

CASE NO.:
Appeal (civil) 441 of 1999

PETITIONER:
HIMACHAL PRADESH STATE FINANCIAL

Vs.

RESPONDENT:
VS.

DATE OF JUDGMENT: 31/10/2000

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI, J.
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The only point in controversy in the present appeal is as to whether the respondent-loanee is also entitled to interest at the rate of 13% on the amount to be refunded which was admittedly realised by the sale of his industrial unit, in excess of his liability in a loan transaction.

Vide the impugned judgment in this appeal, the High Court has directed the refund of the excess amount, if any, after calculations along with interest at the rate of 13%, the rate on which the Corporation is stated to have charged the respondents on the amount of loan advanced to him.

The facts giving rise to the present appeal are that on his request the appellant-Corporation sanctioned on 18.12.1983 a term loan of Rs.15 lacs against the total cost of the Project of the respondent for construction of a hotel unit. The appellant-Corporation had also sanctioned an additional loan of Rs.5.50 lacs on 6.8.1986. The total sanctioned loan of Rs.20.50 lacs was dispersed to the respondents during the period from 6.7.1984 to 1.5.1987. The respondents committed defaults in the payment of the loan amount with the result that the appellant-corporation took over the possession of the hotel under Section 29 of the State Financial Corporations Act, 1951 (hereinafter called "the Act"). Notices for sale of the hotel were advertised in the Newspapers. Four parties negotiated the sale of the assets of the hotel with the appellant-corporation. The offer of M/s.Pradeep Kapur & Associates was accepted whereafter agreement of purchase was made between the Corporation and the purchaser on 13th March, 1993. The respondents challenged the sale through Writ Petition No.515 of 1993. During the pendency of the writ petition it was submitted that one Rana Iqbal Singh was prepared to purchase the property for Rs.60 lacs in case the vacant possession was delivered to him. Such a statement made in the court was recorded in the proceedings of the court dated 23rd December, 1993. In view of the offer of 60 lacs as price of the unit, the Corporation presumably could

not disperse the excess amount out of the amount received from M/s.Pradeep Kapur & Associates to the respondents. The excess amount was put in the Current Account of the corporation so that it could be dispersed immediately to the respondents as per situation arising in the case. The Corporation did not earn any interest on that amount. As per the orders of the High Court dated 23rd December, 1993, the appellant-corporation claims to have arranged a negotiation and called the said Rana Iqbal Singh in its office on 16.2.1994. The counsel of earlier purchaser M/s.Pradeep Kapur & Associates submitted a letter along with an application which was presented before the High Court praying therein for recalling the order dated 23rd December, 1993 and for stay of consideration of the offer of third party, namely, Rana Iqbal Singh. The said application of the earlier purchaser was not decided by the High Court. However, the writ petition No.515 of 1993 was disposed of on 3rd January, 1997 vide the order impugned in this appeal.

It is submitted on behalf of the corporation that the High Court was not justified in granting the interest on the excess amount which was to be payable, upon calculation, to the respondents. The appellant- corporation claims to have not faulted in refunding the excess amount. The delay was occasioned on account of the pendency of the writ petition filed by the respondents. As the appellant-corporation did not earn any profit on the excess amount, it was not obliged to pay any interest. The corporation, subject to the provisions of the Act, can carry on and transact any of the business specified in Section 25 of the Act. The said section authorises the corporation to grant loans or advances to the industrial concerns on such terms and conditions as may be agreed to. The corporation deals with public money for public benefit. Default in payments of the loans and advances thus, ultimately affects the public at large. An obligation is cast upon the loanee to pay back the amount of the loan or advance received under the Act. In case of failure to make the payment, the corporation is expected to adopt an approach which has to be public oriented rendering a helping hand to the loanee to come out of the financial losses and constrains if any but without causing any loss to the corporation. To protect the public interest, the Act provides a mechanism for recovery of loan. Section 29 of the Act authorises the corporation to take over the management or possession or both of the industrial unit and transfer the same by way of lease or sale where it finds that any industrial concern, who had taken loan, had made default in repayment of any loan advanced or any instalment thereof or in meeting of its obligation in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the Corporation.

Powers conferred under Section 29 of the Act are intended to achieve the object of the Act. The amount realised in consequence of the sale or lease of the property of the defaulter can be adjusted in the liability of the defaulter and the excess amount thus realised, if any, to be paid to the person whose unit was proceeded against under Section 29 of the Act. The activities of the corporation are visualised not as profit earning concern but an extended arm of the State to harness the business potential of the country to benefit the common man. There is no statutory obligation on the part of the corporation to pay the interest on the excess amount realised. However, in

appropriate cases interest may be awarded in lieu of compensation or damages for allegedly wrongfully retaining the amount payable to a party. Interest can be awarded on equitable grounds as was held by this Court in *Satinder Singh v. Umrao Singh* [1961 (3) SCR 676], *Laxmichand v. Indore Improvement Trust* [1975 (1) SCC 565] and *Sovintorg (India) Ltd. v. State Bank of India, New Delhi* [1999(6) SCC 406].

A perusal of the impugned order shows that the High Court has not referred to any ground justifying the payment of interest to the respondents. The respondents have also not referred to any circumstance warranting the exercise of powers of equity in their favour. The reliance of the learned counsel for the respondents on Sovintorg (India) Ltd.'s case (supra) is misplaced. In that case this Court has held: "There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commission to also grant interest appropriately under the circumstances of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in Satinder Singh v. Umrao Singh (1961) 1 SCR 676."

From the record it appears that after getting a loan in the year 1983 and 1986 the respondents committed persistent defaults in repayment which necessitated the action against them under Section 29 of the Act in the year 1991. As no amount was paid till 13th April, 1993, the corporation sold the industrial unit, a hotel, for an amount of Rs.39.75 lacs. Before the excess outstanding amount could be paid to the respondents, they filed a writ petition in the High Court challenging the action of the corporation and thus preventing it from making the payment. The counsel of the respondents even made an offer that there was a buyer to purchase the hotel for a sum of Rs.60 lacs. The negotiations with the prospective buyer could not mature on account of application filed by the earlier purchaser. The High Court instead of deciding the application of the earlier purchaser disposed of the writ petition vide the order impugned. As noticed earlier, the High Court has not assigned any reason much less a cogent one for the payment of interest. In the absence of an agreement and the statutory provision, interest could not be claimed by the respondents as a right. The court did not refer to any circumstance on the basis of which the interest could have been granted as an equitable relief.

[illegible]

In view of the judgment in Civil Appeal, the application has become infructuous. The same is dismissed having become infructuous.

JUDIS