

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION NO. 115 OF 2018

Hotel Banarasi Inn. Pvt. Ltd.

.. Petitioner

Vs.

Bank of Baroda & Ors.

.. Respondents

Mr. Aaditya Pimple a/w. Mr. T. N. Tripathi and Ms. Kalyani Wagle i/b
T. N. Tripathi & Co. for the Petitioner.

Mr. Rabindra Hazari a/w. Mr. Khozem Mukhtiar for Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 15th NOVEMBER, 2019.

P. C. :

1. Being informed that Petitioner No.3B having died issueless and being not married resulting in his brothers Petitioner Nos. 2 and 3A being the legal representatives, we make an entry in the record in red ink by recording the said fact.

2. We have heard learned Counsel for the parties at the stage of admission to finally dispose of the Writ Petition.

3. The Respondent-Bank filed an original application before the Debt Recovery Tribunal seeking decree in sum of ₹ 89,91,185/-. The claim was that Hotel Banarasi Inn Pvt. Ltd. had availed a loan and its directors stood not only as guarantors but consented to them being

treated as principal borrowers. As per the indenture document, loan had to be repaid with interest @ 14.5% p.a. with monthly rests.

4. Decreeing the claim; fastening jointly and severally liability on the defendants, pendente lite and future interest was also awarded @ 14% p.a. with monthly rests.

5. The decision dated 19.03.2010 passed by the learned Judge, Debt Recovery Tribunal does not reveal that the Presiding Officer of the Tribunal focused on the point whether contractual rate of interest be awarded on the claim decreed towards pendente lite and future interest exercising jurisdiction under Section 34 of the Code of Civil Procedure which admittedly is the source of the power of the Tribunal to award pendente lite and future interest in view of the law declared by the Supreme Court in the decision reported as *AIR 2001 SC 3095 Central Bank of India Vs. Ravindra & Ors.* and (2009) 11 SCC 60 *C. K. Sasankan Vs. Dhanalakshmi Bank Ltd.*

6. The Petitioners were aggrieved by the decision dated 19.03.2010 and filed Appeal No. 106 of 2010 before the learned DRAT which dismissed the Appeal vide impugned order dated 29.11.2017 noting inter-alia award of interest @ 14% p.a. with monthly rests ordered by the Tribunal was prayed to be set aside.

7. Vide impugned order dated 29.11.2017 learned DRAT dismissed the Appeal in its entirety and from the perusal of the impugned order we find that just as the Tribunal failed to consider at what rate pendente lite and post decretal interest needs to be awarded exercising power under Section 34 of the CPC, the learned DRAT has also committed said error.

8. Notwithstanding all and sundry grounds urged in the Writ Petition, the learned Counsel for the Petitioner restricts the challenge to the impugned order limited to the pendente lite and post decretal interest awarded @ 14% p.a. with monthly rests.

9. The two aforementioned decisions guide that; firstly penal interest if charged by a bank cannot be capitalized that unhealthy practices have slowly penetrated into the banking system and borrowers find themselves unwittingly fall into a trap rendering themselves liable and obliged to pay interest, the quantum whereof at the end proves to be ruinous. That interest charged and capitalized in manifold compared to the amount actually advanced. The decision note that the rule of damdupat does not apply. Thus, the Tribunal should advert their attention to the pendente lite and post decretal interest.

10. In the instant case, the bank has not charged any penal interest and the question therefore of the same being capitalized does not arise.

11. Noting that the credit was advanced on 22.12.2001 and that when the O.A. was filed benefit of interest as per agreement was reflected in the claim amount and the fact that there has been a steady fall in the rate on which bank received deposit an advance loans, exercising power under Article 226 of the Constitution of India we declare the pendente lite and future interest would be @ 14% p.a. as simple interest; not to be compounded.

12. Thus, the Writ Petition is disposed of allowing Appeal No. 106 of 2010 setting aside the order dated 19.03.2010 passed by DRT No. III to the extent pendente lite and future interest has been directed to be compounded with monthly rests. We clarify the sum decree, being ₹89,

91,185/-, shall be paid with simple interest @ 14% p.a. from the date when the original application was filed till date of realization.

13. No costs.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

Digitally signed
by Arjun M.
Kadam
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2019.11.18
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