the schedule machinery by way of second charge in favour of the plaintiff. Initially, the 1st defendant availed credit facilities from the 4th defendant for the purposes of acquisition of plant and machinery and certain fixed assets and created a first charge in favour of the 4th defendant. Thereafter, the 1st defendant agreed to create a second charge in respect of the afore-said properties for securing the due repayment of the working capital facilities granted by the plaintiff Bank to the 1st defendant. Consequently, a second charge was also created in favour of the plaintiff Bank on the above said immovable properties. The 4th defendant is holding the title deeds relating to the mortgaged properties as an agent of the plaintiff Bank and it has also been, *inter alia,* agreed by the 4th defendant that they will hold over the title deeds for the plaintiff's benefit, as mortgagee, subsequent to the liquidation of its loans. Though the plaintiff Bank is entitled to file a mortgage suit for enforcement of mortgage subject to the rights of the 4th defendant, it was found that the mortgage security is not sufficient even to satisfy the loans advanced by the 4th defendant. Therefore, the plaintiff Bank has chosen to file the present money suit as against the defendants 1 to 3 for recovery of the suit claim. The plaintiff Bank reserves its right to recover the excess sale proceeds, if any, in respect of the mortgaged properties from the 4th defendant under the terms and conditions of creation of second charge in favour of the plaintiff Bank. It is, therefore, just and necessary that a direction be issued to the 4th defendant not to part with the excess sale proceeds after realisation of its dues to the 1st defendant. The 1st defendant has been very irregular in complying with the terms and conditions agreed upon, but has, however, been confirming the balance in loan account from time to time. The plaintiff Bank, in pursuance of the sanction, disbursed the working capital requirements to the 1st defendant from time to time. The 1st defendant confirmed the balance in the loan Account (C.C. A/c No.5/9) from time to time. The present outstanding due amount in the Cash Credit Account of the 1st defendant is Rs.6,21,947/- as on 28.04.1993. The plaintiff Bank also issued a notice through registered letter, dated 05.12.1992, to the defendants 1 to 3 to pay the suit amount. Though the defendants 1 to 3 received the said notice, they have failed to repay the outstanding due amounts in the loan account. The defendants 1 to 3 have executed revival letters, dated 11.03.1985, 12.12.1987 and 29.05.1990 respectively, acknowledging their liability to the plaintiff Bank for the payment of all the outstanding due amounts with interest, in respect of the finance granted to the 1st defendant. The plaintiff Bank is entitled to charge interest at 18.75% per annum with quarterly rests for the amounts paid by it on the account of the 1st defendant. Thus, the defendants 1 to 3 are jointly and severally liable to pay the amount of Rs.6,21,947/- as on 28.04.1993, together with further interest at the same rate from the date of the suit till the date of realisation. Hence, the plaintiff Bank has filed the present money suit as against the defendants 1 to 3 for recovery of the suit claim. As the transaction is commercial in nature, the plaintiff is entitled to interest at the contractual rate. Defendants 1 to 3 are not entitled to benefits either of Act 4 of 1938 or Act 7 of 1977, since they are not agriculturists. The rate of interest charged is in accordance with the mandatory directives issued by the Reserve Bank of India, which is binding on the plaintiff and hence, the plaintiff is entitled to contractual rate of interest. The suit is within time.'

