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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23rd April, 2018

+ **RFA 603/2016**

NATIONAL SMALL INDUSTRIES CORP LTD Appellant

Through: Ms. Manvi Gola, counsel on behalf of
Mr. Sanjay Kr. Sharma, Advocate
(M-9810767494).

versus

M/S MAHARANA ELECTRONICS & ANR Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Defendants, Respondent no.1 - is a sole proprietary concern of Respondent no.2, Mr. T.S. Rana (*hereinafter referred to as 'Defendants'*) who had a factory manufacturing plastic items located in 27, New Wazirpur Industrial Complex, Delhi. In the aftermath of the 1984 riots, the factory was looted and burnt down. All the machinery in the factory was destroyed. The Defendants then approached the Appellant/Plaintiff (*hereinafter, 'Plaintiff'*) for taking the machinery on hire-purchase. The machinery was supplied by the Plaintiff and payments were to be made in instalments. The Defendants paid most of the instalments but sought reduction in the rate of interest charged on the basis of the '*Central Interest Subsidy Scheme for November 1984 Riot Affected Borrowers*' (*hereinafter Scheme*) issued by the Central Government for the benefit of riot affected victims. As per the said scheme, the Central Government took a decision that banks and financial institutions

would charge only 1% interest from riot victims. This scheme was extended by the Supreme Court to include all financial institutions as per the judgement in *Harjit Singh v. Union of India (1994) 2 SCC 553* (hereinafter '*Harjit Singh*'). Accordingly, the Defendants sought reduction in the rate of interest which was not acceded to by the Plaintiff. Finally, when the interest amount remained unpaid, the Plaintiff filed a suit against Defendants no.1 and 2, seeking recovery of the amounts due, for the machines, as per the Hire-Purchase Agreements dated 25th July, 1985 and 19th February, 1987. In the said suit, the Trial Court granted relief to the Plaintiffs, which is the subject matter of the present appeal.

2. The NSIC is a Government of India enterprise functioning under the Ministry of Micro, Small and Medium Enterprises (MSME). It claims to be working for the promotion and fostering of small and medium enterprises in the country. It supplies machinery on Hire-Purchase basis to entrepreneurs in order to encourage growth of the industry. It supplied machinery on hire purchase to the Defendants, on the basis of Hire-Purchase Agreements dated 25th July, 1985 and 19th February, 1987. It claimed that it is entitled to recover delayed payment at 14% from the Defendants, as per the Agreement. The waiver of interest as sought by the Defendants was denied primarily on the ground that the two machines were supplied much after the riots and an inspection has revealed that the machines were being used in the factory of the Defendants in full swing. It was further argued that the Defendant's case was not covered by the scheme. Hence, according to NSIC, the Defendants were not entitled to a lower rate of interest. It was the stand of NSIC that the Defendants having applied under the Scheme of NSIC for 1984 affected borrowers, was not entitled to resile from the same.

The said Scheme was *"Liberalised Scheme for supply of machines on hire-purchase basis to rehabilitate small scale units affected by riots during 31st October to 11th November 1984"* under which interest was payable at 12% with rebate of 2% p.a. against payment of instalments on or before the due date. In the suit filed by NSIC against the Defendants, the relief prayed for by NSIC were as under:

"It is, therefore, respectfully prayed that:

- a) this Hon'ble Court may grant a decree for Rs.9,43,077/- being the amount due from the defendants as per the Hire Purchase Agreement executed on 25.7.85 & 19.2.87 in favour of the plaintiff and against the defendants;*
- b) decree for possession of both the machines supplied by the plaintiff i.e. Injunction Moulding Machine and Blow Moulding Machine or in the alternative residual value of the machine amounting to Rs.2,73,812/-;*
- c) grant interest @ 14% p.a. on the decretal amount till its realisation;*
- d) cost of the suit also be awarded in favour of the plaintiff and against the defendant;*
- e) any other relief which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case, may also be granted in favour of the plaintiff and against the defendants."*

3. In the Written Statement, the Defendants submitted that they have suffered a huge loss due to the riots and that the interest being charged is contrary to the judgment of the Supreme Court. It was their submission that the Scheme of the Central Government required that affected borrowers ought to be extended the benefits of the Scheme. The case in the written statement was that the loss was of more than Rs.26 lakhs due to damage caused to raw material, finished products, machinery and building.

