IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 07.03.2024

(1) **CWP-3380-2024 (O &M)**

UCO BANK

......Petitioner

VERSUS

THE DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION AND ANOTHER

.......Respondents

(2) **CWP-3430-2024 (O &M)**

UCO BANK

......Petitioner

VERSUS

THE DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION AND ANOTHER

.......Respondents

(3) **CWP-5181-2024**

MADHU NANDA

......Petitioner

VERSUS

UCO BANK AND ANOTHER

.......Respondents

(4)

CWP-5222-2024

ANIL NANDA

......Petitioner

VERSUS

UCO BANK AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Vimal Kumar Gupta, Advocate
for the petitioner in CWP-3380-2024 and CWP-3430-2024
and for respondent/Caveator in CWP-5181-2024 and
CWP-5222-2024.

Mr. R.S. Manhas, Advocate
for the petitioner in CWP-5181-2024 and
CWP-5222-2024 and for respondent No.2 in
CWP-3380-2024 and CWP-3430-2024.

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VINOD S. BHARDWAJ, J. (Oral)

CM-3733-CWP-2024 in CWP-3380-2024 ,
CM-3737-CWP-2024 in CWP-3430-2024

For the reasons mentioned in the application, the same is allowed and circulars as well as copy of chart of interest are taken on record as Annexures P-19 to P-44 respectively.

CM-4179-CWP-2024 in CWP-3430-2024 ,
CM-4180-CWP-2024 in CWP-3380-2024

For the reasons mentioned in the application, the same is allowed and Annexures P-45 to P-53 are taken on record.

MAIN CASES

1. Since common issues arise in the present batch of 04 writ petitions, the same are being decided by a common order. While CWP-3380-2024 and CWP-3430-2024 have been preferred by the UCO Bank, CWP-5181-2024 and CWP-5222-2024 have been preferred by the Decree holders.

2. For facility of reference, however, a brief narration of the facts has been extracted from ***CWP-3380-2024*** titled as ***"UCO Bank versus The District Consumer Disputes Redressal Commission and another".***

3. Challenge in the present writ petition is to the order dated 01.12.2023 passed by the learned District Consumer Disputes Redressal Commission, Gurdaspur in Execution Application bearing ***EA/35/2018*** titled as ***"Madhu Nanda versus UCO Bank"*** vide which it has been claimed by the Petitioner-Bank that Executing Court has travelled beyond the judgment dated 11.10.2017 passed by the State Consumer Disputes Redressal Commission , Punjab and has called upon the petitioner to recover interest at a rate lower than the rate as approved by the SCDRC, Punjab in its judgment of 11.10.2017.

4. It is evident from a perusal of the documents that the respondent Ms. Madhu Nanda had approached the District Consumer Disputes Redressal Commission for directions to the petitioners to withdraw the notice of recall of Bank dues as being illegal, null and void and based on false reasons and also requested that her account be updated w.e.f. 01.07.2010 till date by charging the rate of interest as per the agreed rate of interest i.e. the base rate +2% which was also the interest on CC limit and to restrain the petitioner Bank from charging interest as per the old promissory

note plus DPR system which was in violation of the instructions/commitment made by the Bank itself. A compensation towards mental agony and harassment was also claimed by the respondent-consumer. It was averred by her in the above said complaint filed before the District Consumer Disputes Redressal Commission that she had availed of the abovesaid CC limit to the tune of Rs. 20 lakhs and that the petitioners had overcharged the interest from the Consumer notwithstanding that the RBI had introduced base rate system w.e.f. 1.07.2010 whereby the interest had been reduced considerably. Instead of passing on the benefits of the reduced interest rates to the consumer, the petitioner-Bank continued to charge higher rate of interest and even upto 17.5% per annum which was in breach of not only the RBI instructions but also the fair trade practices required to be adhered to by the Bank itself. The request on the part of the respondent-Consumer to the petitioner-Bank to comply with the instructions issued by the RBI and the fair trade practices and to pass on the benefits of reduced interest rate to the respondent-Consumer, however, were not adhered to failing on account whereof the complaint had been preferred before the District Consumer Disputes Redressal Commission.

