IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.814 OF 1997

Central Bank Of India : Appellant
Vs.
M/s Desai Vicaji And Co. And Ors. : Respondents

Adv. Geeta R. Shastri, for the Appellant.
None for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 1ST APRIL, 2024

P.C. :

1. Heard.

2. Inspite of several chances none appeared for the Respondents. This Appeal is filed by Original Plaintiff/Bank with a limited grievance that though the suit of the bank is allowed in terms of the prayer Clause (a) of the Plaint, the Court has directed to delete the words "Quarterly rests". A challenge is raised to the judgment and order dated 19th February, 1996 passed by this Judge, City Civil Court, Bombay in B.C.C.C. Suit No.3213 of 1979.

3. A suit was filed by the Bank for recovery of amount of Rs.12,747.52 Paisa.

4. Plaintiff Bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970. The Respondents were Defendants in this suit. The parties are referred to by their original status. The Suit was filed against the Defendant No.1 to 3. The Defendants had applied for increase in the cash credit limit of Rs.50,000/- against hypothecation of raw materials and machinery. The Application came to be granted temporarily for a period of three month i.e upto August, 1976. The Defendants also executed a promissory note, a letter of hypothecation, a letter of continuity, a interest confirmation letter, partnership form and a letter regarding operation of the account. On 17th May, 1976, Defendants also executed for a balance confirmation letter showing that as on 10th May, 1976 a sum of Rs.27,942.58 was due and payable in respect of cash credit facility. Certain transactions took place thereafter.

5. On 27th July, 1978 Defendant No.5, the Receiver informed that the Defendant No.3 filed a Suit in the High Court being Suit No.982 of 1978 for dissolution of the partnership. In the said Suit Defendant No.4 had taken out a Notice of Motion in the Suit alleging that Defendant No.5 had wrongfully taken possession of goods as they belonged to the Defendant No.4 and applied for the discharge of the Defendant No.5 in

respect of the said goods belonging to plaintiff. In the said Suit No.982 of 1978 the Plaintiff also took out a Notice of Motion dated 9th August, 1978 claiming that the goods are hypothecated with the Plaintiff. The said Notice of Motion however came to be dismissed for default for appearance of the Plaintiffs. The Notice of Motion taken out by Defendant No.4 also came to be dismissed ordering the Defendant No.4 to file a Suit. The Defendant No.4 thereafter filed a Suit in the City Civil Court, Bombay being Suit No.6342 of 1978 against the Defendants for a declaration that the articles mentioned in the Exhibit 'D' are of the absolute ownership of the Defendant No.4 and such other relief. In this Suit Defendant No.4 took out a Notice of Motion for the appointment of a Court Receiver and for injunction. Ad-interim order came to be passed by the Court.

6. On this background the Plaintiff issued letter through Advocate calling upon Defendant Nos.1, 2 & 3 to pay balance sum of Rs.12,200/- together with further interest thereon at the rate of 13 per cent per annum from 1st January, 1970 till the repayment. The Defendants however did not reply the letter.

7. Plaintiff therefore filed a Suit for recovery of Rs.12,747.52 paisa from the said Defendants with interest at quarterly rests from the date of filing of the Suit.

8. Defendants No. 2A and 2B filed written statement and claimed that in view of admission on the part of Original Defendant Nos.2 & 3. A decree should follow in favour of Plaintiff. In the Suit the Plaintiff examined a witness and proved the documents including document i.e. promissory note at Exhibit-C. The Court considered the evidence and decreed the Suit. However, as stated above by deleting the words "Quarterly rests".

9. Learned Advocate for the Plaintiff argued that the Plaintiff had made out the case to allow the prayer Clause (a) as it is which reads as below.

> ***"(a) That the Defendants Nos.1,2,3 be ordered and decreed to pay to the Plaintiffs jointly and/or severally the sum of Rs.12,747.52 P. as per particulars hereto annexed and marked Exhibit 'F' with further interest on Rs.12,747,52 P. at a rate of 13 percent per annum with <u>Quarterly rests</u> from the filing of the suit till the payment or reslisation; "2(a) and 2(b) to the extent of the estate of the Defendant No.2 that has devolved upon them."***
>
> ***(emphasis supplied)***

10. She submits that by way of demand promissory note the Plaintiff had clearly admitted the liability to pay the amount with quarterly rests when this evidence was before the Court there was no reason to

delete the words “Quarterly rests”. Court has not discussed anything to show as to why the words “Quarterly rests” is deleted. When the Defendants have accepted to pay the interest with quarterly rests, there was no reason for the Trial Court to delete that words. The Court on evidence has accepted the case of the Plaintiff as it is however, still, while till by granting the relief has not granted the interest at quarterly rests. She relied on the judgments reported in (1994) 5 SCC 214 in the Case of ***Corporation Bank Vs. D. S. Gowda & Anr.*** She also relied upon another judgment reported in (2002) 1 Supreme Court Cases, 405 in the case of ***Union of India & Anr. Vs. P. D. Yadav*** & other connected matters. Learned Advocate for the Appellant thus prays to allow the Appeal.

11. From the evidence, that is, Exhibit-C promissory note, it is seen that the Defendant Nos.1 to 3 have promised to pay the amount with interest at quarterly rests. The Defendants have not lead any other evidence so as not to accept Exhibit-C. A question of grant of interest at quarterly rests had fallen for consideration before the Apex Court. The Apex Court in the case of Corporation Bank had considered this aspect. It is held that there is nothing to prevent the parties from agreeing to quarterly rests and such an agreement would be perfectly valid unless it is shown to be opposed to public policy.

12. In the judgment of Central Bank the Apex Court has again reiterated that the issue in the case of Corporation Bank had been correctly decided. Considering all above, this Court finds that the Trial Court has erred in granting prayer Clause (a) by deleting words "Quarterly rests". This Court finds that the Suit ought to have been allowed in terms of prayer Clause (a) which reads as below.

> ***"(a) That the Defendants Nos.1,2,3 be ordered and decreed to pay to the Plaintiffs jointly and/or severally the sum of Rs.12,747.52 P. as per particulars hereto annexed and marked Exhibit 'F' with further interest on Rs.12,747,52 P. at a rate of 13 percent per annum with Quarterly rests from the filing of the suit till the payment or reslisation; "2(a) and 2(b) to the extent of the estate of the Defendant No.2 that has devolved upon them."***

13. Hence the Appeal is allowed without costs.

14. The decree is modified.

15. The Suit is decreed in terms of prayer Clause (a) of Suit.

16. Appeal stands disposed of.

17. In view of the disposal of the Appeal, Interim Application, if any, stand disposed of.

(KISHORE C. SANT, J.)