



2024:DHC:4890-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 02.07.2024

+ **RFA (OS) (COMM) 42/2019**

SVC COOPERATIVE BANK LTD

..... Appellant

Versus

TRINITY TOUCH PVT LTD

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr.Janinder Kr Chumbak, Advocate.

For the Respondent : Ms.Aditi Mohan and Mr.Peru Lekhi, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant has filed the intra court appeal impugning a judgment dated 08.07.2019 (hereafter *the impugned judgment*) rendered by the learned Single Judge, in CS (COMM) No.1021/2018 captioned *Trinity Touch Private Limited v. SVC Cooperative Bank Limited*.

2. In terms of the impugned judgment, the learned Single Judge accepted the claim of the respondent (hereafter *the plaintiff*) against the appellant (hereafter *the defendant*) regarding the illegal debit of an amount of ₹1,51,38,600/- (Rupees One Crore Fifty-One Lacs Thirty-Eight Thousand



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and Six Hundred only) towards pre-payment penalty charges, and ₹17,25,000/- towards upfront processing charges from the plaintiff's bank account. Accordingly, the learned Single Judge passed a decree for recovery of the said sum of ₹1,68,63,600/- along with interest at the rate of 7% per annum from the date of the institution of suit till 30.09.2019 and thereafter at the rate of 18% per annum. Additionally, the learned Single Judge also held the plaintiff be entitled to costs of the suit with professional fee assessed at ₹2,00,000/-. The notation in the impugned judgment indicates that the rate of interest at the rate of 7% per annum till 30.09.2019, was keeping in mind that the impugned judgment was corrected and released on 05.08.2019.

3. The plaintiff had availed financial credit facilities from the defendant bank and had sought renewal of the same. However, the plaintiff claims that it did not accept the renewal conditions, which included payment of certain charges. It accordingly sought to close the facilities by repaying the amounts due. The defendant accepted the same, but debited the pre-payment charges at the rate of 3% of the outstanding sum and also processing charges for renewal of the facilities. The plaintiff claimed that the same was illegal and thus, instituted the suit.

4. Thus, the principal dispute that requires to be considered is whether the recovery of pre-payment charges and processing charges by the defendant is illegal.

The Context

5. The plaintiff is a company incorporated under the Companies Act, 1956 and is, *inter alia*, engaged in the business of manufacturing and



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distribution of industrial and electrical components. The defendant is a Scheduled Multi State Co-operative Bank having its registered office at SVC Tower, Nehru Road, Vakola, Santacruz, Mumbai- 400055 and one of its branch offices at Nehru Place, New Delhi – 110019.

6. The plaintiff claims that it has been availing credit facilities from various banks and institutions from time to time for the purpose of its business activities. It is stated that till January, 2016, the plaintiff was banking with the Indian Overseas Bank (hereafter *IOB*) and had availed various types of credit facilities, which were renewed from year-to-year basis. The said facilities were due for renewal in January, 2016. The plaintiff claims that the defendant bank had approached the plaintiff in the month of December, 2015 and had offered to provide various credit facilities as required. Accordingly, the plaintiff completed the formalities and on 30.01.2016, the defendant bank issued the sanction letter (Ex.P1), whereby it agreed to provide credit facilities which were being extended by IOB and in addition also extended certain credit facilities.

7. The defendant bank sanctioned total facilities amounting to the extent of ₹43,88,00,000/- (Rupees Forty-Three Crores Eighty-Eight Lacs only). In terms of the sanction letter, the plaintiff also paid the upfront processing charges at the rate of 0.50% of the facilities quantified at ₹17,94,000/-, in addition to the service tax on the said amount. The sanction letter also expressly provided that pre-payment of the credit facility would attract penalty charges at the rate of 3% of the outstanding balance in case of term loan and on the sanctioned limit or the outstanding balance whichever is higher in case of other credit facilities. The facility was to be renewed on or



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before January, 2017.

