

CASE NO.:
Appeal (civil) 972 of 1995

PETITIONER:
SYNDICATE BANK

RESPONDENT:
R. VEERANNA AND ORS.

DATE OF JUDGMENT: 19/12/2002

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2002 Supp(5) SCR 600

The following Order of the Court was delivered :

Heard learned counsel for the parties.

This appeal is by the plaintiff-Bank aggrieved by the impugned judgment and decree of the High Court dismissing their first appeal and affirming the judgment of the trial court. The appellant-Bank filed suit for recovery of total amount of Rs. 16,15,091.05 against the defendants. The appellant advanced loan of three kinds to the defendant No. I and defendant Nos. 2 and 3 were the guarantors. When the defendants failed to make payment of the amount borrowed, the plaintiff was constrained to file the suit. The defendants resisted the claim of the plaintiff on various grounds. In view of the pleadings of the parties, the trial court framed the following issues: -

" 1. Whether defendants have agreed to pay interest at 5% per annum above the Reserve Bank of India rate subject to minimum of 11% per annum, to be compounded quarterly?

2. Whether the interest claimed is highly excessive and exorbitant under the Usurious Loans Act?

3. Whether plaintiff is not entitled to more than Rs. 21.500/- as service charges?

4. Whether defendants have acknowledged the debts and if not, whether the suit is barred by limitation?

5. Whether suit is bad for misjoinder of cause of action?

6. Whether defendants are entitled to instalments claimed?

7. To what reliefs are parties entitled? Additional issues:-

1. Whether the plaintiff Bank is justified in unilaterally raising the rate of interest?

2. Whether the interest charges is correct?"

The plaintiff-Bank examined its officers as PWs-1 and 2 and got marked documents as P-1 to P-40. The defendant No. I entered the witness box and examined himself as DW-2 and one Krishnamurthy, a Chartered Accountant was examined on behalf of the defendants as DW-I. The defendants got marked documents as D-1 to D-40. The trial court, having considered and appreciated the evidence placed before it both documentary as well as oral, recorded findings on issue Nos. 1 to 3 in the affirmative and on issue Nos.

5 and 6 and additional issue Nos. 1 and 2 in the negative. As far as issue No.4 is concerned the trial court recorded a finding that the defendants have acknowledged all the debts and the suit claim of the plaintiff under three loans was within time. However, during the course of the argument before the trial court, learned counsel for the defendants disputed only about the higher rate of interest charged by the plaintiff-Bank. The learned counsel for the defendants also made a specific statement that defendants give up all other contentions. It was further submitted that the defendants were ready to pay the loan amount due from them with agreed rate of interest compounded with quarterly rate but they were not ready to pay the higher rate of interest as claimed by the plaintiff under the pretext that the RBI has enhanced the rate of interest. The learned trial Judge in view of the submissions, as can be seen from the judgment, has recorded that the only point that came up for decision was as regards the charging of higher rate of interest by the plaintiff. The trial court decreed the suit of the plaintiff for recovery of Rs. 9,82,963.47 against the defendants with current rate of interest at the rate of 11% per annum from the date of the suit on the balance amount due from the defendants. The trial court refused to grant interest at the enhanced rate claimed by the plaintiff in terms of the agreement keeping in view the Reserve Bank circulars. The plaintiff-Bank to the extent of refusal of interest at the rate claimed filed regular first appeal before the High Court. The High Court did not find any good ground to differ with the finding recorded by the trial court as regards rate of interest. In that view, the first appeal was also dismissed by the High Court. Hence, the plaintiff-Bank has brought this appeal to this Court.

