IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.87 of 2017 (O&M)
Date of Decision.11.02.2019

Punjab National Bank ...Appellant

Vs

Sahib Singh ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kumar Goyal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal at the instance of the appellant-plaintiff/bank is directed only against part of the judgment and decree whereby rate of interest as allegedly stipulated in the hypothecation agreement had not been granted by the trial Court and as well as lower Appellate Court.

The appellant-plaintiff sought recovery of an amount of ₹1,30,624/- along with pendente lite and future interest @9% per annum with yearly rests in KCC account and ₹5,57,953/- along with pendente lite and future interest @16.75% per annum with half yearly rest in tractor loan account and ₹67,351/- along with pendent lite and future interest @16% per annum with half yearly rest in debt swap loan account taken by the defendant vide execution of the hypothecation agreement/letter of undertaking. It was alleged that defendant had also executed a collateral security vide mortgage deed dated 22.01.2010 registered on same date.

Defendant opposed the suit on various grounds and alleged that it was simple mortgage and the bank had agreed to extend the facility of loan at the lowest rate of interest of 6%.

Mr. Amit Kumar Goyal, learned counsel appearing on behalf of the appellant has drawn attention of this Court to Annexure A-1 i.e. typed relevant extract of loan agreement sought to be placed on record as additional evidence, by way of applications bearing No.2300-2302-C of 2019, to establish that the rate of interest agreed between the parties was in tandem with pleadings but the Courts below calculated the interest in a most whimsical manner. He also submitted that lowest circular interest on the advances issued by the Reserve Bank of India envisaged that the Benchmark Prime Lending Rate (BPLR) should be considered by the Bank by taking into account actual cost of funds, operating expenses and minimum margin to cover regulatory requirement of provisioning/capital charge and profit margin and ceiling rate for credit limit would be upto ₹2 lakhs. All other lending rates can be determined by taking into account the term and/or risk premia.

By way of additional evidence, reliance has also been laid to Annexure A-3 i.e. circular dated 30.04.2009 Punjab National Bank, Risk Management Division to all the offices stating that term premia of 0.50 to be added for arriving at interest rate in respect of all loans, which are repayable in three years and above. The aforementioned circular could not be placed on record before the trial Court, therefore, provisions of Order 41 Rule 27 CPC had been invoked enabling this Court to arrive at factual and proper adjudication of the *lis.* In order to lend support to the aforementioned submissions, cited to the ratio decidendi culled out by Hon'ble

Supreme Court in ***Syndicate Bank Vs. R. Veeranna and others 2003 (1) RCR (Civil) 466*** that Courts cannot interfere with the internal instructions of the Bank on interest as they do not vary the terms of agreements between the parties. In other words submitted that Court had no jurisdiction to deviate from the contractual rate of interest.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Column No.4 of Hypothecation agreement Ex.P7 is extracted herein below:-

> *"4. That the borrower(s) shall pay interest on the loans to be calculated on the daily balances in the loan account(s) with half yearly/yearly or other rests according to the practice of the Bank and as per the guidelines as applicable/issued by RBI from time to time as may be applicable at the rate of @ % above/below the Prime Lending rate of Bank/RBI. Rate rising and falling therewith or at such other rate as may be decided by Bank from time to time, with a minimum rate as may be decided by Bank from time to time, with a minimum of @% per annum."*

It would be in the fitness of things to extract relevant portion of Annexure A-1 sought to be placed on record by way of additional evidence. The same reads as under:-

> ***"LENDING RATE STRUCTURE (IN @ p.a) FOR ADVANCES***
>
> *Term premia of 0.50 is to be added for arriving at present rate in respect of loans repayable in 3 years & above.*

1. Agricultural & Small Enterprises Advances (SSI)

a) Advances upto Rs.50,000/-	***w.e.f. 1.2.2009***	***w.e.f. 01.05.2009***
i) Agricultural production credit including KCC advances	*BPLR minus 0.75*	*BPLR minus 0.75*
ii) Agrl term loans	*BPLR*	*BPLR*
iii) PNB Kalyani Card	*BPLR minus 1.00*	*BPLR minus 1.00*
iv) Small Enterprises Advances (SSI)	*BPLR minus 0.50*	*BPLR 0.50*
iva) Small Entp. (micro entp.)	*BPLR minus 1.00**	*BPLR minus 1.00**
b) Advances over Rs.2 lakh but upto Rs.20 lakh	*BPLR*	*BPLR*
d) Advances over Rs.20 lakh	*As per credit risk rating*	*As per credit risk rating*

(*) In case of micro enterprises with a limit upto Rs.50,000/- the rate of interest is BPLR minus 1% i.e. 10% w.e.f. 1.5.09.