8. There is no dispute as to the terms of the sanction letter dated 30.01.2016 (Ex.P1). The plaintiff paid an amount of ₹20,54,130/- (₹17,94,000/- plus service tax) as upfront processing charges in terms of the said sanction letter. However, there was some controversy between the parties with regard to certain charges which were levied thereafter. The plaintiff claims that the defendant had arbitrarily levied penalty at the rate of 2% of the outstanding balance in March, 2016 and further 2% in June, 2016. However, the said amounts were reverted upon the plaintiff raising concerns in regard to such penalty charges. The same are not the subject matter of the dispute in the suit.

9. The plaintiff claims that it raised the concern with the officials of the defendant in respect of certain penalty clauses as included in the sanction letter. The plaintiff claimed that those clauses were not discussed or explained. In terms of the sanction letter dated 30.01.2016 (Ex.P1), the facility was to come up for renewal in the month of January, 2017. Prior to that, the plaintiff had sent a letter dated 29.06.2016 (Ex.P2) addressed to the General Manager of the defendant bank requesting for an amendment in the terms of the sanction letter (Ex.P1) in regard to premature closure and prepayment of the loan facilities. The plaintiff raised three issues – (i) pre-closure charges should be applicable only to the term loan and not on other credit facilities; (ii) pre-closure penalty should not be more than 1% of the outstanding amount; and, (iii) the same should be linked with the outstanding balance and not the sanctioned limit. The plaintiff requested that the condition no.13 of the sanction letter be modified / waived and in



addition, the plaintiff also sought that the condition regarding the closure of the HDFC bank account be also amended. The plaintiff claimed that it had on numerous occasions discussed with the defendant and sought waiver of the condition, but received no reply to the same. The plaintiff claims that prior to the expiry of the one year term of the sanction letter, it sent a letter dated 20.01.2017 (Ex.P4) submitting enhancement / renewal proposal, *inter alia*, seeking renewal of the existing facilities and grant of additional facilities on account of its growing business requirements. In its renewal proposal, the plaintiff also sought reduction of interest and other charges being levied by the defendant. It also reiterated its request for waiver / amendment of the condition no.13 of the sanction letter, the pre-closure charges and in addition sought reduction in the processing fee charges from 0.5% to 0.2% of the sanctioned limits.

10. It is the case of the plaintiff that facilities were neither renewed nor enhanced prior to 31.01.2017. The plaintiff claims that by an email dated 16.02.2017 (Ex.P5), the defendant sought response to certain queries in connection with its proposal for renewal and enhancement of the credit facilities. However, no action was taken on the said proposal. The plaintiff by an email dated 14.03.2017 (Ex.P11) informed the defendant that they were no longer inclined to renew the credit facilities and requested for the closure of the credit facilities and release of the collateral securities. The plaintiff claims that it repeated its requests by another email dated 16.03.2017 (Ex.P12).

11. Notwithstanding the plaintiff's statement that it was not interested in renewal of the facilities, the defendant sent an email dated 18.03.2017



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(Ex.P13) unilaterally renewing the credit facility and further debiting an amount of ₹17,25,000/- towards processing charges for renewal / enhancement of the credit facilities. It further informed the plaintiff that the sanction letter would be shared with it shortly. Thereafter, the plaintiff received a copy of the sanction letter dated 18.03.2017 (Ex.P15) calling upon the plaintiff to sign the same as a token of the acceptance of the terms and conditions of the sanction letter.

12. The plaintiff claims it did not accept the same and immediately thereafter sent an email dated 20.03.2017 (Ex.P16) requesting for refund of the processing charges. The defendant did not accede to this demand, but instead by email dated 21.03.2017 (Ex.P17) levied an additional penalty of 3% of the total sanctioned limit towards pre-closure /pre-payment of the credit facilities.

13. By further emails dated 21.03.2017 and 22.03.2017 (Ex.P18), the defendant informed the plaintiff regarding outstanding amount towards various credit facilities and also demanded penalty charges at the rate of 3%. The plaintiff's requests for waiver of the same were not accepted.

14. In the aforesaid circumstances, the plaintiff sent a letter dated 30.03.2017 (Ex.P21) setting out its stand regarding the illegal recovery. On 03.04.2017, the defendant debited the account of the plaintiff with ₹1,51,38,600/- towards pre-payment charges.