4. It was the stand of the Defendants that on various representations made by riot affected parties, the RBI had issued a circular by which interest rate was reduced, especially after the Supreme Court's judgement in ***Harjit Singh (supra)***. The Defendants thus contended that only 1% Simple Interest per annum on eligible loan, is liable to be paid by them. The following issues were framed in the suit:

- “1. Whether the suit has been signed and verified by a duly authorised person?*
- 2. Whether the Defendants is entitled to the subsidy scheme announced by the Govt. of India to the victims of 1984 Sikh Riots?*
- 3. Whether the Plaintiff is entitled to the amount as claimed?*
- 4. Whether the Plaintiff is entitled to any interest? If so on what amount, at what rate and for what period.*
- 5. Relief.”*

Plaintiff's evidence

5. On behalf of the Plaintiff, two witnesses, Sh. K.G.S. Moorthi, Manager (Law) (PW-1) and Sh. Rajesh Kumar(PW-2) were recorded. PW-1 in his deposition denied that the Defendants were riot affected victims. Some extracts of his cross examination read as under:

“Q. Is it correct to suggest that the machines which you financed to the defendant company were obtained under the riot victim scheme what you have to say?

A. I am not aware of it.

I am not aware whether the defendant company M/s Maharana Electronics Company is a riot victim or not. It is correct to suggest that the liberalized scheme for supply of machinery on hire-purchase basis to rehabilitate the small scale units effected by riots effected by riots during 31.10.1984 to 11.11.1984 is

issued by our office, the same is already Ex. D1.”

“Q. Do you know that from time to time, the defendant company has been writing to you and visiting your office that they are ready to pay the amount which is due after adjustment of the amount already paid to you as per the Hon’ble Supreme Court’s judgment and the guidelines laid down by the RBI and IDBI i.e. 1 % simple interest?

A. I am not aware of it.

Q. Did your lawyer had issued any notice to the defendant company before filing of the sit and the defendant company replied such notice?

A. Our lawyer had issued notice to the defendant company but I am not aware about the reply.”

PW-1 thus denied knowledge of the circulars and the repeated representations made by the Defendants. He even claimed ignorance about the reply given by the Defendants to the legal notice issued by the Plaintiff.

6. PW-2 proved the statement of account and he confirmed as under:

“Question: Have you brought the books of Account?

Answer: I have brought the statements of account Ex.PW-2/1 & 2.

Question: How you prepared the statement of account?

Answer: The statement of account was prepared as per the books of account.

The interest mentioned @ 14% per annum was as per agreement. I do not know whether the defendant company is a riot’s victim or not. I do not know as to whether there is any Hon’ble Supreme Court directions or RBI Guidelines with regard to the interest @ 1% to the riot victims. It is wrong to suggest that the defendant approached to the plaintiff stating all these facts.”

Defendant's Evidence

7. Mr. T.S.Rana, on the other hand, exhibited the following documents:

“... The documents are Ex.DW-1/2 to 12 as per affidavit Ex.DW-1/1.

The document Ex. DW-1/2 is the copy of complaint dated 05.11.1984 (OSR).

The document EX.DW-1/3 is the copies of general terms and conditions. (Objected to the mode of exhibition as the original not produced). The same is de-exhibited and marked as Mark-DX-1.

The document EX.DW-1/4 is the copy of Performa. (OSR)

The document Ex.DW-1/5 is the copy of Judgment of Hon'ble Supreme Court.

The document EX.DW-1/6 is the copy of Reserve Bank Circular.

The document EX.DW-1/7 is the copy of letter written by defendant.

The document EX.DW-1/8 is the copy of letter dated 08.06.92 written to NSIC.

The document EX.DW-1/9 is the copy of letter dt.6.03.94 written to NSIC.

The document EX.DW-1/10 is the copy of letter dated 18.03.94 written to NSIC.

The document EX.DW-1/11 is the copy of RTI.

The document EX.DW-1/12 is the copy of affidavit filed in pending WP (C) 2720/2008. (objected to as certified not filed).”

8. In his cross-examination, the Defendant no.2, DW-1 stated as under:

“I have taken a loan from NSIC. Vol. The said loan was under 84 riots victim scheme. It is correct that I have taken loan as per agreement Ex.P-2 and I have signed the same and accepted the terms and conditions as mentioned in the agreement. It is correct that the first installment was Rs.56,813/- and the remaining installments were of Rs.51,132/-. We have paid all the instalments. As per verdict of the Hon'ble Supreme

Court, only one percent is allowed to pay from the riots victim and as per our records we have paid more than that.”