	Interest rate as on	
Credit Risk Rating	***w.e.f. 1.2.2009***	***w.e.f. 01.05.2009***
AAA	*BPLR*	*BPLR*
AA	*BPLR + 0.50*	*BPLR + 0.50*
A	*BPLR + 1.00*	*BPLR+ 1.00*
BB	*BPLR + 1.50#*	*BPLR + 1.50#*
B	*BPLR + 2.00#*	*BPLR + 2.00 #*
C	*BPLR + 2.00#*	*BPLR+2.00#*
D	*BPLR + 2.00 #*	*BPLR + 2.00 #*

 # Financing under Capital Investment Subsidy Scheme of National Horticulture Board for construction/expansion/modernization of cold storages and storages for horticulture produce, will continue @ BPLR + 1.00.

e) Concession in the interest rates, is to be extended to SME borrowers having CRISIL/SMERA rating grades ranging from 1-3 out of total 8 rating grades. SME borrowers falling in first two rating grades i.e. 1 & 2 may be given concession of 0.50% and borrowers rated in grade-3 *may be given concession of 0.25% in interest rates for respective category of borrower(s). However, it is to be ensured that at a time only one concession will be admissible to the borrowers having good rating of SMERA as well as CRISIL.*

f) Interest is 7% p.a. In the regular Crop loan/KCC accounts on running balance outstanding upto Rs.3 lakh. On the irregular accounts/outstanding beyond Rs.3 lakh, normal rate of interest is to be charged. The above guidelines are applicable for the year 2009-10 also and are linked to the subvention of 3% as per GOI/RBI guidelines. (Please also refer PS&LB Divn., HO circular in this regard).

2. Tractor Loans

w.e.f. 1.2.2009	***w.e.f. 01.05.2009***
BPLR	BPLR

Clause 2.3. of the RBI Circular reads as under:-

"2.3 <u>Determination of Benchmark Prime Lending (BPLR)</u>

2.3.1. In order to enhance transparency in banks' pricing of their loan produce as also to ensure that the BPLR truly reflects the actual costs, banks should be guided by the following consideration while determining their Benchmark PLR:

a) Banks should take into account their (i) actual cost of funds, (ii) operating expenses and (iii) a minimum margin to cover regulatory requirement of provisioning/capital charge and profit margin, while arriving at the benchmark PLR. Banks should announce *a Benchmark PLR with the approval of their Boards.*

(b) The Benchmark PLR will be the ceiling rate for credit limit up to Rs.2 lakh.

(c) All other lending rates can be determined with reference to the Benchmark PLR arrived at as above by taking into account term premia and/or risk premia.

Details guidelines on operational aspects of Benchmark PLR have been issued by IBA on November 25, 2003."

On perusal of Clause 4 extracted herein above, the space for rate of interest has been kept blank except with the symbol @. The rate of interest had been written on the left side, though every page of the hypothecation agreement signed by the loanee/creditor and the same is reproduced herein below:-

"1. @ KCC BPLR 1% min 10%

2. Tractor BPLR +TP Min 11 ½

3. Debt Swap BPLR + TP Min 11 ½"

It is not deciphered whether the rate of interest was written at the time of extension of loan or subsequent thereto as such an impression has been drawn that signatures were taken without any writing. The argument that the rate of interest could not be added owing to lack of space cannot be a ground as no witness of the Bank stated in the aforementioned terms for the simple reason that defendant had emphatically denied the claimed rate of interest.

In my view, plaintiff-Bank miserably failed to prove that rate of interest was written at the time of disbursement of loan or signing of the document as it remained a mystery. In such circumstances, the Courts below, in my view, have rightly applied provisions of Section 34 CPC by granting interest @6% per annum. The arguments of Mr. Goyal have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No