15. Being aggrieved by the acts of the defendant, the plaintiff filed a complaint dated 13.06.2017 (Ex.P23) before the Banking Ombudsman, Reserve Bank of India, New Delhi seeking refund of the prepayment



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charges to the extent of ₹1,51,38,600/- and processing fee of ₹17,25,000/-, which it claimed was illegally levied by the defendant.

16. The Banking Ombudsman, Reserve Bank of India, New Delhi held that the complaint was not within the pecuniary jurisdiction of the Banking Ombudsman and granted leave to the plaintiff to approach the appropriate forum. The plaintiff, thereafter, filed the instant suit in this Court.

17. The defendant filed its written statement. The defendant claimed its services were satisfactory and the plaintiff had applied for renewal-cum-enhancement of the facilities. It claimed that the same clearly evidenced that the plaintiff was fully satisfied with the facilities extended. It also reduced the interest rate from 12.5% to 10% against the plaintiff's request of reducing the same to 9.5%. It also reduced the commission charges on the bank guarantees and letter of credit, and waived charges for issuance of the demand draft. The defendant claims that it was in the process of considering the enhancement of amount as well as rate of interest, but in the meantime, without giving any prior notice, the plaintiff by a letter dated 14.03.2017 (Ex.P11) informed the defendant that they were no longer interested to renew their credit facilities and requested for closure of the same.

18. The defendant bank disputes the plaintiff's case and alleges it to be vague and untenable.

19. Considering the rival pleadings, the learned Single Judge framed the following issues:-

“(i) Whether the defendant Bank has illegally debited an amount of Rs.1,51,38,600/- from the plaintiff's



account towards prepayment penalty charges? OPP
(ii) Whether the defendant Bank has illegally debited an amount of Rs.17,25,000/- towards upfront processing fees? OPP
(iii) Whether the plaintiff is entitled to interest @18% p.a. on the aforesaid amounts? OPP
(iv) Whether the plaintiff continued to avail credit facilities from the defendant beyond due date of review as per Sanction Letter dated 30th January, 2016 and the suit is not maintainable for this reason? OPD”

20. Since the parties were relying upon the documentary evidence and the documents produced were admitted by the parties, the learned counsel for the parties agreed that the trial was not necessary and requested the learned Single Judge to hear the suit finally. The learned Single Judge, thus, proceeded to hear the suit finally.

21. The learned Single Judge found that the facilities extended by the defendant in terms of the sanction letter dated 30.01.2016 were for a term of one year commencing from 30.01.2016. The same were renewable thereafter. The plaintiff had sent a proposal for renewal of the facilities as well as further enhancement by its letter dated 20.01.2017, however, had withdrawn the said request prior to the defendant agreeing to the same. The learned Single Judge had held that the defendant's email dated 18.03.2017 (Ex.P13) sanctioning renewal of the facilities as well as further enhancement was in the nature of a counter offer. However, the plaintiff had not accepted the same. In the circumstances, the learned Single Judge held that the repayment of credit facilities on 30.03.2017 was after the period of one year and prior to any fresh contract coming into existence. Thus, the said payments could not be considered as premature repayment or pre-payment



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so as to attract the penalty as stipulated in the sanction letter dated 30.01.2016.

22. The learned Single Judge also rejected the defendant's claim that it was entitled to processing charges of ₹17,25,000/- that were recovered from the plaintiff.