9. DW-1 thus deposed in his affidavit that the total amount/value of the two machines which were given to the Defendants was about Rs.7 lakhs. After deducting the earnest money which was paid, the outstanding amount was Rs. 6.4 lakhs and that the Defendants started paying instalments and a total sum of Rs. 6 lakhs stands paid. It was thereafter that the Defendants relied upon the judgment of Supreme Court and the circular of the RBI to charge 1% simple interest from all riot victims of 1984. DW-1 stated that he repeatedly visited the offices of NSIC, met with officers there to sort out the issue and also wrote various representations dated 28th April, 1992, 8th June, 1992, 6th March, 1994 and 18th March, 1994 praying that he be charged only 1% interest. Finally, legal notice was sent on his behalf on 1st October, 1994. He heavily relied upon the letter from RBI which was obtained under RTI, which confirmed that NSIC is a financial institution. In his cross-examination, he stated as under:

“I have taken a loan from NSIC. Vol. The said loan was under 84 riots victim scheme. It is correct that I have taken loan as per agreement EX.P-2 and I have signed the same and accepted the terms and conditions as mentioned in the agreement. It is correct that the first instalment was Rs.56,813/- and the remaining instalments were of Rs.51,132/-. We have paid all the instalments. As per verdict of the Hon’ble Supreme Court, only one percent is allowed to pay from the riots victim and as per our records we have paid more than that.

Question: Whether any term and condition in regard of victim of riots 84, was there in the agreement? Had

you seen and signed it.

Answer: I went to the office of the NSIC i.e. defendant after going through the Advertisement which appeared in the news paper as I am riots victim of 1984."

10. The query raised on behalf of the Defendant (Ex. DW1/11) was as under:

"Dear Sir,

As per Reserve Bank of India Act, 1934. The National Small Industries Corp. Ltd., Okhla Industrial Estate New Delhi are registered with you.

They are letting and delivering machinery under Hire purchase agreement Act 1972 (26 of 1972). Are they come under 45-I Definitions of Financial institution.

Requisite Fee of RTI in the form of Postal Order No. for Rs.10/- is enclosed herewith.

Thanking you."

11. The Defendant No.2 denied the suggestions that the Supreme Court judgment does not apply to him. He also stated categorically that apart from the interest component, there is no other dispute with the NSIC. The Defendants also produced Sh. Neeraj Sinha, an Assistant working with the RBI as DW-2. This witness proved the RBI circular dated 1st September, 1993, EX.DW-2/1.

12. The Trial Court, on the basis of the evidence on record held that the Plaintiff's scheme is not in dispute and that its conduct of denying the benefits of the scheme was a cover up. The Trial Court observed as under:

"38. Plaintiff has not disputed that it floated a scheme namely "Liberalised scheme for supply of machines on Hire Purchase basis to rehabilitated Small Scale Units affected by Riots during 31st October to 11th Nov, 1984" but strangely has not admitted the same also.

Such admission has come on record only by way of remaining silent in response to submission of the Defendants. Whereas fair play requires that Plaintiff should have either pleaded the same at the very first instance or at least should have specifically admitted in replication when Defendant pleaded the same. The conduct of the Plaintiff to this extent display as if Plaintiff was deliberately trying to deny benefit of such Central Interest Subsidy Scheme to the Defendants or was making an attempt to cover up its own default of not having claimed the subsidy in accordance with the Scheme.”

13. Thus the Trial Court held that only 1% simple interest per annum is liable to be charged and that the Plaintiff would not be entitled to any interest for the period during which the litigation remained pending before the Trial Court. The final relief granted by the Trial Court is as under:

“Relief

In view of the findings recorded on issue No.2, 3 and 4 suit of the Plaintiff is hereby dismissed but in the totality of circumstances of the case as the public money is involved, Plaintiff is directed to treat the Defendants as deserving case under the “Central Interest Subsidy Scheme for November 1984 Riot Affected Borrowers” as revised time to time, process the case in accordance with that Scheme and put the Defendants to notice accordingly. If, upon consideration, any amount is found payable, the Defendants shall pay the same in monthly instalments of his choice but not less than Rs.5000/- per month. No interest at any rate shall be charged for the ligation period as the litigation took place mainly due to refusal on the part of the Plaintiff to extend the benefits of the aforesaid scheme to the Defendants resulting into harassment of the Defendants and wastage of precious judicial time; and also for the period Plaintiff takes to

inform the Defendants any outstanding upon reconsideration in compliance of the present direction. It is made clear that Plaintiff shall calculate amount charging simple interest @ 1% per annum upto the date of institution of the present suit and not for period thereafter. If after extending the benefits in accordance with the aforesaid scheme, any outstanding is found due a simple interest @ 1% per annum shall be charged on reducing balance from the date of intimation in writing to Defendants against receipt, till the clearance of the dues.

