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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 169 of 2019**

Anand Ram S/o Morandmal Aged About 77 Years R/o Ganj Road Navapara, Rajim District Raipur Chhattisgarh. (Wrongly Mentioned As District Gariyaband).

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary Cooperative Department, Mantralaya Mahanadi Bhawan, New Raipur District Raipur Chhattisgarh.
2. Joint Registrar Cooperative Societies Raipur Division District Raipur Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur Division District Raipur Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through Officer In Charge, Navapara Tahsil Rajim District Raipur Chhattisgarh. (Wrongly Mentioned As District Gariyaband).
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through G.P. Yadav, S/o Late C.M. Yadav Aged 58 Years, Senior Aavas Supervisor And Office Incharge At Present, Officer Ar C-1, 191 First Floor, Tagore Nagar District Raipur Chhattisgarh.

---- Respondents**Writ Appeal No. 195 of 2019**

Rajesh Kumar S/o Late Jeuram Aged About 47 Years R/o Ganj Road Navapara Rajim District Raipur, Chhattisgarh (Wrongly Mentioned As District Gariyaband).

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Cooperative Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Joint Registrar Cooperative Societies Raipur Division, District Raipur, Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur Division, District Raipur Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through Officer In Charge Navapara, Tehsil Rajim, District Raipur, Chhattisgarh (Wrongly Mentioned District Gariyaband).
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through C.P. Yadav, Son Of Late C.M. Yadav, Aged About 58 Years, Senior Aavas Supervisor And Office Incharge At Present, Officer At C - 1, 191 First Floor, Tagore Nagar District Raipur, Chhattisgarh.

---- Respondents**Writ Appeal No. 171 of 2019**

Premchand S/o Aadatmal Aged About 64 Years R/o Ganj Road Navapara Rajim, District - Raipur, Chhattisgarh, (Wrongly Mentioned As District Gariyaband).

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary Cooperative Department, Mantralaya Mahanadi Bhawan, New Raipur, District - Raipur Chhattisgarh.
2. Joint Registrar Cooperative Societies Raipur Division District Raipur Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur Division District Raipur Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through Officer In Charge, Navapara, Tahsil Rajim, District - Raipur Chhattisgarh. (Wrongly Mentioned District Gariyaband).
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through C.P. Yadav, S/o Late C.M. Yadav, Aged About 58 Years, Senior Aavas Supervisor And Office Incharge At Present, Officer At C-1, 191 First Floor, Togore Nagar, District - Raipur Chhattisgarh.

---- Respondents

Writ Appeal No. 175 of 2019

Gurumukh Das S/o Manikmal Aged About 28 Years R/o Ganj Road Navapara, Rajim District Raipur Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Cooperative Department, Mahanandi Bhawan, New Raipur District Raipur Chhattisgarh.
2. Joint Registrar Cooperative Societies Raipur Division District- Raipur, Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur, Division District- Raipur, Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through Officer In Charge,navapara Tahsil Rajim District Gariyaband, Chhattisgarh.
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through G.P. Yadav S/o Late C.M. Yadav Aged 58 Years, Senior Aavas Supervisor And Office Incharge At Present, Office Ar C-1, 191 First Floor, Tagore Nagar District- Raipur, Chattisgarh.

---- Respondents

Writ Appeal No. 173 of 2019

Dharamchand S/o Aadatmal Aged About 57 Years R/o Ganj Road Navapara Rajim District- Raipur, Chhattisgarh (Wrongly Mentioned As District- Gariyaband).

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary Cooperative Department, Mantralaya Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh.
2. Joint Registrar Cooperative Societies Raipur Division District- Raipur, Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur Division District- Raipur, Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through Officer In Charge, Navapara, Tehsil Rajim, Disrtict- Raipur, Chhattisgarh (Wrongly Mentioned Disrtict- Gariyaband).
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through C.P. Yadav. S/o Late C.M. Yadav, Aged About 58 Years, Senior Aavas Supervisor And Office Incharge

At Present, Officer At C-1, 191 First Floor, Tagore Nagar District- Raipur, Chhattisgarh.

---- Respondents

Writ Appeal No. 174 of 2019

Sugnamal S/o Mayaram Aged About 76 Years R/o Ganj Road Navapara Rajim District Raipur Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary Cooperative Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Joint Registrar Cooperative Societies, Raipur, Division District- Raipur, Chhattisgarh.
3. Deputy Registrar Cooperative Societies Raipur, Division District Raipur, Chhattisgarh.
4. Indira Grih Nirman Sahkari Samiti Maryadit Through- Officer In Charge, Navapara Tahsil Rajim, District- Raipur, Chhattisgarh. (Wrongly Mentioned District Gariyaband).
5. Chhattisgarh Rajya Sahkari Aavas Sangh Maryadit Through G P Yadav, S/o Late C M Yadav, Aged About 58 Years, Senior Aavas Supervisor And Office Incharge At Present, Officer At C-1, 191 First Floor, Tagore Nagar District Raipur Chhattisgarh.

---- Respondents

For Appellant	: Shri Akhilesh Kumar, Advocate.
For Respondent/State	: Shri Gagan Tiwari, Deputy Government Advocate and Shri Faiz Kazi, Panel Lawyer.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

Judgment on Board

17/05/2019

Per P.R. Ramachandra Menon, Chief Justice

1. A common issue is involved in all these appeals and hence, they are taken together treating Writ Appeal No.169 of 2019 as the lead case.
2. We have heard the learned counsel appearing for the Appellants in all the cases and the learned counsel representing the Government.
3. The sequence of events reveals that the 4th Respondent, a Primary Society, with intent to disburse housing loans to its members, made arrangements with the 5th Respondent Society/apex body for procurement and distribution, subject to

some specific terms. Admittedly, the Appellants are members of the 4th Respondent/Primary Society and they made an application for housing loan. This was considered and on pointing out the requirements, necessary money was pumped in by the 5th Respondent to be distributed to the beneficiaries through the 4th Respondent. Necessary documents were got executed; particularly as to the different installments to be satisfied, the interest to be paid and also the consequences, if at all any default was there with regard to payment of installments on time, which was to carry additional interest, described as 'penal interest' at the rate of 3%. The original rate of interest varied from 9 to 11.50% or 12.5%, as the case may be.

