



2025:DHC:5005



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

%

Reserved on: 13th February 2025

Pronounced on: 12th March 2025.

+ CS(OS) 69/2023

CHARANJIT SINGH

.....Plaintiff

Through: Mr. Aniket Bhattacharya, Mr. Karan,
Advocates

versus

V.K. CHABRA & ANR.

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

CS(OS) 69/2023

1. The present suit has been filed by the plaintiff for recovery of Rs. 4,76,00,000/- (*Rupees Four Crore Seventy-Six Lakhs only*) along with *pendente lite* and *future interest* at the rate of 18 percent per annum.
2. Summons were issued to defendant no. 1 on 1st February 2023 and defendant no.2 was dropped from the array of parties on the same day.
3. Defendant no. 1's right to file written submissions was closed on 20th September 2023. Defendant no. 1 was proceeded *ex parte vide* Order dated 7th October 2024.



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Submissions on behalf of the plaintiff

The plaintiff submits in his plaint, as under:

4. Defendant no. 1 came into contact with the plaintiff and his older brother, in 2015, through defendant no. 2. Defendant no. 2 was a financial advisor to the plaintiff and his family. It has been alleged by the plaintiff that defendant no. 2 acted as a middleman in the entire transaction, which proceeded as under:

- i. It was represented that defendant no. 1 was seeking financial assistance, basis which, after due deliberation between the plaintiff and his brother, on 29th September 2015, a sum of Rs. 1,00,00,000/- (*Rupees One Crore Only*) was transferred to defendant no. 1, by way of bank transfer. It is stated that as per the mutual understanding of the parties, the loan was extended at the rate of interest of 12 percent per annum.
- ii. The defendant started paying the interest amount from October 2015.
- iii. Consequent to subsequent demands, another sum of Rs. 1 Crore (*Rupees One Crore only*) was transferred to defendant no. 1's bank account by way of 4 transactions of Rs. 25,00,000/- (*Rupees Twenty-Five Lakhs only*) each.
- iv. From 5th January 2016 to 30th June 2017, interest amounts were duly paid by defendant no. 1.



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v. A further sum of Rs. 1,50,00,000/- (*Rupees One Crore Fifty Lakhs only*) was transferred to defendant no. 1 on 4th July 2017. A total of Rs. 3,50,00,000/- (*Rupees Three Crore Fifty Lakhs only*) was extended to defendant no. 1.

vi. Between 2017 to 2019, interest amounts due were honoured by defendant no. 1.

5. A meeting was held between the parties on 20th November 2019, at the plaintiff's residence, where acknowledgement letter dated 20th November 2019, recording the financial relationship between the parties till the said date, was executed.

The amounts advanced by the plaintiff to defendant no. 2, were tabulated as under, in the aforesaid acknowledgement letter:

Date	Cheque No.	Bank	Branch	Amount
28.9.2015	_____	HDFC	Rajouri Garden	1,00,00,000/-
5.1.2016	_____	_____	_____	25,00,000/-
5.1.2016	_____	_____	_____	25,00,000/-
5.1.2016	_____	_____	_____	25,00,000/-
5.1.2016	_____	_____	_____	25,00,000/-
4.7.2017	RTGS	Allahabad Bank	_____	1,50,00,000/-



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6. On 24th January 2020, due payments were made on the interest accrued, however in the subsequent months, in light of the COVID-19 pandemic, there was a default in payments. Upon inquiry, the plaintiff was assured by the defendant no. 1 that dues will be satisfied in a short span of time.

7. In June 2020, as the lockdown restrictions were relaxed, the plaintiff was desirous of meeting defendant no. 1, however, his efforts did not fructify, Therefore, he sought the intervention of defendant no. 2 to facilitate the meeting,

8. Defendant no. 2 conveyed that defendant no. 1 seeks some time to establish contact. Defendant no. 2 remained in contact with the plaintiff till January 2021, constantly reassuring him of efforts being made to arrange contact with defendant no. 1, however, post January 2021, defendant no. 2 went completely silent.

9. Post March 2021, the country again faced a lockdown which was only relaxed in June 2021.

10. In light of the continued default, loan recall letter dated 1st July 2022 was issued to defendant no. 1.

11. On 5th July 2022, defendant no. 2 conveyed to the plaintiff that the said letter had been received by defendant no. 1 and that he requests a withdrawal of the same, by the plaintiff. As communicated by defendant no. 2, defendant no. 1 was now willing to meet the plaintiff and structure a repayment plan.



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12. By e-mail dated 6th September 2022, defendant No. 1, acting through one, *Mr. Gulshan Kumar*, confirmed and shared with the plaintiff, an account ledger, as maintained by defendant no. 1 for loan amounts borrowed by him and interest amounts accruing thereupon.

13. However, post aforesaid acknowledgement of dues, no payments were made in that regard. Consequently, legal demand notice dated 11th January 2023 was sent to the defendant no. 1, demanding a sum of Rs. 4,76,00,000 (*Rupees Four Crore Seventy-Six Lakhs only*) arrived at, basis Rs. 3,50,00,000/- (*Rupees Three Crore Fifty Lakhs only*) as principal amount and Rs. 1,26,00,000/- (*Rupees One Crore Twenty-Six Lakhs only*) as interest accruing thereupon.

14. The said legal notice was not responded to, resulting in the filing of the present suit.

Findings and Analysis

15. The bank statements for the following accounts of the plaintiff have been exhibited:

- i. Account No. 02921930021695 maintained with *HDFC Bank, Rajouri Garden, New Delhi*, for the period between 1st October 2015 to 31st January 2020- **Ex. PW-1/A**
- ii. Account No. 20378090406 maintained with *Allahabad Bank (now Indian Bank), East Patel Nagar, New Delhi*, for the



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period between 28th June 2017 to 10th August 2017- **Ex. PW-1/B.**

16. A perusal of the aforesaid statements bears out the following transactions having taken place:

MONIES TRANSFERRED BY PLAINTIFF TO THE DEFENDANT			
Date	Account No./ Bank	Chq./ Ref. No.	Transaction Amount
5 th January 2016	02921930021695/ <i>HDFC Bank</i>	0000000000172	Rs. 25,00,000/-
		0000000000173	Rs. 25,00,000/-
		0000000000174	Rs. 25,00,000/-
		0000000000175	Rs. 25,00,000/-
4 th July 2017	20378090406/ <i>Allahabad Bank (now Indian Bank)</i>	-	Rs. 1,50,00,060/-

MONIES RECEIVED BY PLAINTIFF FROM THE DEFENDANT			
Date	Account No./ Bank	Chq./ Ref. No.	Transaction Amount
12 th October 2015	02921930021695/ <i>HDFC Bank</i>	CBINR52015101210008174	Rs. 03,86,301/-
8 th January 2016		CBINR52016010810003651	Rs. 07,25,410/-
19 th April 2016		CBINH16109297663	Rs. 07,47,945/-



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18 th July 2016		CBINR52016071810004860	Rs. 07,56,164/-
31 st March 2017		CBINR52017033110001903	Rs. 07,39,726/-
4 th July 2017		CBINH17185140677	Rs. 5,98,356/-
12 th July 2017		CBINR52017071210000208	Rs. 10,43,836/-
16 th November 2017		CBINR52017111610006393	Rs. 10,58,631/-
5 th May 2018		CBINR52018050510008822	Rs. 10,35,617/-
1 st June 2018		CBINR52018060110015309	Rs. 10,47,123/-
10 th July 2018		CBINR52018071010007334	Rs. 10,58,630/-
15 th January 2019		CBINR52019011510009083	Rs. 10,58,630/-
11 th April 2019		CBINR52019041110001690	Rs. 10,35,616/-
18 th April 2019		CBINR520190418100D6131	Rs. 3,45,205/-
17 th June 2019		CBINR52019061710001546	Rs. 3,56,712/-
7 th August 2019		CBINR52019080710000232	Rs. 14,03,835/-
24 th January 2020		CBINR20024335878	Rs. 10,58,630/-

17. The ledger account shared by *Mr. Gulshan Kumar (agent/ employee of the defendant no. 1)* in e-mail dated 6th September 2022, alleged to have been



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maintained and issued by the defendant and exhibited as PW-1/E, shows the following transactions to have taken place:

Date	Particulars	Vch Type	Vch No.	Debit	Credit
29-Sep-15	By CBI A/C NO.: 1118390658	Receipt	19		1,00,00,000.00
12-Oct-15	To CBI A/C NO.: 1118390658	Payment	92	3,86,301.00	
	By INTEREST PAID	Journal	84		3,86,301.00
5-Jan-16	By CBI A/C NO.: 1118390658	Receipt	32		1,00,00,000.00
8-Jan-16	To CBI A/C NO.: 1118390658	Payment	139	7,25,410.00	
	By INTEREST PAID	Journal	128		7,25,410.00
				11,11,711.00	2,11,11,711.00
	To Closing Balance			2,00,00,000.00	
				2,11,11,711.00	2,11,11,711.00
1-Apr-16	By Opening Balance				2,00,00,000.00
19-Apr-16	To CBI A/C NO.: 1118390658	Payment	10	7,47,945.00	
	By INTEREST PAID	Journal	3		7,47,945.00
18-Jul-16	To CBI A/C NO.: 1118390658	Payment	68	7,56,164.00	
	By INTEREST PAID	Journal	40		7,56,164.00
21-Oct-16	To CBI A/C NO.: 1118390658	Payment	92	7,56,164.00	
	By INTEREST PAID	Journal	74		7,56,164.00
31-Mar-17	To CBI A/C NO.: 1118390658	Payment	192	7,39,726.00	
	By INTEREST PAID	Journal	145		7,39,726.00
				29,99,999.00	2,29,99,999.00
	To Closing Balance			2,00,00,000.00	
				2,29,99,999.00	2,29,99,999.00
1-Apr-17	By Opening Balance				2,00,00,000.00
4-Jul-17	By CBI A/C NO.: 1118390658	Receipt	19		1,50,00,000.00
	To CBI A/C NO.: 1118390658	Payment	77	5,98,356.00	
	By INTEREST PAID	Journal	62		5,98,356.00
10-Jul-17	To CBI A/C NO.: 1118390658	Payment	91	10,43,836.00	
	By INTEREST PAID	Journal	76		10,43,836.00
16-Nov-17	To CBI A/C NO.: 1118390658	Payment	136	10,58,631.00	
	By INTEREST PAID	Journal	106		10,58,631.00
				27,00,823.00	3,77,00,823.00
	To Closing Balance			3,50,00,000.00	
				3,77,00,823.00	3,77,00,823.00
1-Apr-18	By Opening Balance				3,50,00,000.00
5-May-18	To CBI A/C NO.: 1118390658	Payment	27	10,35,617.00	
	By INTEREST PAID	Journal	28		10,35,617.00
1-Jun-18	To CBI A/C NO.: 1118390658	Payment	50	10,47,123.00	
	By INTEREST PAID	Journal	48		10,47,123.00
10-Jul-18	To CBI A/C NO.: 1118390658	Payment	101	10,58,630.00	
				31,41,370.00	3,70,82,740.00

Carried Over

True Copy



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**V. K. CHABRA**

Charanjit Singh Ledger Account : 1-Apr-12 to 31-Aug-22

(27)