Suit of the Plaintiff is dismissed with aforesaid liberty to the Plaintiff.

Decree sheet be prepared accordingly.

File be consigned to Record Room after necessary compliance.

Background of the various Circulars and Schemes for 1984 Riot victims

14. Several matters relating to loans disbursed to riot affected victims came before the Supreme Court in ***Harjit Singh (supra)***. These loans had been taken by riot affected borrowers for purchase of trucks or for setting up businesses. The impression conveyed to borrowers was that the said amounts disbursed would be converted to grants, however recovery proceedings came to be initiated by the Government. Several of them were persons who were rendered homeless during Partition in 1947 and they approached the Supreme Court claiming their '*right to livelihood*', as recovery proceedings would render them destitute. The stand of the banks was that the loans were disbursed on terms and conditions and no promise was ever made that the same need not be repaid.

15. On 25th August 1989, submission on behalf of the Petitioners was recorded to the effect that the Petitioners are willing to pay back the

Principal amount and are only seeking some relief in respect of the interest component. The Supreme Court had then directed stay of recovery in respect of the '*entire class of riot affected victims*' until the RBI advised banks as to the further steps and until the banks take a decision in case of each individual.

16. The RBI then issued a Circular dated 23rd December 1989 directing banks to give '*relief as may be considered reasonable*' to the borrowers. Thereafter, the Central Government issued the *Central Subsidy scheme for November, 1984 Riot affected borrowers* dated 19th September 1990 (*hereinafter the '1990 scheme'*). As per this scheme, banks were directed to charge interest at 6% per annum on all eligible outstanding loans. The salient features of this 1990 Scheme were:

“(i) The banks shall charge interest at six per cent per annum on all eligible outstanding loans in a deserving case, as on 31st December, 1989, for the period from 1st November, 1984 if the loan is granted on or before 1st November, 1984 or from the date of grant of loan, if granted subsequently, to 31st December, 1989.

(ii) The borrower shall be advised by the bank in writing about the extent of relief provided in each account as also the balance outstanding in the accounts as on 31st December, 1989 and the date on which relief is provided.

(iii) The relief granted by the banks shall be reimbursed to the banks by the Central Government.

(iv) The entire interest that has accrued on the outstanding loan amounts after 31st December, 1984 shall be borne by the borrowers.”

17. This 1990 Scheme was challenged as it sought to differentiate between borrowers who took assistance from banks as opposed to those who

took assistance from financial institutions. In the context of the said challenge, the Supreme Court observed

“10. If the petitioners are to be substantially helped, the benefit of the circular will have to be extended vis-à-vis the loans advanced by the financial institutions, having regard to the circumstances in which the petitioners are placed. The spirit of the circular is to help the petitioners. Therefore, it could hardly matter whether loans are from the banks or financial institutions. To us, it appears, the failure to refer to the financial institutions, is an inadvertent omission. We find the prayer to be just and reasonable.”

Thus, the Supreme Court extended the benefit of the RBI circular dated 19th September, 1990 to both banks and financial institutions.

18. Thereafter a Revised Scheme was introduced dated 1st September 1993 viz., ‘Central Interest Subsidy Scheme (Revised) for November 1984 Riot Affected Borrowers’ (hereinafter ‘Revised Scheme’). The said Revised Scheme circulated by the RBI provided as under:

“Relief and Extent 3. (a) A bank shall in deserving cases, charge the borrowers interest at one per cent (simple) per annum on all eligible loans outstanding as on the effective date for the period from 1 November 1984, if the loan is granted on or before 1 November 1984, or from the date of grant of the loan, if granted subsequently, to the effective date. The difference between the interest calculated at simple rates charged as per Reserve Bank of India instructions or Interest Rate Directives on Advances or at 16 per cent, whichever is lower, on the eligible loans and interest at one per cent per annum (simple) now to be charged, will be reimbursed by Government of India to the banks as interest subsidy through the Reserve Bank of India/National Bank for Agriculture and Rural

Development.”

