NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 7-8-2019

Delivered on 30-8-2019

FA No. 41 of 2003

1. M/s Rajaram And Brothers through Suryakant Gupta aged about 50years son of late Shri Rajaram Gupta, resident of Kamal Nivas, Kailash Nagar, Rajnandgaon, CG.
2. Suryakant Gupta, aged about 50 years, son of late Shri Rajaram Gupta, resident of Kamal Nivas, Kailash Nagar, Rajnandgaon (CG).

---- Appellants/defendants.

Versus

- Punjab National Bank through Branch Manager, Kamthi Line, Rajnandgaon, Dist. Rajnandgaon (CG).

---- Respondent/plaintiff.

For appellants	:	Mr. P.K.C. Tiwari, Sr Advocate with Mr. Ashutosh Trivedi, Advocates.
For respondent	:	Dr (Mr).N.K. Shukla, Sr. Advocate with Mr. Ashwin Panikar, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 28-11-2002 passed by the District Judge, Rajnandgaon (CG) in Civil Suit No. 2-B/96 wherein the said court decreed the suit filed by the respondent/plaintiff against appellants/defendants for recovery of Rs.56,000/- with interest.

2. Respondent/plaintiff filed a civil suit for recovery of Rs.56,000/- on 7-3-1996 which was registered as Civil Suit No. 2-B/1996 before the trial Court. Appellants/defendants filed written statement and counter claim on 9-7-1996. The main dispute between the parties is with respect to entries made on 6-10-1993 in the ledger pertaining to the defendants marked as Ex. P/11 (D& E). There was a credit balance in the account to the extent of Rs.304/- on 6-10-1993. Two entries with respect to penal interest were made. Respondent bank has not mentioned the grounds for charging penal interest and not explained on what ground the bank is entitled for higher rate of interest. The bank officials inspite of specific questionings could not explain the grounds for charging penal interest and they are also not able to prove on what basis the bank can further charge interest on the amount of interest when the principal amount was not due to the borrower and had amount in his credit on the date of charging of the said interest.

3. Learned counsel for the appellants would submit that the trial court has not properly appreciated the evidence of Shri M.L. Pandey (PW/1) who deposed before the trial court that without perusal of ledger of the period of his incumbency he cannot say that the transaction of the appellants was satisfactory or not. He further deposed that the ledger of that period is not filed in the case. He would further submit that the trial court has not

appreciated the provisions of Section 21(A) of Banking Regulation Act 1949 . The court has to examine as to whether the interest has been applied for as per circular of Reserve Bank of India or the contract between the parties or not. The trial court erred in holding that counter claim is barred by limitation. The trial court has not evaluated the evidence in its true perspective, therefore, the same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondent would submit that the finding of the trial court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether statement of account contains particulars or details of debit entries. As per Ex.P/11 on 16-9-1993 the amount of Rs.304/- is credit entry. It means, no amount was in debit side and contrary to that there was credit entry of Rs.304/- which shows that the appellants were not liable to pay any amount to the Bank. Gyanchand Kothari (PW/3) admitted that credit entry of Rs.304/- is made in the bank account (para 4). He deposed that interest which is subsequently entered into account on 16-10-1993 to the tune of Rs.18,706/- can be ascertained only after register is produced, but no register was

produced before the trial Court regarding entries made as interest subsequent to credit entry of Rs.304/-. The bank is under obligation to submit particulars or details of debit entries as per law laid down by Hon'ble the Supreme Court in the matter of **Central Bank of India vs. Ravindra and others, reported in 2001 AIR SCW 4468 (para 55).**

7. From the evidence of Gyanchand Kothari (PW/3) it is clear that on 27-5-1993 the operation of account was closed (para4). When the operation of account is closed the respondent was under obligation to inform the appellant regarding debit entries and the period of interest or penal interest but that is not done in the present case. The trial court recorded finding that the court is not competent to appreciate about interest (judgement para 19 and 20). Finding of the trial court is not sustainable because in the present case account was earlier closed and thereafter interest was charged and it was not informed regarding period of interest and regarding penal interest, therefore, finding of the trial court is not sustainable.

8. Accordingly, the appeal is allowed and decree is passed in favour of the appellants and against the respondent as under:

i) The suit filed by the respondent/plaintiff is dismissed with cost.

ii) Parties to bear their own costs.

iii) Pleader's fee, if certified, as per schedule or whichever is less.

iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju