IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

CS/56/2016

SIDHANT UDYOG PRIVATE LIMITED
VS
SUPREME WOOD PRODUCTS PRIVATE LIMITED AND ORS.

For the Plaintiffs : Mr. K. C. Garg, Adv.
Ms. R. L. Joshi, Adv.

For the Defendants : Mr. Debdut Mukherjee, Adv.
Ms. Bhawna Parasramka, Adv.

Hearing concluded on : 10/02/2025

Judgment on : 21/02/2025

Sugato Majumdar, J.:

The instant suit was filed by the Plaintiff praying for recovery of money along with interest.

The plaint case, in nutshell, is that the Plaintiff is a company registered under the Companies' Act, 1956, having registered office at 2B, Tara Chand Dutta Street, 2nd Floor, Kolkata – 700073, within jurisdiction of this Court. The Defendant No.1 is a company registered under the Companies' Act, 1956 having registered office at 224, A.J.C. Bose Road, Krishna Building, 7th Floor, Kolkata – 700017, outside the jurisdiction of this Court.

The Defendant No.1 approached the Plaintiff to lend and advance and/or grant intercorporate loan for a sum of Rs.50,00,000/- and agreed to pay interest at a rate of 18% per annum. The Defendant No.2 and 3 stood as guarantors for repayment of the loan. The Plaintiff advanced the said sum of money in terms of a cheque bearing no. 490288 dated 5th June, 2012, drawn on State Bank of India, SME Branch, Howrah. The Defendants issued one cheque bearing no.180396 dated 15th June, 2013 drawn on ICICI Bank Ltd. Chowringhee Branch, Kolkata, containing a sum of Rs.50,00,000/- assuring repayment of the loan. The Defendants requested the Plaintiff not to present the cheque since they were in financial difficulty. Ultimately, the said loan of Rs.50,00,000/- was not repaid. The Plaintiff, therefore, instituted the instant suit praying for the principal amount of Rs.50,00,000/- along with interest, at a rate of 18% p.a interest calculated stood at Rs.33,00,000/- at the time of institution of the suit. However, there is no mention from which date pre-institution interest was calculated.

The Defendants contested the suit by filling written statement opposing the claim. It was admitted in the written statement that the said amount of Rs.50,00,000/- was advanced by the Plaintiff as inter-corporate loan on 5th June, 2012 but denied that any guarantee was given by the Defendant No.2 and 3. It was further contended there was no agreed rate of interest. The Defendant No.1, admittedly, could not repay the loan on account of financial difficulties. On 21st

March, 2013, the Defendant No.1 had filed a reference under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 before the Learned Board of Industrial and Financial Reconstruction. In terms of the order dated 10th September, 2015, the Board observed that the said reference stood abated. The Defendant No.1 preferred an appeal against the said order. During pendency of the said appeal, the instant suit was filed.

During pendency of the suit, the Plaintiff filed an application being G.A No.1007 of 2016 for passing the final judgment. Co-ordinate Bench of this Court was pleased to pass final judgment on 6th July, 2017 for the sum of Rs.50,00,000/-, being the principal amount. Decree was to be drawn up accordingly. It was observed by the Co-Ordinate Bench that the defence was not only sham and illusory but demonstrate commercial dishonesty. The Co-Ordinate Bench passed another order dated 18th September, 2018 wherein it was clarified that the Defendant No.2 and 3 are directors and shareholders of the Defendant No.1. Therefore, their names were struck out from the decree. It was further directed by the Co-Ordinate Bench that the quantum of interest should be decided in the suit.

Since the interest part was relegated to the suit for adjudication, the suit was proceeded with for determining the rate of interest.

Both the parties adduced oral as well as documentary evidences.

The Plaintiff averred in the plaint that interest rate was agreed at 18% per annum. In the written statement, the Defendants denied that interest rate was agreed upon at 18% p.a. No documentary evidence was adduced to show that this particular rate of interest was agreed upon. The Defendant No.1 handed over a cheque containing the principal sum only without any interest. Ext.3 is statement of accounts admittedly signed by both the parties. In course of cross examination, the P.W.1 admitted that the same does not contain any interest component. The statement of accounts (Ext.3) speaks of the principal amount only, not any interest component. In view of that it cannot be said that interest was agreed upon at 18% p.a. The Plaintiff has failed to prove that the agreed rate of interest is 18% p.a.

The Plaintiff also averred in the plaint that the Defendant No.2 and 3 stood as guarantor which was refuted by the Defendants. No agreement of guarantee was adduced in evidence. In course of cross examination, it was admitted by the P.W.1 that Ext.6, being the notice issued by the Learned Advocate for the Plaintiff is silent of the alleged guarantee. It was also admitted by the P.W.1 that the Defendant No.2 & 3 are authorised signatories of the Defendant No.1. The Co-Ordinate Bench, in terms of the Order dated 18th September, 2018 clarified that the Defendant No.2 & 3 are the directors and shareholders of the Defendant No1. In terms of the said Order, decree was modified. The Order dated 6th July, 2017 and 18th September, 2018 were adduced in evidence and were marked as Ext. A and Ext. B respectively. Therefore, the Plaintiff failed to established and it has already been decided, therefore, acts as res judicata, that the Defendant No.2 and 3 are not the guarantors for repayment of the loan.

Section 34 of the Code of Civil Procedure, 1908 can be looked into inthis context:

> **"Section 34.-Interest:**
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> (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, [1] [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 [3][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 therefor shall not lie."

The principal sum adjudged in the suit was Rs.50,00,000/-. In the pleading, the Plaintiff has failed to mention any date from which the principal amount became due. Although the plaint shows calculation of interest and the sum calculated at Rs.33,00,000/- there is no date from which it was calculated. Absence of certain fact in pleading cannot be compensated by evidence. Rather evidence cannot be adduced beyond the scope of pleadings. In absence of any pleading, this Court desists from awarding any pre-suit interest. But this would not exonerate the Defendant No.1 from liability to pay interest during pendency of the suit and for the post suit period. The Co-ordinate Bench observed very clearly that the Defendant No. 1 not only failed to pay but also demonstrated commercial dishonesty. Therefore, it is apt and the Defendant No. 1 should be made liable to pay interest.

On appreciation of evidence, it is decided and ordered herein that the Defendant No.1 shall be liable to pay interest at a rate of 10% per annum on the principal sum adjudged, namely Rs.50,00,000/- from the date of institution of the suit till the date of drawing up of the decree.

The Defendant No.1 shall pay the interest, so decided herein, within sixty days from the date of the decree in case of default of which, the Defendant No.1 shall be liable to pay additional interest at a rate of 5% per annum from the date of such default till full realisation or repayment. It is clarified that from the date of decree till the time frame of sixty days, as aforesaid, the Defendant shall be liable to pay interest at the aforesaid rate of 10% p.a.

Let the decree be drawn up.

The instant suit is disposed of with all pending applications, if any.

(Sugato Majumdar, J.)