SUBMISSIONS

23. The learned counsel appearing for the defendant (appellant in the present appeal) submitted that the defendant was entitled to recover pre-payment charges in terms of the sanction letter dated 30.01.2016 between the parties and the same was not proscribed by the Reserve Bank of India (**RBI**). He submitted that in terms of the RBI circular bearing No.RBI/2019-20/30 DNBR (PD) CC. No.101/03.10.001/2019-20 dated 02.08.2019. The RBI had clarified that non-banking financial companies would not charge foreclosure charges / pre-payment penalties on any floating rate term loans sanctioned for the purposes other than business to individual borrowers. Since the credit facilities extended by the defendant were not to an individual borrower, the defendant was entitled to recover the charges as agreed between the parties. He submitted that the plaintiff had continued to avail financial facilities beyond the renewal or review date and thus, it was not open for the plaintiff to send a letter dated 14.03.2017 (Ex.P11) stating that they are not interested in continuing the credit facilities. He submitted that the plaintiff was thus obliged to pay the premature closure or pre-payment charges at the rate of 3% of the outstanding balance amount. He also submitted that the conduct of the plaintiff clearly indicated that it had accepted the renewal of the facility and was thus obliged to pay the pre-



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payment charges.

24. The learned counsel appearing for the plaintiff (respondent in the present appeal) relied upon the impugned judgment and the findings recorded therein. In addition, she also referred to the decision of the learned Single Judge in ***DLF Limited v. Punjab National Bank: 2011 SCC OnLine Del 2465*** and on the strength of the said judgment contended that even if the loan agreement provides for repayment of a loan in a specified manner, the pre-payment of the loan by the borrower at best amounts to breach of the loan agreement. Thus, the bank would be entitled to claim compensation for such breach provided it has suffered any actual loss and is able to establish the same. She also referred to the decision of the Supreme Court in ***Fateh Chand v. Balkishan Dass: 1963 SCC OnLine SC 49***.

REASONS & CONCLUSION

25. Primarily there are two issues that require consideration. First, whether the defendant is entitled to recover pre-payment penalty at the rate of 3% as claimed; and second, whether it was entitled to the processing charges.

26. It is relevant to note that in terms of the sanction letter dated 30.01.2016, the defendant had agreed to extend fund based facilities aggregating to ₹35.88 crores. The tabular statement as set out in the sanction letter indicating the facilities sanctioned by the defendant is reproduced below:

“Facility	Prime Security	Margin	Exist	Addn./Redc.	Total	R.O.I. p.a./Remarks
Cash Credit	Hypn. of stocks &	25%	0.00	2300.00	2300.00	ROI@PLR-5.25%



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	book debts					i.e. 12.25% p.a. Renewal due in January 2017
PC/PCFC	Pre shipment credit under LC	10%	0.00	100.00	100.00	As stipulated by IBD Renewal due in January 2017
FDBP/FUDBP (sublimit of PC/PCFC)	Post shipment credit under sight / usance upto 180 days under confirmed contracts	Nil	0.00	(100.00)	(100.00)	As stipulated by IBD Renewal due in January 2017
Bills discounting under LC (DA 90 days)	Underlying bills backed by confirmed L/C opened by nationalized bank, Scheduled Co-operative bank & private sector bank	Nil	0.00	800.00	800.00	Rate of Interest shall be Market driven, to be confirmed with CGM, Credit. Renewal due in January 2017
Term Loan* (LRD) (Takeover)	Equitable Mortgaged of Building B located, in Village- Dudhola Tehsil & Dist. Palwal, Haryana. Assignment of total net rent receivable from Phoneix Contact India Pvt. Ltd.	25%	0.00	388.00	388.00	ROI@PLR-3.50% i.e. 14.00% p.a. Repayable in 48 EMI of Rs.10.60 lacs. Review due in January 2017. Shortfall in EMI vis-à-vis actual rentals at any point of time, should be met by the Company out of own funds.
Total Funded limits			0.00	3588.00	3588.00"	

27. It is apparent from the above that all credit facilities would be due for renew in January, 2017. The said facilities were thus only for a period of one year unless the same were renewed by the defendant bank. There is no dispute that in the event the facilities were not renewed by the defendant for any reason, the plaintiff would be required to immediately repay the same.