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			31,41,370.00	3,70,82,740.00
10-Jul-18	By INTEREST PAID	Journal	81		10,58,630.00
15-Jan-19	To CBI A/C NO.: 1118390658	Payment	194	10,58,630.00	
	By INTEREST PAID	Journal	149		10,58,630.00
				42,00,000.00	3,92,00,000.00
	To Closing Balance			3,50,00,000.00	
				3,92,00,000.00	3,92,00,000.00
1-Apr-19	By Opening Balance				3,50,00,000.00
11-Apr-19	To CBI A/C NO.: 1118390658	Payment	7	10,35,616.00	
18-Apr-19	To CBI A/C NO.: 1118390658	Payment	20	3,45,205.00	
	By INTEREST PAID	Journal	18		13,80,821.00
14-Jun-19	To CBI A/C NO.: 1118390658	Payment	73	3,56,712.00	
	By INTEREST PAID	Journal	58		3,56,712.00
5-Aug-19	To CBI A/C NO.: 1118390658	Payment	141	14,03,835.00	
	By INTEREST PAID	Journal	100		14,03,835.00
24-Jan-20	To CBI A/C NO.: 1118390658	Payment	195	10,58,630.00	
	By INTEREST PAID	Journal	150		10,58,630.00
				41,99,998.00	3,91,99,998.00
	To Closing Balance			3,50,00,000.00	
				3,91,99,998.00	3,91,99,998.00

18. A letter dated 1st July 2022, issued by the plaintiff to the defendant no.1 has been exhibited as **PW-1/D**, along with courier receipts for the same. The amounts shown to be due in the aforesaid letter are to the tune of Rs. 4,55,00,000/- (*Rupees Four Crore Fifty-Five Lakhs only*).

19. The letter of acknowledgement dated 20th November 2019, executed between the parties and exhibited as **PW-1/C**, has been extracted as under:



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J. Registrar (S), DHC
30/01/25

(21)

**CHARANJIT
SINGH**

15A/20, EAST PATEL NAGAR, NEW DELHI-110008

P.A.N - AAAP8741E

Date 20.11.2019

Advanced a sum of Rs. 3,50,00,000/- (in word) Rs. Three Crore Fifty
Lakh only - Only

as a loan @ Interest rate of 12% Per Annam to Mr/Mrs/Ms V. K. Chaudhary

Vide a cheque No./NEFT/RTGS details as under :

Transaction Date	Cheque No.	Bank	Branch	Amount
28.9.15	-	-	-	100,00,000 -
5.1.16	-	HDFC	Rajouri Gate	25,00,000 -
5.1.16	-	-	"	25,00,000 -
5.1.16	-	-	"	25,00,000 -
5.1.16	-	-	"	25,00,000 -
4.7.17	RTGS	All India Bank	Loan borrower P.A.N:	1,50,00,000 -

Signature

Charanjit Singh

Signature

V. K. Chaudhary

PAN AADPC 36355

Limitation

20. The monies were loaned on various dates, for the first time however, on 5th January 2016, and for the last time on, 4th July 2017. The date of repayment of first payment by the defendant no.1 against the interest accrued, was on, 12th October 2015. The last payment was made by the defendant no. 1 on 24th



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January 2020, the defendant, thereafter defaulted in repayment of remaining amount. The letter of acknowledgement of liability (PW-1A/C) is dated 20th November 2019. The ledger maintained by defendant no.1 for the amounts received from and paid to the plaintiff, was e-mailed by defendant no. 1's employee, on 6th September 2022 (PW-1/E).

21. The e-mail dated 6th September 2022, would constitute a fresh cause of action, as per Section 25(3) of the *Indian Contract Act, 1872* and Section 18 of the *Limitation Act, 1963*. The said provisions read as under:

i. **Section 25, Indian Contract Act, 1872:**

“25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.



In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent to the promisor was freely given.”

(emphasis supplied)

ii. **Section 18, Limitation Act, 1963:**

“18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal



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to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

(emphasis supplied)

22. Even if the e-mail dated 6th September 2022 is disregarded, in light of Section 19 of Limitation Act 1963, the period of limitation would begin afresh on 24th January 2020. Further the order of the Supreme Court in, ***Cognizance for Extension of Limitation, In re*** (2022) 3 SCC 117, aids the plaintiff in crossing the bar on limitation.

i. Section 19 of the Limitation Act, 1963, reads as under:

“19. Effect of payment on account of debt or of interest on legacy.—

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—



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(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment.