6. The 4th defendant remained *ex parte*.

7. The averments in the written statement of the 2nd defendant, which is adopted by the defendants 1 & 3, in brief, are as follows: - 'The 2nd defendant admits the entire suit loan transactions. The person, who signed the plaint, has no authority. For the business of the 1st defendant company, a request was made by the defendants 2 & 3 to the State Bank of India, SS & SB Banking Division, Main Branch, Hyderabad, to provide Cash Credit facility towards working capital, but the plaintiff Bank, taking advantage of the financial condition and necessity of the defendants 1 to 3, imposed onerous conditions. The plaintiff Bank, however, sanctioned Cash Credit (Medium Term) to the limit of Rs.1,35,000/- and Cash Credit (Outward Bill) to the limit of Rs.2,40,000/- to the 1st defendant company, on 26.05.1982. Having no alternative, the defendants 1 to 3 accepted the various conditions stipulated in the letter of sanction, particularly the high rate of interest stipulated in that regard. The rate of interest charged is highly exorbitant. The minimum interest stipulated is 16% per annum with quarterly rests together with all costs, charges and other expenses. The entire moveables, book debts and other assets of the 1st defendant are taken by way of hypothecation and first charge to the plaintiff Bank. Not satisfied with the same, the plaintiff Bank took several ancillary agreements relating to the working capital finance sanctioned by the plaintiff Bank to the 1st defendant company. The plaintiff Bank made the 2nd defendant to execute a Guarantee Agreement in favour of the plaintiff Bank agreeing to guarantee the due repayment of all the amounts due and payable by the 1st defendant to the plaintiff Bank. There is no justification on the part of the plaintiff to charge interest @ 16% per annum from its customers while the Bank is paying interest @ 10% to 11% per annum only to its customers. The plaintiff Bank, having got pledged the moveables and other articles of the 1st defendant and also got the guarantee from the other two defendants and having obtained a mortgage, has no right to give up the same. Initially, the 1st defendant availed facilities from the 4th defendant for acquisition of machinery plant, etc., and created a first charge on the assets of the 1st defendant in favour of the 4th defendant, which is existing and is in force; and, the title deeds are in the possession of the 4th defendant. The plaintiff Bank has enhanced the working capital limits by taking all possible documents from the defendants taking advantage of the helpless condition of the defendants. The plaintiff obtained a mortgage of all the properties of the 1st defendant, its assets and also guarantee from the other two defendants; it is not open to the plaintiff to give up the mortgage. If the plaintiff gives up its right under mortgage, the debt due to it by the defendants is deemed to have been discharged; and, the plaintiff is not entitled for any decree in the suit. The suit as framed is not maintainable. The suit is bad for non-joinder of 4th defendant in a mortgage suit; and, in this suit, the suit is bad for mis-joinder of the 4th defendant. The plaintiff is not entitled to any of the directions claimed in the plaint. The plaintiff Bank failed to release the loan amounts in time, so the defendants 1 to 3 were subjected to loss. Therefore, the suit is liable for dismissal.'

8. On the basis of the above pleadings, the trial Court framed the following issues for trial:

> **"1. Whether the person who signed the plaintiff is an authorised person?**
>
> **2. Whether the plaintiff is not entitled to claim interest at the rate claimed?**
>
> **3. Whether the suit is bad for mis joinder of fourth defendant?**
>
> **4. Whether the plaintiff is entitled to the suit amount against the defendants 1 to 3 as prayed for?**
>
> **5. Whether the plaintiff is entitled to a direction against the 4th defendant as prayed for?**
>
> **6. To what relief?"**
>
> [Reproduced verbatim]

9. During the course of trial, P.W.1 was examined and exhibits A-1 to A-31 were marked on the side of the plaintiff. On behalf of the defendants, D.W1 was examined and exhibits B-1 & B-2 were marked.

10. On merits and by the judgment impugned in this appeal, the trial Court decreed the suit of the plaintiff. The operative portion of the judgment of the trial Court reads as under:

> **"In the result, the suit is decreed against D-1 to D-3 for Rs.6,21,947/- with interest at the rate of 9% p.a. on Rs.2,08,000/- on cash credit (MT) and Rs.3,44,000/- on cash credit (OWB) facilities which are adjudged principal amounts from the date of suit till the date of realisation with costs."**

10.1 Aggrieved thereof the defendants 1 to 3 are before this Court as appellants.

10.2 Aggrieved of the judgment and decree of the trial Court insofar as award of interest at 9% per annum instead of 18.75% per annum with quarterly rests on the suit amount, the 1st respondent-plaintiff filed Cross Objections (SR).No.36250 of 2000.

