Case No. 39

99 (2002) DELHI LAW TIMES 420 (DB)

DELHI HIGH COURT

Dalveer Bhandari & Vikramajit Sen, JJ

WEST BENGAL CEMENT LTD & ANR — Appellants

Vs

SYNDICATE BANK — Respondent

RFA (OS)Nos.22,13,15,16,21,23,24,25,26,12 of 1989 - Decided on 10.5.2002

Interest capitalization permissible - Unpaid interest becomes part of principal sum as if advanced on that date - Central Bank of India Vs. Ravindra (2002 (1 S.C.C. 367) followed.

Cases referred:

1.1973 (4) SCC115. (Relied) [Para 11]

2. VII(2001) SLT 400=I (2002) BC 150 (SC) = 2002 (1) SCC 367. (Referred & Relied) [Para 12]

3. II (1994) BC 614(SC)=1994 (5) SCC 213.(Relied) [Para 14]

Counsel for the Parties :

For the Appellants : Mr.P.C. Khanna, Sr. Adv with Ms. Ruchi Sindhwani, Advocate

For the Respondents :Mr. M.S. Dewan , Advocate

JUDGMENT

Dalveer Bhandari, J. – A number of appeals have been filed against the judgment of the learned Single Judge dated 10.10.1988. By this judgment we propose to dispose of all the aforesaid appeals. These appeals involve an important and interesting question of law whether the amount initially advanced can alone be treated as principal sum?

2. For the sake of convenience facts of only RFA (OS) No.22/89 are recapitulated as under.

3. The respondents/plaintiff has filed a suit for recovery against the appellants/ defendants. The respondent bank provided facility of overdraft limit of Rs. 10 lakhs

to the appellant company against hypothecation of fiat cars, jeeps and commercial vehicles. The appellants in consideration of the said overdraft limit executed a demand promissory note dated 2.2.1972 for the said amount of Rs.10 lakhs carrying interest @ 10% p.a. for the time being. The appellants also executed further documents as set out in the plaint and availed of the said overdraft limit of Rs10 lakhs. The appellants admitted their liability in writing to the extent of Rs.11,83,327.95 as on 31.12.1974. Inspite of the acknowledgement of the liability, the appellants failed to deposit money in the said overdraft account and when called upon to deposit the sale proceeds of the hypothecated vehicles, the appellants stated that the same had been utilisd elsewhere and they were not in a position to pay the same to the bank.

4. The appellants admitted their liability to the extent of Rs. 17,38,401.85 as on 31.12.1976. The respondent bank claimed that originally the rate of interest was 10.5% p.a. but because of the enhancement in the bank interest rate by the Reserve Bank of India, the interest chargeable from the appellants stood enhanced and the appellants had agreed to be bound by the various rules and regulations of the bank regarding enhancement of interest and the same has been charged @ 16.5% p.a. The interest was computed accordingly in the statement of accounts filed in the suit. Accordingly it is claimed that a sum of Rs. 33,39,026.75 is due and payable by the appellants to the respondent bank.

5. The Court after hearing the parties framed the following issues :

(1) Whether the principal amount as claimed by the Bank is not principal amount on the ground that it includes interest added from the date of advance till date of the suit ? If so, what is its effect ? OPD

(2) Whether there are special circumstances for disallowing interest payable to the plaintiff from the date of the filing of the suit to the date of the decree and from the date of the decree till the date of the payment and, in any case, for charging the same at the reduced rate or rates of interest ? OPD

(3) Whether the amount paid by the defendant during the pendency of this suit is liable to be adjusted against the principal amount or towards interest ? OPD

(4) Relief.

6. The Court examined the scope of Section 34 of the Code of Civil Procedure including interpretation of the words 'Principal Sum' in the said section and from the date of the decree to the date of payment. The Court examined the entire evidence, documents and number of cases decided by various Courts. The Court rejected the contention of learned Counsel for the appellants that interest can never become principal.

7. The Court while dealing with issue No. 2 observed that Section 34 of the Code of Civil Procedure gives discretion to the Court in the manner of grant of interest but the Court observed that in commercial transactions, grant of interest at the contractual rate ought to be the rule and grant of interest at the reduced rate a rare exception. The Court mentioned that it cannot be said that there are any special circumstances justifying the grant of interest at a reduced rate and the learned Single Judge observed that on consideration of the totality of the facts and circumstances it shows that the appellants have not been able to show any exceptional or special circumstances justifying reduction of rate of interest and not awarding it at the rate of 16.5% p.a.

8. During the pendency of the matter, the appellants paid Rs. 7,40,0000-. The Court observed that the appellants cannot insist that this amount is liable to be adjusted against the principal amount in absence of any such instructions to the bank. Issue No. 3 was also decided in favour of the respondent and against the appellants and a decree for a sum of Rs. 33,39,026.75 with interest thereon @ 16.5% p.a. from the date of suit till realisation was passed by the learned Single Judge.

9. The appellants are aggrieved by the said judgment and preferred this appeal on manifold grounds. It is mentioned in the appeal that the learned Single Judge was in error in not directing that Rs. 7.40 lakhs paid by the appellants should have been adjusted towards the principal and not the interest.

10. The appellants also submitted that principal and interest will always be separate and under no circumstance the interest can become the principal amount. The learned Counsel for the appellants also submitted that the respondent bank, for all practical purposes, being a monopoly organisation and even otherwise the debtor according to universal recognitions, having a weaker bargaining power qua the creditor,

the mere fact that the original agreement gave the authority to the respondent bank to increase the rate of interest proportionate to the increase in the Reserve Bank of India rate amounted to unfair bargain, which was liable to be set aside on the ground that the same was arbitrary being violative of Article 14 of the Constitution of India.

11. In *Shew Kissen Bhattar v. CIT,* reported as 1973 (4) SCC 115, the Court observed that on failure of the borrower to pay in accordance with the terms of the contract he is liable to pay compound interest. In other words, if he fails to pay interest in accordance with the contract, he is liable to pay interest on interest. To put it differently, when the interest payable is not paid, the same becomes a part of the principal sum and thereafter interest has to be paid not only on the original principal amount but also on that part of the interest which had become a part of the principal.

12. During the course of the hearing learned Counsel for the appellants, Mr. Khanna, fairly submitted that the entire controversy whether the interest amount can become the principal has been finally decided recently against the appellants by a Constitutional Bench judgment of the Supreme Court in the matter of *Central Bank of India v. Ravindra & Ors.* reported as VII (2001) SLT 400=1 (2002) BC150 (SC)=2002 (1) SCC 367. The Constitution Bench comprehensively examined this issue in great depth. The Supreme Court examined provisions of the Act and a large number of English and Indian cases. The Court also examined the judgment delivered by Y.K. Sabharwal, J. in the instant case. Their Lordships of the Supreme Court observed that the principal sum adjusted can also include in it interest as it depends upon the contract between the parties. Their Lordships in the aforesaid case observed that 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.

13. The Court further observed that:

> "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."

14. Their Lordships of the Supreme Court observed that the judgment of the

Supreme Court in *Corporation Bank v. D.S. Gowda,* II (1994) BC 614 (SC)=1994 (5) SCC 213, laid down correct law. The Court observed that 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.

15. In view of the clear, categoric and unambigious findings of the aforementioned Constitutional Bench case, we find no merit in these appeals and these appeals are accordingly dismissed. In the facts and circumstances of these appeals, we direct the parties to bear their own costs.

Appeals dismissed.