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

RSA No.5103 of 2013 (O&M)
Date of decision: 20.04.2018

Punjab and Sind Bank and others
.......Appellants

versus

Charanjit Singh
......Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. I.P. Singh, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second Appeal, defendant-bank has laid challenge to the judgment and decree dated 28.02.2013 of the First Appellate Court, reversing the judgment and decree dated 07.10.2011 of the trial Court, whereby suit of the respondent-plaintiff was dismissed.

Put pithily, during service as a Clerk-cum-Cashier with the appellant-bank, respondent obtained loan of ₹70,000/- under housing loan scheme of the staff on 26.05.1987, which was repayable in monthly instalments of ₹490/- per month, so to be deducted from his salary during his service. Services of the respondent-plaintiff were terminated vide order dated 24.09.1991. He raised industrial dispute. Presiding Officer, Central Industrial Tribunal-cum-Labour Court, Chandigarh vide award dated 03.02.1999 directed the appellant-bank to reinstate him with continuity of service, but without backwages, holding termination order against him as illegal.

On challenge of the award aforesaid by the appellant-bank before this Court by way of a Civil Writ Petition, operation of the same was stayed. However, this Court allowing the application of the respondent under Section 17-B of the Industrial Disputes Act directed the appellant-bank to pay his last drawn wages to the respondent-plaintiff, which he was receiving every month w.e.f. 10.06.1999. Pursuant thereto, appellant-bank started paying to the respondent, his last drawn wages every month till the date of superannuation. Simultaneously, respondent-plaintiff also filed a Writ Petition before this Court for grant of full backwages. Both the said Writ Petitions are still pending.

Afterwards respondent-plaintiff came to know that the appellant-bank has illegally and wrongly got deposited ₹4,31,988/- from him charging exorbitant interest @ 18.5% per annum on 13.11.2002 against the agreed rate of 5% per annum. Upon representation (Annexure P-1) of the respondent-plaintiff through the union, the matter was referred to the Assistant Labour Commissioner, Chandigarh for conciliation. After considering submissions of both the parties, Assistant Labour Commissioner, Chandigarh vide his order dated 27.11.2003 observed that the conciliation efforts between the parties ended in failure. Consequently, respondent-plaintiff raised a demand under Section 2k of the Industrial Disputes Act. When the appellant-bank did not refer his demand notice to the Industrial Disputes Tribunal-cum-Labour Court, respondent-plaintiff sent two representations dated 01.06.2005 and 27.09.2005 to the Government of India, Ministry of Labour for reference of his dispute and thereafter served a legal notice upon the appellant-bank. It is only then on 24.03.2006, respondent-plaintiff received a reply from Under Secretary, Ministry of Labour and Employment, Government of India, that dispute raised by him was not considered as fit for reference.

Being aggrieved, respondent-plaintiff filed a civil suit for recovery of ₹5,00,000/- against the appellant-bank on 30.09.2006, which was dismissed by the trial Court while returning its finding under Section 5 of the Limitation Act against the respondent-plaintiff vide judgment and decree dated 07.10.2011.

Being dissatisfied, respondent-plaintiff approached the First Appellate Court challenging the judgment and decree of the trial Court. The First Appellate Court, after hearing both the sides, partly decreed the suit of the respondent-plaintiff vide judgment and decree dated 28.02.2013 holding that the appellant-bank was liable to charge interest on the loan amount of the respondent-plaintiff @ 10% per annum and not @ 18.5% per annum. Resultantly, appellant-bank was directed to refund the excess amount with interest @ 8% per annum on equitable basis from the date it became refundable and was deposited with the bank by way of adjustment of the loan amount.

Learned counsel for the appellants contends that the First Appellate Court has failed to appreciate that any action of the respondent-plaintiff before the Industrial Tribunal or the Labour Court does not fall within the definition of "Court" under Section 14 of the Limitation Act. Therefore, the appeal of the respondent-plaintiff was liable to be dismissed upholding the judgment and decree of the trial Court. Circular dated 17.04.1990 (Ex.D1) was very much applicable upon the loan advanced to the respondent-plaintiff in view of the fact that respondent-plaintiff did not fulfil the conditions of his agreement for advancing loan inasmuch as he failed to deposit the title deed, creating equitable mortgage in favour of the appellant-bank for security of the loan. The First Appellate Court has wrongly held that subsequent circular issued by the appellant-bank issued after advancing loan to the respondent-plaintiff was not applicable retrospectively, losing the sight of the fact that respondent-plaintiff was issued many notices to comply with the terms and conditions of the agreement between him and the appellant-bank for advancement of the loan disclosing therein to him that in case, he would not fulfil the terms and conditions, the interest would be charged from him @ 18.5% per annum in view of the latest circular (Ex.D1).

Having given considerable thought to the submissions made by learned counsel for the appellants, I find that this appeal is completely devoid of any merit for the reasons to follow.

Undisputedly, respondent-plaintiff cleared the entire outstanding loan against him on 13.11.2002. There is no iota of evidence on the record that before clearing the loan amount by the respondent-plaintiff, he was given any notice by the appellant-bank informing him that in view of the latest circular (Ex.D1) he was liable to pay interest @ 18.5% per annum. Therefore, without informing the respondent-plaintiff in this respect and the subsequent circular (Ex.D1) issued much later after advancing the loan to the respondent-plaintiff cannot be made retrospectively applicable.

That apart, respondent-plaintiff believing the account statement of the appellant-bank cleared the loan amount paying interest @ 18.5% per annum, which shows his honest intentions. However, when respondent-plaintiff came to know afterwards that the appellant-bank had illegally charged interest @ 18.5% per annum from him beyond the agreed interest @ 5% per annum, he moved a representation through his union to the appellant-bank immediately within 1½ month, which was referred to the Labour Commissioner, Chandigarh, for conciliation, which failed as per order of the Labour Commissioner, Chandigarh dated 27.11.2003. Representation (Annexure P-1) of the respondent-plaintiff shows that it was a *bona fide* representation challenging the action of the appellant-bank charging interest @ 18.5% per annum from him illegally without any agreement or contract to this effect, in which, as discussed above, conciliation efforts failed as per order dated 27.11.2003. Therefore, limitation period has to be counted from the said date for filing civil suit, which the respondent-plaintiff had filed on 30.09.2006 within three years.

The argument raised by learned counsel for the appellant that in Section 14 of the Limitation Act word "Court" does not include the Tribunal or any other forum, is not relevant for discussion for the reason that respondent-plaintiff, as discussed above, had filed suit within limitation.

The circular issued subsequently after advancing loan to the respondent-plaintiff has rightly been held not applicable retrospectively by the First Appellate Court, whereby interest @ 18.5% per annum was charged from the respondent-plaintiff. More-so, since it was a housing loan obtained by the respondent-plaintiff, therefore, charging of interest at commercial rates by the appellant-bank is quite illegal and not sustainable, in case no notice in advance is issued to the borrower.

As discussed above, in the instant case, respondent-plaintiff was not made aware about the subsequent circular (Ex.D1) and the charging of interest at enhanced rate of interest @ 18.5% per annum. Therefore, this Court is not inclined to differ with the findings of the First Appellate Court, which are well-reasoned, based on appreciation of evidence and documents produced by both the parties on record.

I have gone through the impugned judgment of the First Appellate Court and find no ambiguity or illegality in the same.

No question of law muchless substantial has been raised or arises for consideration in his appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

(Ramendra Jain)
April 20, 2018 **Judge**
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.