11. Learned counsel for the defendants contended as follows: -

'The trial Court erred in holding that the Branch Manager, who signed the plaint, is authorised under the State Bank of India Act and State Bank of India general regulations. The trial Court ought to have held that the suit is barred by limitation. The trial Court ought not to have believed the evidence of PW1; and, ought to have believed the evidence of DWs1 & 2. The trial Court ought to have held that the suit is liable to be dismissed on the ground of misjoinder of 4th defendant. The trial Court ought to have seen that due to the plaintiff bank's non payment of the agreed loans in time, the defendants were put to heavy loss which cannot be compensated. The trial Court ought to have awarded huge amounts to the defendants towards compensation. The trial Court ought to have held that the interest claimed by the plaintiff bank is highly excessive. The trial Court ought to have held that there is no justification on the part of the plaintiff bank to charge interest @ 16% per annum from its customers. The trial Court erred in not considering the contentions raised by the defendants in their written statement and in not considering the oral and documentary evidence adduced on behalf of the defendants. The trial Court ought to have seen that the plaintiff bank instead of filing the suit on the basis of mortgage, subject to the right of the 4th defendant, filed the suit for recovery of money; and hence, the trial Court ought to have dismissed the suit. The trial Court ought to have seen that the 4th defendant seized the unit, on 20.03.1992, in the absence of the 2nd defendant; and having come to know of the same, 2nd defendant informed the plaintiff bank to take the possession of the raw material and finished products available in the premises of the 1st defendant and that the plaintiff bank did not respond and the stock in the premises of the 1st defendant was worth about Rs.4.00 lakhs and that due to the inaction of the plaintiff bank the defendants sustained heavy loss. The trial Court ought to have rejected the statement of account filed by the plaintiff bank as it is not proper and correct. The trial Court erred in granting the decree for an amount of Rs.6,21,947/- together with interest at 9% per annum from the date of the suit till the date of realisation. The judgment of the trial Court is based on assumptions and surmises. The judgment of the trial Court is in violation of Order 41 Rule 31 of CPC. The judgment and the decree of the trial Court are in violation of the settled principles of law. If the judgment and the decree of the trial Court are allowed to stand, it would occasion in failure of justice. Hence, the judgment and the decree of the trial Court may be set aside; and, the appeal of the defendants may be allowed and consequentially the suit of the plaintiff may be dismissed.'

12. Per contra, learned counsel appearing for the plaintiff bank while supporting the judgment and decree of the trial Court, however, *inter alia,* contended that the trial Court erred in granting further interest at 9% per annum only instead of granting future interest at 18.75% per annum with quarterly rests as agreed to be paid on the principal sum due of Rs.6,21,942/-. He would further submit that the trial Court ought to have decreed the suit as prayed for. Finally he prayed to dismiss the appeal suit and allow the cross objections and grant interest as prayed for by modifying the decree of the trial Court in that regard.

13. I have given earnest consideration to the facts and submissions. I have gone through the evidence.

14. The points that arise for determination in this appeal are: -

1. **Whether the person who signed the plaint is an authorised person?**

2. **Whether the simple suit for recovery of money as framed and filed is not maintainable? Whether the plaintiff is entitled to a decree for the suit amount or any part thereof against the defendants 1 to 3 as prayed for?**

3. Whether the plaintiff is entitled to claim interest at the rate as claimed in the plaint as being contended in the cross objections? Whether the plaintiff is not entitled to claim interest as being contended by the defendants 1 to 3?

4. Whether the decree and judgment of the trial Court are unsustainable under facts and in law as being contended by the defendants 1 to 3?