Thus, in all deserving cases, borrowers were liable to be charged interest at one percent (simple) per annum on all eligible loans.

Paragraph 9 of the Salient Features of the Revised Scheme reads as under:

“9. Interest at 1% (simple) per annum on eligible loans outstanding as on the effective date i.e. 31st March, 1992 for the period from 1st November, 1984 if the loan granted on or before 1st November, 1984 or from the date of grant of the loan if granted subsequently to the effective date.”

Following the Supreme Court judgement and the Revised Scheme the RBI, vide its Circular dated 29th September 1994, clarified as under:

“As you may be aware the Supreme Court of India in IA No.4 of 1992 – WP No.457 of 1988 – Harjit Singh and Others Vs. Union of India and Others had directed RBI and Union of India to include all financial institutions both Central and State in the definition of bank in the captioned schemes. Accordingly, Government of India had advised RBI to amend the schemes. A copy each of the amended schemes duly approved by Government of India are enclosed. It has been decided that in the case of financial institutions, IDBI will administer the schemes. You are, therefore, requested to circulate the schemes, receive the claims from financial institutions in respect of the interest subsidy provided by them to riot victims and settle them after receipt of the amount from Government of India. The schemes are self explanatory. However, if any clarifications are required, you may write to us.

2. We also enclose for your information a copy of each of the letters forwarding the schemes to banks by RBI. You may suitably amend these letters while forwarding the schemes to the financial institutions.

3. We request urgent action in the matter. The action taken may please be advised to us.”

On the basis of the judgement of the Supreme Court along with the Revised scheme the Defendants sought remission of interest. The simple case of the Defendants was that they were covered by the revised scheme and that NSCI ought to extend the benefits to them. This was not accepted by NSCI leading to the present litigation.

Appeal Proceedings

19. Before this Court, the primary contention of NSIC is that the circular of the RBI and the judgment of the Supreme Court does not apply to the Plaintiff as NSIC is not a 'bank' as defined in the Scheme or even a financial institution. It is the contention of the counsel for the Plaintiff that the Hire-Purchase Agreements having been entered into by the Defendant, he is bound by the said agreement. It is further submitted that the judgment of the Supreme Court cannot be extended to the Defendant as the Hire-Purchase was not given by the Plaintiff on the basis of the Defendant being a riot affected victim. It was further argued that the Scheme required a determination that the Defendant had a '*deserving case*' which determination had not happened. In the appeal, initially notice was issued but the service report shows that the Defendant is no longer available in the said address. The counsel for NSIC had made a statement on 8th September, 2017 that they are unable to ascertain the fresh address of the Defendants and accordingly, the Defendants was served through publication. Since there was no appearance on behalf of the Defendants on 10th January, 2018, the Defendants were proceeded ex-parte. Thereafter submissions have been addressed by NSIC.

Analysis and Findings

20. A question that was determined both in letter and spirit by the Supreme Court is sought to be re-agitated all over again by NSIC.

21. The question raised again is whether the Plaintiff is a financial institution and is bound to extend the benefit of the scheme which was introduced by the Central Government as also whether the circular of the RBI applied to the Plaintiff. The Scheme for November, 1984 Riot Affected Borrowers had come into force from 17th September, 1990. In 1994, this scheme was revised and financial institutions both Central and State were included in the definition of 'bank'. Various financial institutions including IDBI, Bank of Baroda, etc. had extended this scheme to borrowers. The Plaintiff, in its pleadings merely states that it is not a bank and therefore it is not covered in the scheme. The letter issued by RBI on 29th June, 2011 under RTI, had confirmed that a non- banking financial institution could also include an entity in the business of delivering goods to a hirer under a Hire-Purchase Agreement. Heavy reliance is placed by NSIC on document Ex.D1 which was issued by the Plaintiff titled "*Liberalised scheme for supply of machines on Hire-Purchase basis to rehabilitated Small Scale Units affected by Riots during 31st October to 11th November 1984*" (hereinafter NSIC Scheme). Under this scheme issued by the Plaintiff, Small Scale Industry Units and Entrepreneurs who could obtain a certificate that they had incurred damage due to the 1984 riots, were eligible to get benefits of this scheme. However, under this scheme, 12% interest was chargeable. Repeated representations were made by the Defendants praying that their Hire-Purchase Agreement should be covered by the Revised Scheme.