(b) “debt” does not include money payable under a decree or order of a court.”

(emphasis supplied)

ii. The decision of the Supreme Court in ***Cognizance for Extension of Limitation, In re*** (*supra*), reads as under:

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [*Cognizance for Extension of Limitation, In re*, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.



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5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

(emphasis supplied)

23. The suit was filed on 30th January 2023. If the starting point of limitation is taken to be 24th January 2020, in consonance with Section 19 of the Limitation Act, 1963, the limitation period would end on 24th January 2023, however, in light of the Supreme Court's decision in ***Cognizance for Extension of Limitation, In re(supra)***, the suit of the plaintiff would fall well within the limitation period.

Liability

24. The testimony of PW-1 remained uncontroverted, unrebutted and unchallenged. There is no reason to disbelieve the testimony of the PW-1 and the exhibited documents i.e. the bank statements (**PW-1/A; PW-1/B**), the letter of acknowledgement dated 20th November 2019 (**PW-1/C**), loan recall letter dated 01st July 2022 (**PW-1/D**), the ledger attached with E-mail dated 6th September 2022 (**PW-1/E**), and legal notice dated 11th January 2023 (**PW-1/F**).

25. Certificate under Section 65B of Indian Evidence Act, 1872, along with the plaint and the statement of truth appear to be of an unimpeachable character.

26. In light of the aforesaid evidence, the liability of the defendant no. 1 stands established.



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Pendente Lite and Future Interest Payable

27. The plaintiffs' plea of relief can be trifurcated in the following portions:

- i. Recovery of principal amount: Rs. 3,50,00,000/- (*Rupees Three Crore Fifty Lakhs only*).
- ii. Recovery of interest receivable under contract at the rate of 12 percent per annum:Rs. 1,26,00,000/- (*Rupees One Crore Twenty-Six Lakhs only*)
- iii. *Pendente Lite* and *Future* interest at the rate of 18 percent per annum.

28. At this juncture, it is apposite to refer to Section 34 of the Code of Civil Procedure, 1908, ('CPC'), which reads as under:

"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 therefor shall not lie.”

(emphasis supplied)

29. The Supreme Court in ***Central Bank of India v. Ravindra*** (2002) 1 SCC 367, held as under:

“41. A few points are clear from a bare reading of the provision. While decreeing a suit if the decree be for payment of money, the court would adjudge the principal sum on the date of the suit. The court may also be called upon to adjudge interest due and payable by the defendant to the plaintiff for the pre-suit period which interest would, on the findings arrived at and noted by us hereinabove, obviously be other than such interest as has already stood capitalised and having shed its character as interest, has acquired the colour of the principal and having stood amalgamated in the principal sum would be adjudged so. The principal sum adjudged would be the sum actually loaned plus the amount of interest on periodical rests which according to the contract between the parties or the established banking practice has stood capitalised. Interest pendente lite and future interest



(i.e. interest post-decree not exceeding 6 per cent per annum) shall be awarded on such principal sum i.e. the principal sum adjudged on the date of the suit. It is well settled that the use of the word “may” in Section 34 confers a discretion on the court to award or not to award interest or to award interest at such rate as it deems fit. Such interest, so far as future interest is concerned may commence from the date of the decree and may be made to stop running either with payment or with such earlier date as the court thinks fit. Shortly hereinafter we propose to give an indication of the circumstances in which the court may decline award of interest or may award interest at a rate lesser than the permissible rate.”

.....