The learned counsel for the appellant contended that having regard to the agreement entered into between the plaintiff and the defendants as regards the rate of interest, the trial court as well as the High Court committed an error in not accepting the claim of the appellant to award the interest; the High Court was also not justified in holding that the appellant was not entitled to charge higher rate of interest without giving notice and charging such interest was in violation of principles of natural justice inasmuch as rate of interest was enhanced without giving an opportunity to the defendants. According to the learned counsel, the High Court committed an error in refusing the claim of the plaintiff on the ground that it failed to follow the circulars issued by the head office; the circulars issued were only for the guidance of the officers of the Bank, which could not vary terms of the contract. Learned counsel added that the claim of the Bank was substantiated by the accounts maintained by the Bank and the extracts were produced before the trial court. Further in 1978, the defendants acknowledged their liability of the amount and the amount calculated was on the basis of the enhanced rate of interest on the basis of the agreed terms between the parties. According to him, it was not open to the defendants, having acknowledged the liability, to contend that the rate of interest charged was on higher side. It was also the submission of the learned counsel for the appellant that once the plaintiff placed the evidence before the Court to establish that it was entitled to charge higher rate of interest it was for the defendants to rebut the same. The defendants in this regard failed to do so. The courts were not justified in refusing to award the interest as claimed by the appellant.

Learned counsel for defendant No.1 submitted that in the plaint itself the plaintiff has claimed the contract rate of interest at 11%; hence it was not open to the plaintiff to claim higher rate of interest; in the plaint averments were not made as to what was the rate of interest charged from time to time. The learned counsel submitted that the trial court on appreciation of evidence recorded findings as to the appropriate rate of interest and High Court has confirmed the same. Hence, this Court may not interfere with the findings.

We have carefully considered the submissions made by the learned counsel for the parties. The trial court rejected the claim of the plaintiff as regards the interest on the ground that there was absolutely no record to

show that at any time the defendants agreed to pay any higher rate of interest than the agreed rate on the said three loans taken by them. We must point out at once that this observation of the trial court runs contrary to the very agreements Ex. P-I, P-5 and P-l 1. Further, the acknowledgements made by the defendants in 1978 also indicate that the defendants acknowledged their liability of the amount due and the amount had been calculated on the basis of the enhanced rate of interest. Observations of the trial court that the Bank arbitrarily increased the rate of interest and charged the higher rate also do not stand to the reason in the light of the evidence placed on record including the aforementioned documents. In our view, the trial court was wrong in saying that the interest could not be enhanced without the consent of the defendants on the face of the agreements to Ex. P-l, P-5 and P-l I. The rate of interest was enhanced as per the agreement between the parties and there was no question of taking separate consent from the defendants again.

The High Court while holding that the party is bound to pay the interest at the agreed rate took the view that the Bank could not automatically charge the increased rate of interest merely on the basis of rise of interest on account of RBI circulars. It is not a case of automatically charging the increased rate of interest; charge of higher rate is based on agreement between the parties. The High Court was clearly in error in holding that the principles of natural justice were violated on the ground that the defendants were not put on notice before enhancing the rate of interest when the parties are bound by the terms of the contract. The application of principle of natural justice cannot be read into the express terms of contract. The other reason given by the High Court to affirm the decree of the trial court was that the plaintiff Bank violated the circulars/instructions given by the head office and as such the plaintiff could not claim higher rate of interest. We are not in a position to approve this view of the High Court. The instructions given by the head office to the branches were only for their guidance and to safeguard the interest of the Bank in case of dispute. At any rate, these instructions cannot vary the terms of agreement between the parties. In other words, they could not alter the terms of Ex. P-1, P-5 and P-II.

We may add that in the light of the acknowledgement of their liability by the defendants in 1978, it is not open to them now to deny to make payment of the amount due to the Bank on the ground that higher rate of interest could not be charged. It is clear from the judgment of this Court in *Hiralal and Ors. v. Badkulal and Ors.*, [1953] 4 SCR 758 that an unqualified acknowledgement of liability as in the present case by a party not only saves the period of limitation but also gives a cause of action to the plaintiff to base its claim.

In the circumstances, in our view, the trial court as well as the High Court were clearly in error in refusing interest as claimed by the plaintiff Bank. Hence, this appeal is entitled to succeed. The impugned judgment and decree confirming the judgment and decree of trial court so far they relate to refusal of interest at the rate claimed by Bank is set aside and the decree of the trial court as affirmed by the High Court stand modified to that extent. In other words, the plaintiff's suit is decreed for Rs. 16,15,091.05 instead of only for Rs. 9,82,263.47 and the decree of the trial court is modified on this basis while maintaining the current and future rates of interests as ordered by the trial court. The appeals are disposed of accordingly. No costs.