22. The Defendants repeatedly prayed for being covered under the Scheme issued by the Central Government as the Directorate of Industries and DSIDC had certified that the Defendants' factory had been destroyed in the riots. The letter issued by the Directorate of Industries on 25th January, 1985 reads as under:

*"To
The National Small Scale Industries Corporation
Ltd.,*

Okhla Indl. Estate, New Delhi.

Sir,

It is certified that M/s Maharana Electronics, located in DSIDC shed No.27, New Wazirpur Industrial Complex, Delhi was destroyed during the recent riots. For earliest rehabilitation of the unit all the necessary assistance required to the units may please provided to them.

An early action will be appreciated. The copy of the First Information Report lodged by the unit is enclosed.

(RAKESH NAGPAUL)

*ASST DIRECTOR OF INDUSTRIES (CL)
FOR DIRECTOR OF INDUSTRIES, DELHI."*

23. The Defendants made repeated requests for reduction in the rate of interest. The Defendants had made a payment of total of Rs.6 lakhs. In all these letters, the stand of the Defendants was that the Plaintiff may kindly consider their case sympathetically and charge only 1% interest. One such letter dated 19th February, 1994 is extracted herein below:

**"File No. 880/1-2/DEF/HP/NSIC
RE: SALINT FEATURES O F CENTRAL INTREST
SUBSIDY SCHEME (REVISED) FOR NOVEMEBR
1984 RIOT AFFECTED BORROWERS.**

This is in reference to the above and we would like to remind your our letter dated 28.4.92, 8.6.92, and 30.8.92 in which we informed you that govt. of India have decided to give relief in interest to Nov. 84 riot affected Borrowers. Inspite of our above letters you have not replied us in this connection. We have already recived relief in interest subsidy Scheme from our bankers and they have charged interest @ 6% per annum and have credited our account. We have already sent you the photo copy of banks letter. We are again enclosing photo copy of their letter.

It seems that NSIC have not received any circular from Govt. of India or from Reserve Bank of India. Our Riot Relief Committe filed a writ petition with The Supreme Court of India to include all financial Institutions in this Scheme. We are happy to inform you that Supreme Court of India have given their Judgment as per the writ petition No.457 of 1988. The photo copy of judgment is enclosed.

*Our riot Victim Relief Committee have been pressing the Central Govt that the interest should be charged @ **One Per Cent per annum** from all the Nov. Riot affected Borrowers. We are also very happy to inform you that Govt; of India have agreed that One per Cent interest will be charged from all Nov. 84 Riot affected Borrowers. We are also enclosing herewith photo copy of **Circular No. HO/RD/29/93-94 Dt. 21.09.93.** So we would request you to please charge one per cent interest from Nov 84 to 31st March 1993. In all riot affected cases on actual cost of machine After calculation while charging one per cent interest please write us how much money stands balance in our account or you have to pay us.*

We are sure you will reply us immediately on receipt of this letter and you will close the above mentioned file.

Thanking you,

Yours faithfully”

24. The representations of the Defendants went unheeded. NSIC continued to insist that the Defendants had to pay as per the NSIC scheme and not as per the Central Government revised scheme as notified by the RBI.

25. A perusal of all the pleadings and the evidence on record reveals that the Defendants who were riot affected persons repeatedly approached the Plaintiff for payment of interest @ 1% per annum. Their conduct clearly shows that they have paid all the instalments and were only seeking remission of the interest amount. The Plaintiff ought to have considered their case sympathetically owing to the various circulars of the RBI as also the judgment of the Supreme Court in *Harjit Singh (supra)* read with the Revised Scheme of 1993. The 1984 riots where the Defendants lost their entire factory was sufficient reason for a Government Organisation to have lent a helping hand to the borrowers rather than involving them in this protracted litigation. The riots took place in November 1984 and the hire-purchase agreement was made in 1985. Almost 33 years have passed since the event and the letters on record show that there has been no *mala fides* on behalf of the Defendants. On the other hand the Plaintiff has failed to reply to the repeated representations of the Defendants and even the witness who has appeared claims complete ignorance of these representations.