5. To what relief?"

15. POINTS 1 & 2:

I have gone through the pleadings and the evidence (both oral and documentary). A plain consideration of the pleadings would show that the entering into of the suit transactions and the execution of the documents, exhibits A2-arrangement letter, A3-general agreement, A4-guarantee agreement, A5 & A6-ancilliary agreements, A7-Form No.8, A8-registration of mortgage and A9-agreement of hypothecation, by the 2nd defendant in his capacity of Managing Director of the 1st defendant company is admitted. PW1, the Deputy Manager concerned of the plaintiff Bank, deposed about the sanction of cash credit (medium term) limit and cash credit (outward bill) limit and the failure of the defendants 1 to 3 in properly and regularly conducting their business and their approaching the plaintiff bank for rehabilitation package. He also deposed about the enhancement of the limits of the cash credit (medium term) limit to Rs.2,08,000/- and cash credit (outward bill) facility upto Rs.3,44,000/- and about the 2nd defendant and 3rd defendant standing as guarantors and exhibited A10-arrangement letter, A11-letter, dated 06.02.1989, A12-supplemental agreement, A13 & A14-anciliary agreements, A15 & A16-gurantee agreements, A17-letter of undertaking, A18-agreement of hypothecation, A19-form 8, A20-certificate of registration of modification of charge & mortgage, A21-letter, A22 to A25-revivial letters, and A26 & A27-debit confirmation letters. The bank also issued a legal notice before filing the suit. Exhibit A28-notice copy, A29, postal acknowledgement and exhibit A30-copy of legal notice, dated 05.12.1992, were also exhibited in his evidence. Exhibit A31 is the statement of account. PW1 having exhibited the said documents and proved the same stated that the defendants 1 to 3 have not repaid the loan amounts and, hence, exhibit A28 notice was issued and that the 1st defendant received it under exhibit A29-acknowledgment but notice copies sent to defendants 2 & 3 were returned unserved. DW1, the 2nd defendant, admitted the sanction of both the cash credit limits/loans as well as the provision of rehabilitation package and stated that the 4th defendant, the financier (APSFC), seized the unit and took possession of the raw material & finished products and also the records and that the stock in the premises was worth Rs.4 lakhs as is evident from exhibit B1 & B2-the connected letters. DW2 was examined to speak about the submission of monthly statements and the 1st defendant company becoming sick in the year 1991 and its revival and the availability of stocks worth rupees 4 to 5 lakhs in the premises of the unit at the time of seizure.

15.1 Dealing first with the issue as to whether the person who signed the plaint was authorised to sign the plaint and institute the suit, DW1 did not speak about this aspect in his evidence and thus, failed to substantiate the said defence. It is not disputed before this Court that the State Bank of India Act and Rules framed thereunder empower the Branch Manager concerned of the State Bank of India to sign the pleadings and institute the suit. Hence, this Court finds itself in agreement with the finding of the trial Court that there is no merit in the contentions of the defendants 1 to 3 that the person who signed the plaint is not authorised so to do.

15.2 Dealing with the maintainability of the suit instituted for recovery of money after giving up the right to proceed against the mortgaged properties, it is to be noted that even on this aspect there is no whisper in the depositions of DWs1 & 2 and there is also no cross examination of PW1. It is undisputed that the assets were mortgaged with the 4th defendant, financier. The plaintiff bank is a 2nd mortgagee and is also having a second charge on the said assets. Therefore, the first right to realise the amounts due from the sale proceeds of the mortgaged assets vested with the 4th defendant-financier. Only after first satisfying the amounts outstanding to the 4th defendant-financier, the balance, if any, is recoverable by the plaintiff Bank. The defendants 1 to 3 have not adduced any evidence as to the proceedings that were taken up by the 4th defendant-financier for sale of the mortgaged property for realisation of the amounts due to it and the balance, if any, which remained after appropriation of the sale proceeds towards the amount due to the 4th defendant-financier. The case of the plaintiff is that the value of the mortgaged property is not even sufficient to meet the amount due and payable by the defendants 1 to 3 to the 4th defendant-financier and discharge the dues to the said financier. In the circumstances, like any other person having charge over the assets, which are already subject to mortgage to a 3rd party, the plaintiff bank is entitled to give up the mortgage and charge and sue for recovery of the money due by instituting a simple suit for money. Since the 4th defendant is the financier and the assets over which the plaintiff bank has a charge are mortgaged with the said 4th defendant-financier, the plaintiff bank added the said financier as 4th defendant-proforma party while seeking a decree for money against the defendants 1 to 3. Therefore, the contentions of the defendants 1 to 3 that the simple suit for recovery of money is not maintainable and that the suit is liable for dismissal for mis-joinder of a party need no countenance.

