IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1925 OF 2020

Kamaljitsing Kulwantsing Gujral,
Age : 53 years, Occ. Business,
r/o. Timber Market,
Behind Pandurang Temple,
Bhusawal, Dist. Jalgaon
and anr. ..Petitioners

Vs.

Punjab National Bank,
having its Head Office at
Bhikani Kama Palace,
New Delhi,
Through its Branch Manager,
Bhusawal Branch,
Dist. Jalgaon
and anr. ..Respondents

Mr.S.P.Shah, Advocate for petitioners
Mr.K.C.Sant, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 15, 2021
PRONOUNCED ON : FEBRUARY 16, 2021

ORDER :-

Heard learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated 15.02.2019 passed by learned 5th Joint Civil Judge, Junior

Division, Bhusawal, on application Exhibit-13 in Regular Darkhast No.28 of 2012 (execution proceedings). By the impugned order, learned Judge has directed the petitioners to pay compound interest at the rate of 17% per annum.

3. Respondent no.1 herein is a nationalised bank. It had filed a suit, being Special Civil Suit No.357 of 1996, against the petitioners herein for recovery of the amount of Rs.2,42,000/- advanced as a loan for purchase of a truck. The petitioners (defendants in the suit) had claimed set-off. The Trial Court dismissed the suit vide judgment and order dated 13.04.2004. It allowed the set-off. The respondent-bank preferred appeal, being Civil Appeal No.414 of 2014, against the judgment and decree passed in Special Civil Suit No.357 of 1996. The appeal was partly allowed. The judgment and decree passed in Special Civil Suit No.357 of 1996 was modified. The petitioners initiated execution proceedings, being Regular Darkhast No.28 of 2012. They preferred application (Exh.13) calling upon the respondent/bank to submit calculations as per the terms of decree passed by the appellate

Court in Regular Civil Appeal No.414 of 2014. The respondent/ bank submitted the calculations. The petitioners disputed the same contending that the respondent-bank has charged compound interest. After hearing the petitioners and the respondent-bank, the executing Court, vide its order impugned herein, directed the petitioners to pay compound interest at the rate of 17% per annum. This order is under challenge in this Writ Petition.

4. Mr.Shah, learned counsel for the petitioners, would submit that the executing Court cannot travel beyond the decree. The decree passed by the trial Court has merged into a decree passed in appeal. The terms of decree are as plain as day light. In terms of the decree, the petitioners are directed to pay interest at the rate of 17% per annum. The same indicates the petitioners to have been directed to pay simple interest.

5. Mr.Sant, learned counsel for respondent-bank, would, on the other hand, submit that the relationship between

the petitioners and the respondent – bank was that of a borrower and a lender. The loan was advanced for commercial transaction. The petitioners executed loan related documents, such as loan agreement, deed of hypothecation, etc, whereunder, they had agreed to pay interest at the rate of 17% per annum with quarterly rests. Learned counsel has relied on the decisions of the Hon'ble Apex Court in the cases of (i) **Corporation Bank Vs. D.S.Gowda and anr., 1994 AIR SCW 2721**; and (ii) **Central Bank of India Vs. Ravindra and ors., AIR 2001 SC 3095**.

6. True, it was a commercial transaction. Grant of interest, *pendente lite* and post, is governed by Section 34 of the Code of Civil Procedure ("the Code", for short). For better appreciation, Section 34 of the Code is reproduced below:-

> ***34. Interest***.- *(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior*

to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.- In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

7. The suit filed by the respondent-bank was dismissed. Set-off claimed by the petitioners was allowed. The decree passed by the trial Court was set aside in Regular Civil Appeal No.414 of 2014. The appeal was allowed in terms of the following order :-

> *"1. Appeal is partly allowed, both parties to bear their own costs.*
>
> *2. The judgment and decree passed by the Civil Judge (S.D.), Jalgaon, in Special Civil Suit No.357 of 1996 is modified as under.*
>
> *(i) Special Civil Suit No.357/1996 decreed, both parties to bear their own costs.*
>
> *(ii) Defendants No.1 to 3 jointly and severally directed to pay Rs.1,93,250/- (One Lakh Ninety-three Thousand Two Hundred Fifty only) to the plaintiff bank along with interest at the rate of 17% p.a. from the date of suit i.e. from 5/10/1996 till realisation of the amount.*
>
> *(iii) Plaintiff bank is directed to give set-off of Rs.1,38,838/- (One Lakh Thirty Eight Thousand Eight Hundred Thirty Eight only) to the defendants along with interest on it at the rate of 13% p.a. from the September, 1991 til the decision of this appeal.*
>
> *3. Decree shall be drawn accordingly."*