28. The defendant had also advanced the term loan of a sum of ₹3.88 crores which was repayable in forty-eight Equal Monthly Installments (*EMIs*) of ₹10.6 lacs. According to the defendant, the repayment of the credit facilities (other than the term loan) as on 30.03.2017 would amount to



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pre-payment of the credit facilities as the same stood renewed. As noted above, according to the defendant, the renewal of facilities was apparent from the conduct of the plaintiff. However, it is not disputed that if it is found that there was no contract for renewal of those facilities, there would be no premature repayment and the defendant would not be entitled to collect any pre-payment charges on such credit facilities. It is important to note that before the learned Single Judge, it was contended on behalf of the defendant that the word 'renewal' as mentioned in the sanction letter dated 30.01.2016 (Ex.P1) must be understood as 'review' and not renewal of the credit facilities. However, no such contention was advanced before this Court. Thus, there is no cavil that the claim for recovering penalty charges is premised on the basis of a valid renewal of credit facilities (other than the term loan) on the terms and conditions of the sanctioned letter which entitled the defendant to charge pre-payment penalty at the rate of 3% of the sanctioned limits. The second aspect to be examined is whether the term loan is extended in terms of the sanction letter dated 30.01.2016 (Ex.P1) was also repaid prematurely. According to the defendant, the said loan was repayable in forty-eight EMIs and therefore, the repayment after expiry of one year would amount to a premature repayment and foreclosure of the loan. However, according to the plaintiff, the term facilities were also required to be reviewed in January, 2017. Thus, the terms and conditions regarding premature closure would not contemplate repayment after the expiry of the first year.

29. The communications placed on record clearly indicate that there was no consensus between the parties regarding renewal of the credit facilities on



the terms and conditions as set out in the sanctioned letter dated 30.01.2016. The plaintiff by a letter dated 20.01.2017 (Ex.P4) had applied for enhancement-cum-renewal of “existing credit facilities”. The said letter indicates that the plaintiff had sought an additional term loan of ₹4 crores; additional working capital limit of ₹3 crores and additional BG/LC/SBLC limit of ₹7 crores. It is important to note that the plaintiff had sought renewal-cum-enhancement of the facilities on certain terms and conditions as set out in its letter. This included reduction of processing fee and release of certain properties mortgaged as additional collateral securities. The relevant extract of the terms and conditions as proposed by the plaintiff in its letter dated 20.01.2017 is set out below:

- “1. Interest on Working capital limit to be charged at 9.50%.
2. Interest on Term Loan to be charged at 9.50%
3. 100% waiver in DD Charges.
4. Flat Charges of Rs. 1000/- (all inclusive) to be applicable for each foreign exchange remittance irrespective of amount of remittance.
5. BG/LC/SBLC Charges:- Presently, the bank is charging @ 3.25% per annum which should be reduced to 1% p.a.
6. Reduction of Pre-Closure charges: - Presently there is a pre-closure penalty of 3% in case of all kind of sanctioned limits. However, this penalty should be applicable only in case of Term Loan and not on other limits. The Board members are not comfortable with the condition of pre-closure penalty. Our auditors have also strongly objected on the same. We therefore request you to kindly exclude all the limits other than Term Loan for Pre-Closure penalty. The applicable rates should not be more than 1% on the outstanding term loan in case of pre-closure.
7. Concession in Processing Fee: - Presently the processing fee is



charged @ 0.50% of sanctioned limits. We request you to kindly reduce the same to 0.20%.

8.
9. Release of Delhi property mortgaged as additional collateral security - We have presently given two properties as collateral securities out of which one property belongs to Mrs. Reena Parwanda. The value of the other property, i.e., land & building of the Factory is sufficient enough to cover the credit limits. Therefore, it is requested for the release of Defence Colony Property as the same is in the individual's name. We had also informed about the same vide our email dated 25.01.2016. A copy of the letter and email is also enclosed for your perusal.”

30. Admittedly, the said terms and conditions were not accepted by the defendant. On receipt of the said request, the defendant sought certain information including copies of the latest income tax returns of all Directors and audited balance sheets of other companies. The plaintiff responded to the same on 20.02.2017. Admittedly, the defendant immediately did not communicate its acceptance of the proposal. The plaintiff sent another e-mail dated 01.03.2017 (Ex.P18), *inter alia*, stating that its proposal had been pending for more than six weeks and in absence of credit approvals, it was unable to plan its financial commitments. The plaintiff also requested the defendant to inform him if it was unable to meet its expectations so that “they could move on amicably”.