44. We are of the opinion that the meaning assigned to the expression “the principal sum adjudged” should continue to be assigned to “principal sum” at such other places in Section 34(1) where the expression has been used qualified by the adjective “such”, that is to say, as “such principal sum”. Recognition of the method of capitalisation of interest so as to make it a part of the principal consistently with the contract between the parties or established banking practice does not offend the sense of reason, justice and equity. As we have noticed, such a system has a long-established practice and a series of judicial precedents upholding the same. Secondly, the underlying principle as noticed in several decided cases is that when interest is debited to the account of the borrower on periodical rests, it is debited because of it having fallen due on that day. Nothing prevents the borrower from paying the amount of interest on the date it falls due. If the amount of interest is paid there will be no occasion for capitalising the amount of interest and converting it into principal. If the interest is not paid on the date due, from that date the creditor is deprived of such use of the money which it would have made if the debtor had paid the amount of interest on the date due. The creditor needs to be compensated for deprivation. As held in Pazhaniappa Mudaliar v. Narayana Ayyar [AIR 1943 Mad 157 : (1942) 2 MLJ 753] the fact situation



is analogous to one as if the creditor has advanced money to the borrower equivalent to the amount of interest debited. We are, therefore, of the opinion that the expression “the principal sum adjudged” may include the amount of interest, charged on periodical rests, and capitalised with the principal sum actually advanced, so as to become an amalgam of principal in such cases where it is permissible or obligatory for the court to hold so. Where the principal sum (on the date of suit) has been so adjudged, the same shall be treated as “principal sum” for the purpose of “such principal sum” — the expression employed later in Section 34 CPC. The expression “principal sum” cannot be given different meanings at different places in the language of same section i.e. Section 34 CPC.

.....

48. It was also submitted that Section 34 CPC is general in its application to all money suits and if banking practice or banking contracts providing for capitalisation of interest charged on periodical rests were to be recognised it will mean that application of Section 34 would be different in suits filed by banks and in suits filed by creditors other than bankers. In our opinion it is bound to be so. Section 34 is a general procedural provision and whether it would apply or not and if apply then to what extent would obviously depend on the fact situation of each case.

49. We are, therefore, of the opinion that the two-Judge Bench decision of this Court in Corpn. Bank v. D.S. Gowda [(1994) 5 SCC 213] and the three-Judge Bench decision in Bank of Baroda v. Jagannath Pigment & Chemicals [(1996) 5 SCC at p. 280] are correctly decided and are, therefore, affirmed. A creditor can charge interest from his debtor on periodical rests and also capitalise the same so as to make it a part of the principal. Such a course can be justified by stipulation in a contract voluntarily entered into between the parties or by a practice or usage well established in the world to which the parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or usage or practice



can stand abrogated by legislation such as usury laws or debt relief laws and so on.

.....

55. ..However, we propose to place on record a few incidental observations, without which, we feel, our answer will not be complete and that we do as under:

(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

(2) Novation, that is, a debtor entering into a fresh agreement with a creditor undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal, any contract express or implied and an express acknowledgement of accounts, are the best evidence of capitalisation. Acquiescence in the method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to protest is not acquiescence.

(3) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.



(4) Capitalisation method is founded on the principle that the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an opportunity of making the payment on the date of entry or within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded on being shown to the satisfaction of the court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

.....

(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

(emphasis supplied)



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30. In view of the aforesaid position of law and considering that the last payment was made in the year 2020, post which, the defendant no.1 has neither replied to notices/letters issued by the plaintiff nor appeared in the proceedings before this Court, and also, in view of contractual rate of interest, the prevalent market rates of interest and the nature of the transaction between the parties, the Court deems it fit to allow the prayer of the plaintiff and direct the defendant no.1 to pay *pendente lite* and *future* interest, till the date of realization, at the rate of *12 percent per annum*.

Relief

31. Accordingly, the suit of the plaintiff is decreed for a total amount of Rs.4,76,00,000/- (*Rupees Four Crore Seventy-Six Lakhs only*) [inclusive of the principal amount (Rs. 3,50,00,000/-) and interest accrued thereupon, as on 31st December 2022 (Rs. 1,26,00,000/-)] along with *pendente lite* and *future* interest, on the said amount, at the rate of *12 percent per annum*, from the date of institution of the suit, till the date of payment by the defendant.

32. Decree sheet be drawn up accordingly.

33. Pending applications, if any, be rendered infructuous.

(ANISH DAYAL)
JUDGE

MARCH 12, 2025/kp