4. The Appellants, after availing the loan, admittedly could not repay the installments, on time, which made them defaulters. Met with the situation, appropriate proceedings were taken to recover the amount due and it was accordingly, that the matter was listed for consideration before the Deputy Registrar Cooperative Societies, on filing an application in terms of Section 84A(1) of the Chhattisgarh Cooperative Societies Act, 1960. The matter was considered and after appreciation of the evidence on record, Annexure P/2 verdict was passed by the Deputy Registrar on 11.11.2005 directing payment of the arrears with 9% interest, however, declining to grant the 'penal interest' as mentioned above. This was sought to be challenged by the 5th Respondent stating that the amount due had to be satisfied in terms of the loan and as such, the 'penal interest' was also liable to be recovered, which otherwise would be a burden upon the 5th Respondent-Society who had procured the funds from different sources and was bound to compensate the sources. This however was not appreciated properly by the Joint Registrar who dismissed the appeal as per Annexure P/3. The matter was taken up further before the Additional Registrar at the instance of the 5th Respondent, who considered the matter and remitted the same for fresh

consideration. Still, this did not tilt the balance in any manner and the Deputy Registrar reiterated his stand by passing Annexure P/5, order whereby the arrears were ordered to be satisfied only with of 9% interest, without granting penal interest. The matter was taken up before the Joint Registrar at the instance of the 5th Respondent who declined interference and dismissed the appeal as per Annexure P/6. The 5th Respondent, by virtue of the vested rights, moved the Tribunal for interference but the same did not turn to be fruitful and the appeal came to be dismissed as per Annexure P/7. The 5th Respondent approached this Court by filing a writ petition wherein Annexure P/8 judgment was passed on 09.08.2016, whereby the impugned order was set aside and the matter remitted to the Co-operative Tribunal for fresh consideration. It was considered by the Tribunal again who passed Annexure P/9 order on 21.02.2018, refusing to grant 'penal interest', which was subject matter of challenge in the subsequent writ petition filed before this Court at the instance of the 5th Respondent.

5. After hearing both the sides, a threadbare analysis was made by the learned Single Judge. It was held that there was no dispute with regard to the procurement of loan, the instance of default made by the borrowers, their liability to pay interest and such other relevant aspects. The observations as contained in paragraphs-11 and 12 of the judgment under challenge are relevant, which are reproduced below for convenience and reference :

“11. Para 4 of the recovery application pleads that the borrowers have failed to make payment of the principal, interest, penal rent and installments and in reply to this part of the pleadings, the borrowers specifically admitted in so many words that due to adverse financial condition they have committed default in repaying the installments. Thus, non-payment of the installments is an admitted position before the Deputy Registrar.

12. Once it is found that the Agreement contains a clause authorizing the petitioner to recover penal interest @ 3% per annum and such pleadings of default in payment of installments have been made in the application, which have been admitted by the borrowers

in their reply before the Deputy Registrar, the finding recorded by the Cooperative Tribunal that the petitioner has failed to prove non-payment of installments by the borrowers, is rendered perverse. The finding is absolutely contrary to the terms of the Agreement and the pleadings made by the parties.”

6. The learned counsel for the Appellants submits that the observation made by the learned Single Judge in paragraph-12 that the Appellants had admitted payment of penal interest is not at all correct. But the reference in the said paragraph with regard to the admission made is with reference to the 'default in payment of installments' of the loan procured by the Appellants. Once, that is admitted, the other relevant facts, also forming part of the agreement and the transaction will also have to be given effect to. The factual position was sought to be substantiated by the 5th Respondent by raising specific pleadings and by adducing evidence before the forum as mentioned above.

7. Obviously, the dispute is only with regard to the liability to pay 'penal interest' at the rate of 3% p.a. on default to pay the timely installments. The disputed interest though labelled as 'penal interest', in fact, it also accounts for 'differential interest' as well. There is no dispute that there was default on the part of the Appellants who are the borrowers, as to the satisfaction of timely installments. When the timely installments are not satisfied, then it goes without saying that, over and above the 'simple interest' to be paid, the amount that should have been satisfied by installments at different points of time, would also have generated some interest and it cannot be said that it has to be suffered by the financier who extended the loan. The liability pursuant to the loan has to be satisfied in toto by the borrower and as such, there is nothing wrong in the course pursued in finalising the matter.

8. The learned counsel submits that there was a specific contention for the Appellants that Annexure P/10 was actually not an agreement and that there is no privity of contract between the Appellants/borrowers and the 5th Respondent. We

find it difficult to agree to the said proposition. The liability arising from the very same loan transaction with the involvement of the 5th Respondent is not sought to be challenged. In other words, liability to pay the arrears with interest as claimed by the 5th Respondent stands conceded and dispute is only with regard to payment of 'penal interest'. The relevant terms and conditions in the very same document executed in this regard cannot be sought to be accepted on a pick and choose basis and the Appellants cannot approbate or reprobate simultaneously.

9. The scrutiny made by the learned Single Judge is perfectly in order. The finding is supported by proper reasoning. In the said circumstances, interference is declined. All these appeals stand dismissed as devoid of any merit.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Manindra Mohan Shrivastava)
JUDGE