15.3 As already noted, the pleadings reflect that the suit transactions and the execution of the documents is admitted. Further, the evidence brought on record sufficiently established the availment of cash credit (medium term) limit and cash credit (outward bill limit and the enhancement of the limits under the rehabilitation package and the execution of the relevant documents by the defendants 1 to 3. The said evidence is sufficient by any standards to grant a decree for the suit claim in favour of the plaintiff Bank and against the defendants 1 to 3. If there is any stock worth Rs.4 to 5 lakhs at the time of seizure of the unit by the

4th defendant-financier, it is for the defendants 1 to 3 to proceed against the said financier and seek remedies, if any, available. In-fact, no monthly stock statements are marked. Mere submission of the monthly statements, even if true, does not absolve the defendants 1 to 3 from the liability to pay the amounts due to the plaintiff bank under the suit transactions. Therefore, the availability of any stock in the premises of the unit of the 1st defendant at the time of seizure by the 4th defendant-financier, even if true, does not advance the defence of the defendants 1 to 3 any further.

15.4 On the above analysis, this Court finds that the plaintiff is entitled to a decree for the suit amount as prayed for. Points 1 & 2 are accordingly answered.

16. POINT No.3: -

The defendants contended before the trial Court that when the banks are paying interests @ 10% to 11% per annum only to its customers, there is no justification on the part of the plaintiff bank to charge interest @ 16% per annum. It is pertinent to note that the trial Court awarded future interest @ 9% per annum simple on Rs.2,08,000/- on cash credit (MT) and Rs.3,44,000/- on cash credit (OW) facilities, which are the adjudged principal amounts. Aggrieved thereof, the plaintiff bank filed cross objections stating that the plaintiff bank is entitled to grant of future interest at 18.75% with quarterly rests on the suit amount of Rs.6,21,947/- in view of the agreements and security documents executed by the borrowers and the guarantors. It is urged that the transaction being a commercial transaction the plaintiff bank is entitled to interest @ 18.75% on the suit amount but not on the bare principal sums. Admittedly, the suit transaction is a commercial transaction since connected with trade or business of the defendants 1 to 3 who incurred the liability. The contract between the parties provides for right to claim interest at quarterly rests, that is, at the rate of 0.5% below the bank rate subject to a minimum of 16% per annum. As on the date of the filing of the suit, the bank rate is 18.75% per annum is undisputed before this Court. When the suit transaction is a commercial transaction and there is an agreement to pay interest at quarterly rests, the interest every quarter, if not paid at the end of every quarter, gets merged with the principal amount, and the future interest would be payable on the total amount including the unpaid interest that became merged with the principal. When there is a provision in the contract, compound interest is awardable more particularly when the transaction is a commercial transaction. The *proviso* to Section 34 of the Code provides that where the liability in relation to the sum adjudged arises out of a commercial transaction; the rate of further interest may exceed 6% per annum but shall not exceed the contractual rate of interest. In that view of the matter, the plaintiff bank is entitled to claim interest @ 18.75% per annum with quarterly rests on the suit amount of Rs.6,21,947/- from the date of the suit till date of payment or realisation. Point is accordingly answered.

17. POINT No.4: -

For the reasons assigned and the findings recorded under point nos.1 to 3, this Court finds that the trial Court is justified in decreeing the suit. However, in view of the finding under point no.3, this Court finds that the decree and judgment of the trial Court awarding interest at 9% per annum simple on Rs.2,08,000/- on cash credit (MT) and Rs.3,44,000/- on cash credit (OW) facilities, which are the adjudged principal amounts, from the date of the suit till date of realisation are unsustainable. Accordingly, this Court holds that the decree and judgment of the trial Court are liable to be set aside in the above regard and that the plaintiff bank is entitled to claim interest @ 18.75% per annum with quarterly rests on the suit amount of Rs.6,21,947/- from the date of the suit till date of payment or realisation. Point is accordingly answered.

18. POINT No.5:-

In the result, the appeal suit of the defendants 1 to 3 is dismissed. The Cross objections filed by the plaintiff bank are allowed; and, the decree and judgment of the trial Court are modified as under: - 'The suit is decreed, with costs, against the defendants 1 to 3 for Rs.6,21,947/- with future interest on the said sum @ 18.75% per annum with quarterly rests from the date of the suit till date of payment of realisation.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

25.04.2018
KL/Vjl