

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 1317 OF 2009
(Arising out of SLP (C) No. 30832 of 2008)

C.K. Sasankan

...Appellant

Versus

The Dhanalakshmi Bank Ltd.

...Respondent

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.
2. This appeal arises out of the judgment and order dated 17.07.2008 passed by the Division Bench of the High Court of Judicature at Madras in Writ Petition (civil) No. 28664 of 2003 dismissing the writ petitions filed by the appellant and confirming the judgment passed by the Debt Recovery Appellate Tribunal, Chennai (hereinafter referred to as the ‘Appellate Tribunal’).

3. The appellant is the son of late C.V. Kunjikuttan, who was carrying on business as a civil contractor. Said C.V. Kunjikuttan carried on business of contracts in his individual capacity. He died on 8th September, 1989 and on his demise, the business was taken over by his legal heirs. While C.V. Kunjikuttan was alive he had availed of certain facilities from Dhanalakshmi Bank Ltd., Cherthala Branch, Alappuzha District – Respondent herein (for short the ‘Bank’). The respondent is a scheduled bank and has its principal place of business at Thrissur in Kerala and Branches in various other places. C.V. Kunjikuttan approached the respondent – bank in 1973 for sanction of an over draft financial facility. The Bank sanctioned him an overdraft facility of Rs. 3 lakh. The overdraft facility allowed to C.V. Kunjikuttan was secured by security of immovable property, which was collateral security. On 30.10.1980, the Bank granted an enhanced overdraft facility of Rs. 9 lakh which was secured by late C.V. Kunjikuttan and his children including the appellant herein.

4. As the said amount was not repaid the bank filed a suit being O.S. No. 176 of 1991 on the file of sub-court, Cherthala. Subsequently the proceedings were transferred to Debts Recovery Tribunal (for short “DRT”) on its formation under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The relief prayed by the Bank was to

realize a sum of Rs. 28,50,707.03 from the appellants, if necessary, by sale of the suit / scheduled properties. The DRT vide Judgment dated 10.08.2001 allowed the proceedings initiated by the Bank and accordingly declared that the debts due to the bank is Rs. 28,50,707.03 together with interest @ 25% per annum compounding with quarterly rests from 17.7.1991 i.e. from the date of filing of the suit till the date of the Judgment with a simple interest at the rate of 19.4% per annum from 11.08.2001 till realisation. The appeal from the said order was dismissed by the Appellate Tribunal as also by the Division Bench of the High Court of Madras.

5. The learned counsel appearing for the appellant contended before us that the grant of interest @ 25% from the date of filing of the suit till the date of judgment and at 19.4%, thereafter till its realisation is exorbitant and contrary to the provisions of Section 34 of the Code of Civil Procedure (for short the 'Code'). It was further submitted that as per the said section the interest has to be reasonable and at prevalent bank rate of interest.

6. The learned counsel appearing for the respondent on the other hand supported the judgments of the courts below and submitted that the courts

below were justified in granting the said rate of interest as the appellants have failed to re-pay the amount which was obtained by them under the overdraft facility.

7. In order to appreciate the aforesaid contention, we are required to consider the scope and ambit of Section 34 of the Code which gets attracted in the instant case. The provisions of Section 34 of the Code are reproduced hereinbelow :

“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 therefore shall not lie.”

8. The quantum and rate of interest which the appellant in the present case is entitled to would be in accordance with the provisions of Section 34 of the Code. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and thereafter till realisation is in the discretion of the court as is confirmed by the use of the word ‘may’ but such discretion has to be exercised by the court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the court is also to consider the parameter, scope and ambit of Section 34 of Code.

9. The aforesaid scope and ambit of Section 34 of the Code has been the subject of discussion in many cases of this Court. We are inclined to refer to the decision in *Clariant International Ltd. v. Securities &*

Exchange Board of India, (2004) 8 SCC 524, where it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. It was further held that in absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9, H.S. Ahammed Hussain v. Irfan Ahammed (2002) 6 SCC 52 and United India Insurance Co. Ltd. v. Patricia Jean Mahajan (2002) 6 SCC 281 and it was observed that even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the

rate of interest held 9% interest to be reasonable. Direction to pay such rate of interest is also found to be reasonable and fair as the plaintiff was deprived to utilize and roll its money in commercial transaction and kept out of it due to wrongful withholding of the same by the defendant.

10. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable.

11. The appeal stands allowed to the aforesaid extent.

.....J.
[S.B. Sinha]

.....J.
[Dr. Mukundakam Sharma]

New Delhi,
February 27, 2009