8. Clause 2(ii) of the decree passed by the appellate Court directs the petitioners to pay the respondent-bank a sum of Rs.1,93,250/- with interest at the rate of 17% per annum from the date of the suit till realisation of the amount. The order directing payment of interest at the rate of 17% per annum from the date of the suit till the date of realisation of the amount, shall be taken to have been passed in exercise of the powers under Section 34 of the Code. It may be mentioned that the power to grant interest *pendente lite* and post is discretionary. Here, the appellate Court has specifically directed to pay interest at the rate of 17% per annum. It is to be taken that the appellate Court has consciously refused to direct to pay compound interest.

9. The facts in the case of **Corporation Bank** (supra) indicate that the matter was carried to the Hon'ble Supreme Court in appeal against the decree. The respondent-bank, therefore, would not be benefited by placing reliance on the said judgment. In the case in hand, the decree passed in the

suit filed by the respondent-bank for recovery of the amount has attained finality. It is a well known proposition of law that the executing Court cannot go beyond the decree.

10. So far as reliance on the judgment in the case of **Central Bank of India** (supra) is concerned, it is to be stated that the Apex Court has interpreted the term "principal sum adjudged" occurred in Section 34 of the Code. Perusal of the decree in question, it would be crystal clear that the sum adjudged is Rs.1,93,250/-, on which the petitioners have been directed to pay interest at the rate of 17% per annum.

11. The executing court passed the impugned order with the following reasons:-

> *8] In the present case the JD Bank had sanctioned and disbursed vehicle loan Rs. 2,42,000/- to the DH to purchase truck. Hence the relationship between the parties is that of the borrower and money lender. Perusal of the Letter of Hypothecation dated 28 June 1991, it is transpired that the DH has agreed to pay an interest at the rate of 17% p.a. with quarterly rests. The Hon'ble District Court, Bhusawal in C.A. No. 414/2014 modified the judgment and decree in said suit and directed the DH to*

pay Rs. 1,93,250/- (One Lakh Ninety Three Thousand Two Hundred and Fifty Only) to the plaintiff bank along with interest at the rate of 17% p.a. from the date of suit i.e. from 05/10/1996 till realization of the amount. This being a commercial loan, the amount quarterly added to the amount of loan is entitled as principal amount. Hence the principal amount found due not only menas principal amount but also the amount due as interest which has become part of the principal sum. So if the borrower fails to pay interest in accordance with the contract, he is liable to pay interest on interest. To put it differently, when the interest payable is not paid, the same becomes a part of the principal and thereafter interest has to be paid not only on original principal but also on the part of the interest, which had become a part of the principal. Hence in case of the relationship between the mortgagee and mortgagor, the charging of interest would be governed in accordance with the terms and agreement. As per the clause 4 of the Hypothecation deed the DH had agreed to pay interest at the rate of 17% p.a. with quarterly rests. Moreover issue of calculating the interest to be simple has not been raised by the DH through out the proceeding in trial Court. Hence in view of the above discussion the claim of the DH to pay interest with simple rate of interest is liable to be rejected and the JD bank is entitled to claim compound interest."

12. The aforesaid reasons are inconsistent with the terms of decree. The executing Court has to execute the decree as it is. The terms of decree are not susceptible to more than one interpretation. The reasons given by the executing Court may be concerning as to how the term "principle sum adjudged" is to be arrived at. At the cost of repetition, it is stated that under the decree, the petitioners have been directed to pay the respondent-bank a sum of Rs.1,93,250/- with interest at the rate of 17% per annum from the date of the suit till realisation of the amount. The executing Court ought to have interpreted it as a simple interest and not compound interest. Interference with the impugned order is, therefore, called for.

13. Writ Petition is allowed. The impugned order is set aside. The executing Court is directed to execute the decree considering the petitioners to have been directed to pay simple interest.

[**R.G. AVACHAT, J.**]

KBP