5. The petitioner-Bank entered appearance and it admitted to the personal CC limit Account having been opened against the respondent-Consumer. It was held that as per the agreement dated 12.06.2009, the loan amount was to be adjusted in 84 equal monthly installments and the limit was to be reduced 15% annually and if the respondent failed to do so, there was a penal interest of 2% per annum. It is contended that the respondent-consumer had become defaulter of her loan and was declared NPA on 30.04.2016 due to non-payment of the dues. It was further submitted that as

per the loan agreement, the loan had been availed under the mortgage scheme and as per the loan sanction agreement, the agreed link rate of interest at the said time was Base Prime Lending Rate (BPLR) i.e. 12.5% and agreed rate of interest was 2% per annum over and above the BPLR subject to the minimum rate of interest of 14.5% which was variable and subject to the R.B.I Instructions and guidelines issued from time to time. It was thus claimed by the petitioner-Bank that as per the Circular dated 09.07.2010, the BPLR was 12.25% and the rate of interest was 2% over and above the BPLR and hence it came to 14.25% and after switching to the base rate it became a base rate +6.30% i.e. 14.30%. It is further submitted that the base rate at the time of filing of the response was 10.20% and alongwith 6.30% rate of interest, the chargeable interest would become @ 16.50%.

6. Upon consideration of the rival submissions advanced by the parties, the District Consumer Disputes Redressal Commission partly allowed the complaint and directed the petitioner-Bank to charge as per the old BPLR system and ordered the petitioner-Bank to update and overhaul the account of the respondent-Consumer w.e.f. 1.07.2010 till 18.01.2017 by charging rate of interest as per base rate + 2% and refund the extra amount so charged during the pendency of the loan (alongwith "Interest Component" etc.) and a cost of Rs. 25,000/- was also imposed. It was further pointed out that in case the entire award does not get released, the respondent-Consumer was to be entitled to interest @ 9% per annum with effect from the date of the orders till actually paid. The operative part of the said order reads thus"

> *"9. In the light of the all above, we partly allow the present complaint and direct the OP Bank not to charge interest as per old BPLR system and ORDER the OP*

> *Bank to update and overhaul the Account of the complainant with effect from 1.7.2010 till date by charging the rate of interest as per Base rate + 2% and refund the 'extra' amount so charged during the pendency of the Loan (along with the 'interest' component etc) to the complainant besides to pay to the complainant a token sum of Rs.25,000/- as cost and compensation for having harassed her throughout within a period of 30 days from the receipt of copy of orders otherwise the so awarded total aggregate amount shall attract interest @ 9% PA with effect from the date of orders till actually paid.*

7. Aggrieved of the said award, the petitioner Bank preferred Appeal No. 200 of 2017 before the State Consumer Disputes Redressal Commission, Punjab. The contentions of the respective parties were duly noticed alongwith the argument advanced by the petitioner to the effect that the petitioner had charged the interest as per the applicable contractual rate i.e. the base rate plus 6% per annum as per the Circular issued by the RBI and as such, the award passed by the District Consumer Disputes Redressal Commission was without appreciating the contractual obligation executed between the parties and without understanding the Circulars issued with respect to the applicable rate of interest. After consideration of the rival submissions advanced by the parties, the appeal was accepted and the impugned order was set aside. A further direction was given to the opposite party i.e. the petitioner Bank herein that the Account of the respondent-consumer be treated as a cash credit limit as on 01.07.2010 and interest be reset from BPLR to base rate as on 01.07.2010 according to the circular issued by the Bank and interest rate according to the base rate would be at 14.30% per annum till 01.07.2010. Thereafter i.e. after the date of

01.07.2010, the Bank would be entitled to charge interest according to the cash credit limit rate in accordance with the directions issued by the RBI from time to time and the account shall be overhauled. The exercise was directed to be completed within a period of 60 days. The operative part of the judgment dated 11.10.2017 passed by the State Consumer Disputes Redressal Commission extracted as under:

> *"10. Sequel to the above, we accept the appeal and impugned order is set aside. Further direction is given to the opposite parties that account No.02780510000182 is to be treated as cash credit limit as on 01.07.2010 and interest is to be reset from BPLR to base rate as on 01.07.2010 according to the Circular issued by the opposite parties the interest rate according to the base rate is 14.30% per annum. After that the opposite parties will charge the interest according to the cash credit limit rate in accordance with the directions issued by RBI from time to time and accordingly, they will overhaul the account. As and when they are to change the rate of interest, they would refer the circular of RBI under which it has been changed and adopted by the opposite parties. This exercise will be done within a period of 60 days from the date of receipt of the copy of the order and fresh statement of account will be supplied by the opposite parties to the complainant within that period alongwith all the circulars of the RBI/opposite parties. In case, the complainant is not satisfied with overhauling of the accounts then he can get it done by filing the execution application before the District Forum."*

8. The said award became final and was not subject to any further challenge.

9. As the requisite compliance has not been done, the respondent-Consumer preferred an execution application before the District Consumer Disputes Redressal Forum, Gurdaspur bearing complaint No. 218 of 2016.