31. The defendant responded to the said e-mail assuring of a speedy resolution. The representatives of the plaintiff also met the representatives of the defendant bank as is evident from an e-mail dated 06.03.2017 (Ex.P9). By the said e-mail, the plaintiff once again requested the respondent to inform the plaintiff as to the commercial terms as the same



were critical for it.

32. The e-mails on record indicate that the parties had held discussions regarding the commercial terms by an e-mail dated 10.03.2017 (Ex.P10). The plaintiff once again requested the sanction of the facilities on the commercial terms as mentioned in the said letter which included only foreclosure charges and processing fees of 0.20%. The said e-mail (Ex.P-10) is set out below:

“Dear Sir,

Please refer to our today’s discussion and trailing mail, we are expecting the following:

1. Commercials:
 - i. 8.50% rate for CC and Term Loan
 - ii. 0.75% commission on BG/LC/SBLC
 - iii. 0.20% of Processing Fee
 - iv. Nil Foreclosure Charges
2. Enhancement in credit facilities:
 - i. Enhancement of Rs. 3 Crore in CC Limit.
 - ii. Sanction of fresh Term Loan of Rs. 4 Crore
 - iii. Enhancement of Rs. 7 Crore in BG/LC/SBLC Limit
3. Release of Defence Colony Property

We hope that you will consider our expectations positively and sanction the facilities at the desired commercials as mentioned above.”

33. It is apparent from the above that there was no consensus between the parties regarding the terms and conditions for renewal of the facilities.

34. Certain telephonic discussions were held between the parties on 14.03.2017 (as is evident from an e-mail of the said date – Ex.P11), whereby



the plaintiff was informed that its proposal for enhancement of credit facilities was postponed by the concerned committee of the defendant. The plaintiff was also made aware that the defendant was not willing to accept the commercial terms as proposed by the plaintiff. In the circumstances, the plaintiff informed the defendant that it was not interested in renewal of the credit facilities and requested it to communicate the outstanding amount to be paid for closure of the credit facilities. The e-mail dated 14.03.2017 (Ex.P11) is reproduced below:

“Dear Sir,

Further to our telephonic discussion with you today, we are sorry to know that our enhancement proposal has got postponed to Bank's Committee meeting due now on March 17, 2017. This is quite disheartening since we've originally submitted proposal almost 2 months ago have been emphasizing upon taking it up on priority, but hasn't been considered so by the bank.

Beside this, we understand that bank is unable to meet our expectations on commercial pricing either.

In light of these facts and circumstances, we are not interested in renewing our credit facilities and request you to let us know the outstanding amount to be paid towards closure of credit facilities with you. Also, we would request you to release our collateral securities and charge on current assets suitably. We thank you for the support and cooperation extended to us in last one year.”

35. It is clear from the above that there was no contract between the parties for renewal of the credit facilities. Whilst the plaintiff was insisting on the terms and conditions as set out in its proposal, it was apparent that the defendant has not accepted the same. There was no consensus between the parties regarding the terms and conditions for renewal of the credit facilities. Whilst the plaintiff continued to avail of facilities during the period after it



had submitted its proposal, the same cannot lead to the conclusion that it was on the commercial terms as put forth by the defendant bank. The plaintiff had clearly stated that the condition of penalty of foreclosure was not acceptable and its proposal for renewal of the credit facilities was on such terms. The fact that the defendant was not willing to accept the same cannot lead to the conclusion that there was agreement between the parties as to the terms and conditions put forth by the defendant.

36. Since the plaintiff had withdrawn its proposal for renewal of the credit facilities prior to the same being sanctioned or approved, no contract for renewing the facilities came into existence. The plaintiff's proposal was put up before the Board of Directors of the defendant on 17.03.2017, however, the plaintiff had withdrawn the same prior to its proposal for renewal and enhancement being considered by the Board of Directors of the defendant. The decision of the Board of Directors of the defendant to renew the facilities thus cannot be construed as acceptance of the plaintiff's proposal as the same has already been withdrawn. The learned Single Judge had thus rightly concluded that at best the decision of the Board of Directors of the defendant to renew the facilities on certain terms and conditions was a counter offer which was required to be accepted by the plaintiff in order to result in a binding contract. However, the said did not happen.