26. Ld. Counsel for the Plaintiff has submitted that the scheme does not apply to the Defendants. She submits that the Plaintiff is neither a bank nor a financial institution. By a mere reading of this scheme, it is clear that the Defendants ought to be extended the benefit which was granted to other riot

affected borrowers who availed of loans and other facilities from banks and financial institutions. Moreover, as per the Circular of the RBI, the Scheme was made applicable to financial institutions. From the nature of activity undertaken by the Plaintiff i.e., 'hire purchase' being specifically covered as per the reply given by the RBI, there is no reason why the Defendants should not be extended the said benefit.

27. Going by the judgment of the Supreme Court as also the clear and categorical response by the RBI in Ex.D-1/11 that the NSIC which is involved in the letting and delivery of machines and comes under the definition of a financial institution, there can be no doubt that the case of the Defendant is a '*deserving case*' as per the Revised Scheme and the Plaintiff was bound to extend the benefit of the circulars and the said Scheme of the Central Government to the Defendant. The manner, in which the Plaintiff has conducted itself with the Defendants, shows lack of intention of a Government body, to follow the settled judicial precedents and the Government's own policies. The Plaintiff is a Government undertaking which has been set up to support small industries in the country and the Defendants' case definitely falls in the category of an industry which required support in light of the 1984 riots. The Plaintiff, for the purpose of this case, ought to be considered as a Government undertaking or a Financial Institution, involved in support of 1984 riot victims and accordingly, the benefit has been rightly extended by the Trial Court.

28. The Defendants who availed of the Hire-Purchase as far back as in 1985, in the wake of the riots have been dragged into a long-drawn litigation for a period of 30 years. The Defendants fully participated in the trial of the suit and adduced evidence in support of their case till 2016. The Defendants

have also, in a *bona fide* manner, paid all the instalments and sought a remission on interest as per the prevalent policy. The circular of the RBI proved by Defendant No.2 clearly shows that RBI's intention was to extend benefits to riot affected victims. A specific question to the witness of the Plaintiff in respect of IDBI and other similar banks and financial institution has been simply denied. The circular and the Revised Scheme is categorical and clear that only 1% simple interest is liable to be charged even on loans which have been granted after the riots. The stand of the Plaintiff that since the Hire-Purchase Agreement was entered into after the riots, and hence the benefits cannot be extended to the Defendants, is completely illogical, inasmuch as the riots having taken place on November, 1984, the Hire-Purchase could have been taken only in 1985 and not before that. The human element of riot affected victims has been given a complete go-by by the Plaintiff which ought to have lent a helping hand to a small scale industries and entrepreneurs. There is no dishonesty on behalf of the Defendants who, after paying most of the instalments, made repeated representations seeking reduction in the interest on the basis of the policy. The Plaintiff turned a deaf ear to the said requests and did not even bother to reply to the same. The filing of the suit was totally misconceived, especially when the Defendant was willing to pay interest at 1%.

29. The Trial Court had granted Relief to the Plaintiff in the following terms:

“In view of the findings recorded on issue No.2, 3 and 4 suit of the Plaintiff is hereby dismissed but in the totality of circumstances of the case as the public money is involved, Plaintiff is directed to treat the Defendants as deserving case under the “Central

Interest Subsidy Scheme for November 1984 Riot Affected Borrowers” as revised time to time, process the case in accordance with that Scheme and put the Defendants to notice accordingly. If, upon consideration, any amount is found payable, the Defendants shall pay the same in monthly installments of his choice but not less than Rs.5000/- per month. No interest at any rate shall be charged for the litigation period as the litigation took place mainly due to refusal on the part of the Plaintiff to extend the benefits of the aforesaid scheme to the Defendants resulting into harassment of the Defendants and wastage of precious judicial time; and also for the period Plaintiff takes to inform the Defendants any outstanding upon reconsideration in compliance of the present direction. It is made clear that Plaintiff shall calculate amount charging simple interest @1% per annum upto the date of institution of the present suit and not for period thereafter. If after extending the benefits in accordance with the aforesaid scheme, any outstanding is found due a simple interest @1% per annum shall be charged on reducing balance from the date of intimation in writing to Defendants against receipt, till the clearance of the dues.”

30. The impugned judgement does not warrant any interference. It is further clarified that no interest would be chargeable for the period of pendency of the appeal. Costs of Rs.50,000/- shall be deductible from the interest amount which has been awarded to the Defendants for the long drawn litigation that they have been made to undergo since 1995 till 2016 i.e. for more than two decades. The impugned judgment/decreed is modified in the above terms.

PRATHIBA M. SINGH, J.
Judge

MAY 19, 2018/Rahul