10. Reply to the execution application was filed on behalf of the petitioner-Bank whereupon the order has been passed on 01.12.2023 which is a subject matter of challenge herein.

11. Counsel for the petitioner contends that he is aggrieved of the operative part of the order passed by the Executing Court as per which the petitioner-UCO Bank has been directed to charge the base rate of interest applicable to CC limit i.e. 11.75% per annum w.e.f. 01.07.2010 till 01.04.2016 and from 01.04.2016 till the date of NPA i.e. 30.06.2017, the rate of interest was to be charged on the basis of MCLR plus spread and thereafter w.e.f. 01.07.2017 as per MCLR rate of interest @ 8.70% per annum was required to be charged. It is contended that the State Consumer Disputes Redressal Commission passed an award to the effect that the petitioner-Bank could have charged interest as per the BPLR plus the rate of interest as approved by the RBI and as against the same, the Executing Court has fixed the interest @ 11.75% per annum for the said duration and has violated the above said mandate. It has thus averred that the Executing Court has fell in an error by passing a direction which amounts to modification of the award passed by the State Consumer Disputes Redressal Commission on 11.10.2017. Vide the impugned order dated 01.12.2023, the Executing Court has issued the following directions which are extracted as under:-

> *i) J.D./respondent Bank is directed to calculate the rate of interest afresh i.e. J.D./respondent is directed to charge base rate of interest applicable to cash credit limit i.e. 11.75% per annum w.e.f. 01.07.2010 till 01.04.2016 and from 01.04.2016 till date of NPA i.e. 30.06.2017 the rate of interest shall be charged on the basis of MCLR plus spread and thereafter w.e.f. 01.07.2017 as per*

MCLR rate of interest @ 8.70% per annum shall be charged.

ii) After receiving the said calculation from the J.D./respondent the D.H./applicant shall deposit the amount as per the calculation prepared by the Bank.

iii) The J.D./respondent Bank shall release all the security documents to the D.H./applicant forthwith after receiving all the payments as per calculations.

12. The Consumer-complainant has also preferred a challenge against the above said order passed by the Executing Court by contending that it has directed levy of interest which is higher than the applicable rate of interest and for supporting his argument, he has placed reliance on the information that had been obtained by the complainant-respondent decree holder from the petitioner-Bank itself under the Right to Information Act, 2005. Reference in this regard is placed on Annexure P-5 attached with CWP-5181 of 2024 which is an information received under the RTI Act bearing Memo No. ZOJ/SP/9687/2017-18 giving information as regards the applicable rate of interest on a cash credit limit. The same is extracted as under:-

"*Sh. Anil Nanda*
1, Green Aveneue
Abrol Nagar
Pathankot

विषय Sub- आरटीआई एक्ट-2005 के तहत आपके आवेदन दिनांक 28.11.17 का जवाब
Reply of your RTI Application dated 28.11.17

This has reference to your RTI Application dated 28.11.2017. in this regard we are providing you the point wise reply as follows:

1. *We wish to inform you that now Bank has shifted to MCLR based Rate of Interest from Base Rate. Only those customers who have not shifted from base rate to MCLR*

system are charged on the basis of Base rate. All new loan/CC limits are sanctioned on the basis of MCLR. The rate of Interest of few popular cash credit schemes is mentioned in title below.

SI.	Name of Scheme	Rate of Interest
1	UCO Trader	Base Rate +1%
2	UGCC	Base Rate
3	CC-Udyog Bandhu upto 10 lac	Base Rate
4	CC-Udyog Bandhu 10 lac-1 Crore	Base Rate +1 %
5	CC against property Priority Sector	Base Rate +6.30 %

We are also providing you the base rates applicable from 01.07.2010 till date.

Date	*Effective Base Rate*
01.07.2010	*8.00*
05.10.2010	*8.50*
15.12.2010	*9.00*
01.02.2011	*9.50*
05.05.2011	*10.00*
12.07.2011	*10.25*
01.08.2011	*10.75*
01.05.2012	*10.50*
11.02.2013	*10.20*
01.05.2015	*9.95*
01.10.2015	*9.70*

2. There is one popular scheme introduced by Bank after 01.07.2010 details of which are given below”

CC against Property : MCLR +2.15% MCLR=8.45 w.e.f. 10.09.17

If you are not satisfied with the above reply, you may file an appeal u/s 19 of the Right to Information Act, 2005 within 30 days of issue of this reply to the First Appellate Authority whose particulars are given below.

