**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.2934 of 1998 (O&M)
Date of decision:30.04.2018**

New Bank of India ... Appellant

Vs.

M/s Raj Die Casting and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Sidhu, Advocate
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gagandeep Singh Virk, Advocate
for the respondents.

AMIT RAWAL J.

Appellant-Bank is in Regular Second Appeal against the judgment and decree dated 24.03.1998 rendered by the Lower Appellate Court, whereby, appeal filed by the respondents while upholding the findings with regard to decretal of principal amount of ₹50484.20 paise alongwith interest @ 15% per annum with quarterly rests by declaring the future interest @ 6% per annum, has been allowed.

Appellant-plaintiff instituted a suit on the premise that a cash credit facility in the sum of ₹75,000/- alongwith bill purchase limit in the sum of ₹25,000/- was sanctioned on execution of various documents, for example, letter of hypothecation etc. Since the defendants defaulted in making the payment, suit aforementioned was filed claiming amount of ₹66,737.60 paise.

The defendants contested the suit on the various grounds by raising the objections qua maintainability and locus-standi. However, admitted the availing of loan facility. It was clarified that plaintiff wrongly appropriated the amount of FDRs towards the loan in question with a malafide intention. There were certain blank printed forms which got signed from the officials of the Bank.

On the basis of pleadings of the parties, the trial Court framed as many as 7 issues including the issue of Relief. Both the parties examined their respective witnesses.

The trial Court decreed the suit to the aforementioned extent by granting interest @15% per annum with quarterly rest on ₹50,484.20 paise with simple future interest @ 15% till realization of the decretal amount. The appeal laid by defendants was partly allowed by modifying the future interest from 15% per annum to 6% per annum.

Mr. S.S.Sidhu, learned counsel appearing on behalf of appellant submitted that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law, for, it cannot change the terms and conditions with regard to future interest. The Court cannot be deemed to be a silent spectator as it has liberty to use discretion in awarding the interest. The plaintiff had already been granted interest @15% per annum with quarterly rest on the principal amount and the defendants are also entitled to the interest on their FDRs, thus, Bank is entitled to the amount after adjustment of the amount paid back by the defendants. The future interest awarded @ 15% per annum till the realization of the amount was correct appreciation of law. It could not have been reduced. The Lower Appellate Court did not appreciate the settled proposition of law that liability of interest accrued if remained unpaid, it becomes the part of principal amount and bears the interest in the ordinary course of business. The discretion allegedly exercised is not sustainable in the eyes of law, for, by reducing the future interest, a loss of ₹1,75,484, has been caused.

On the contrary, Mr. Kanwaljit Singh, learned Senior counsel assisted by Mr. Gagandeep Singh Virk, Advocate for the respondents submitted that the Lower Appellate Court has exercised the discretion as per the provisions of Section 34 of CPC and there is hardly any substantial question of law involved in present appeal for interference in the findings of facts and law arrived at by the Lower Appellate Court and urged this Court for maintaining the judgment and decree under challenge by dismissing the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Sidhu. The Bank has already been granted interest @15% per annum with quarterly rests on the amount of ₹50,484.20 paise against claim of ₹66,737.60 paise with a rider that defendants would also be entitled to the amount of interest on their FDRs, in other words, Bank is also entitled to the amount after adjustment of the amount paid back by the defendants/amount of FDRs adjusted.

As regards the future interest, there was no contract between the parties enabling the Bank to seek interest @ 15%. Even the commercial rate of interest over a period of time had considerably reduced which law had not been tinkered with by the Lower Appellate Court nor this Court intends to do so but fact of the matter is that 15% rate of interest awarded by the trial Court which had been reduced to 6% per annum was correctly found to be on higher side. Such finding of fact, in my view, does not call for any interference or to formulate any substantial question of law.

I do not find any illegality and perversity in the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence.

No ground is made out for interference.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 30, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No