37. In view of the above, we are unable to accept that there was any conduct between the parties which entitled the defendant to recover the pre-payment penalty charges at the rate of 3% of the facilities extended. The initial term of one year during which the said condition was applicable had expired and there was no consensus between the parties regarding such



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penalty charges thereafter. The learned Single Judge had rightly construed that since the plaintiff had not repaid the amount within the period of one year, the same could not be considered as pre-payment within the four corners of the sanction letter dated 30.01.2016 (Ex.P15) as the same had matured for renewal in January, 2017.

38. Notwithstanding that the plaintiff had withdrawn its proposal, the defendant issued a sanction letter dated 18.03.2017 setting out the terms of the renewal and calling upon the plaintiff to countersign the same as “a token of acceptance”. However, the plaintiff declined to do so.

39. Thus, there was no consensus between the parties regarding the terms and conditions as set out in the said sanction letter.

40. The next aspect to be examined is whether the term loan was prematurely repaid by the plaintiff, thus, attracting pre-payment charges of 3% on the amount as outstanding in terms of the sanction letter dated 30.01.2016 (Ex.P1).

41. As noted above, the term loan of ₹3.88 crores was required to be repaid in forty-eight EMIs of ₹10.6 lacs. However, the same was also subject to review in January, 2017. Although, the learned counsel for the defendant had sought to make a distinction between the term loan and other credit facilities. He further stated that the term loan was subject to review and not renewal and thus the same is contrary to the pleadings. In its written statement, the defendant had unequivocally stated that it had granted total credit facility of ₹43.88 crores and the same was to be renewed every year. The averment made in the written statement reads as under:



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“.....On request of the plaintiff, the defendant bank sanctioned a total credit facility of Rs.43.88 Crores (including both fund based and non funded limits) vide sanction letter dated 30.01.2016. It is further submitted that as per the terms of the sanctions, as well as banking norms, these credit facilities were to be renewed every year.....”

42. It is apparent from the above that the defendant had not made any distinction between credit facilities and the term loan insofar as the question whether the same were subject to renewal is concerned. Thus, although the term loan was repayable in forty-eight EMIs, the same was subject to review. It is apparent that if the said term loan was not renewed in January, 2017, the same would become repayable. It is reasonable to infer that the penalty for premature repayment would be attracted only prior to the date of its renewal in January, 2017. Post the period of its renewal, it would necessarily follow the terms and conditions as agreed.

43. We concur with the decision of the learned Single Judge that the levy of pre-payment penalty of a sum of ₹1,51,38,600/- was wrongful. The defendant is liable to refund the same to the plaintiff.

44. The recovery of ₹15,00,000/- as processing charges are also unsustainable. Admittedly, the said charges would be payable only if an applicant's application for credit facilities fructify in sanction of the facility. In the present case, the plaintiff had withdrawn its application prior to its approval. There is no material on record to indicate that there was any prior agreement between the parties whereby the plaintiff was obliged to pay the processing charges notwithstanding the result of its application for renewal-cum-enhancement of the credit facilities. The learned Single Judge had rightly held that since the application was aborted before the contract came



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into being, there was no obligation for the plaintiff to pay a sum of ₹15,00,000/- as processing charges. The plaintiff had repaid the credit facilities along with full interest and had withdrawn its request for renewal-cum-enhancement of the facilities. The defendant had wrongfully recovered the said charges and is liable to refund the same. In addition, we also concur with the decision of the learned Single Judge to award interest on the amounts wrongfully recovered by the defendant.

45. We also find no ground to interfere with the award of *pendente lite* interest at the rate of 7% per annum and at the rate of 18% per annum after 30.09.2019.

46. We find no merit in the present appeal, the same is dismissed with costs quantified at ₹1 lac.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 02, 2024

M/gsr