13. He further places reliance on the subsequent information also received under the RTI Act from the petitioner-Bank bearing reference No. ZOJ-LAW/RTI/2023-24/09/1569 dated 19.08.2023 with respect to the other property of the respondent-complainant namely M/s Surya Sales and the rate of interest charged against CC limit with respect to the limit advanced on the said account i.e. credit limit account No. 02780510000977. The details of the said information is extracted as under :-

Sir,

We have received your subject RTI Application from the Pathankot Branch on 26.07.2023 under RTI Act, 2005. In this regard, your sought information regarding Cash Credit Limit No.02780510000977 of the M/s Surya Sales, Pathankot Under RTI Act, 2005 is replied as under:-

SL	Required information	Provided information
1	*Details of interest Rate charged time to time in cash Credit Limit of Surya Sales, Pathankot, from the date of opening the account. I further clarity that it is Interest rate not he interest amount.*	*As per Branch record, the details of interest rate charged from the date of opening the account as under:* *1. 11.20% from the dt. 11.10.2013 to 30.04.2015* *2. 10.95% from the dt. 01.05.2015 to 04.10.2015* *3. 10.70% from dt. 05.10.2015 to 09.09.2017* *4. 10.60% from dt. 10.09.2017 to 13.09.2017* *5. 9.60% from dt 14.09.2017 to 31.07.2018 (NPA date*

		31.07.2018)
2	*Total interest charged in Surya Sales account from the date of opening of account till it was declared NPA*	*The total interest charged in CC account since opening of account till NPA date is Rs. 514342/- account statement is enclosed.*
3	*It is requested that during your tenure in Pathankot Branch, whether we came across in the ADC Court, have I ever misbehaved with you. or any staff member of the Branch?*	*This information is not come in the purview of the RTI Act, 2005.*

14. Relying on the said information, counsel for the respondent-consumer contends that the respondents have specifically conveyed as regards the base rate applicable for the various periods from 01.07.2010 till 01.10.2015 at the time of shifting from base rate to MCLR. He contends that the base rate which had been approved by the State Commission and as applicable to the Bank has been tabulated for the entire duration commencing from 01.07.2010 till 01.10.2015 and that the rate of interest under the UCO Traders Scheme had to be charged on the basis thereof. It is further contended that a reference has been made by the petitioner-Bank to the rate as applicable to a mortgage loan whereas the specific direction issued by the State Consumer Disputes Redressal Commission, Punjab was

that the loan of the complainant-consumer had to be treated as a CC limit and not as a loan against property-mortgage. He further contends that the petitioner-Bank had itself been levying the interest at the base rate as conveyed vide information received on 26.12.2017 plus 1% and that there is no reason as to why any other rate ought to have been applied with respect to the CC limits in dispute herein.

15. Responding to the above, counsel for the petitioner-Bank submits that the information furnished in relation to the base rate plus spread over was on a UCO Trader loan Account. He contends that the spread over being 3.75%, the base rate being 8% in the year 2010, hence, the interest to which the petitioner-Bank was entitled would be 8% plus 3.75% i.e. 11.75% as has been admitted by the petitioner-Bank and noticed by the Executing Court in its impugned award. He is, however, not in a position to carve out a distinction as to how a differential rate often to certain charge against the cash credit limit extended to the third CC limit availed by the respondent-complainant himself.

16. Under the given circumstances, it is evident that the Bank has failed to disclose the correct calculation and assessment to the Executing Court which has resulted in passing an order which may not strictly be in conformity with the award as passed by the State Consumer Disputes Redressal Commission.

17. The present writ petition are accordingly disposed of with the following directions:-

i) The petitioner-UCO Bank shall furnish a duly audited Account sheet certified by an independent Chartered Accountant with respect to the rate of interest as ascertained in terms of the award passed by the State Consumer Disputes Redressal Commission. The needful shall be submitted by the UCO Bank with the Executing Court within a period of one month of a receipt of certified copy of this order. The expense of independent Auditor and its certification shall be borne by the petitioner-Bank.

ii) Upon submission of the aforesaid calculation sheet, counsel for the respondent-complainant would be given an opportunity to file a response/objections to the said calculation alongwith a verification done by Chartered Accountant, if the calculation so furnished is disputed. The expenses of such objections through an independent Auditor shall be borne by the Customer-Consumer himself.

iii) The Accounts shall thereafter be overhauled on the basis of the objections received from the respondent (if no objection is filed then as per the statement furnished by the petitioner-Bank which is duly certified by the independent Auditor and referred to in direction (i) above.

iv) That the undisputed/ascertained amount shall thereafter be released in favour of the Consumer-complainant.

A photocopy of this order be placed on the file of connected cases.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 07, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No