

PETITIONER:
DELHI FINANCIAL CORPORATION

Vs.

RESPONDENT:
B. B. BEHEL

DATE OF JUDGMENT: 19/03/1999

BENCH:
S.B.Majmudar, Syed Shah Mdhammed Quadri

JUDGMENT:

J U D G M E N T

QUADRI, J.

Leave is granted. This appeal is directed against the order of a learned Single Judge of the High Court of Punjab and Haryana passed in C.R.No.1990 of 1993 on November 21, 1995. By the impugned order, the learned Judge determined that Rs.9,02,300/- were payable by the respondent to the appellant, directed that the same be paid within one month from the date of the order and held that the order under revision staying the auction of the mortgaged properties by the execution court was justified and thus disposed of the revision. This case has had a chequered history. To appreciate the question involved in this case, it would be necessary to refer briefly to the facts giving rise to this appeal. The appellant advanced loan of Rs.14.75 lakhs to the respondent for the construction of a hotel building on plot No.22, Sector 26, Chandigarh. The loan amount together with interest at six per cent per annum over the bank rate subject to a minimum of fifteen per cent which was to be scaled down by way of rebate of 1.5 per cent in case of prompt payment of principal amount and interest and was to be increased by 1.5 per cent per annum in case of default was payable in twenty one half yearly instalments commencing from July 15, 1982. The repayment of loan and interest thereon was secured by mortgage of properties under registered mortgage deed executed by the respondent on September 20, 1980. On the ground that the respondent committed breach of terms of the agreement, the appellant recalled the loan and demanded Rs.17,66,038.46p. along with interest by issuing a registered notice on February 21, 1983. The appellant followed the notice by filing an application under Section 31 of the Financial Corporations Act [for short, 'the S.F.C. Act'] before the Additional District Judge, Chandigarh. On April 2, 1985, the learned Additional District Judge passed the order of recovery directing the respondent to pay Rs.17,07,466.28p together with future interest at the rate of 17.5 per cent per annum from the date of the application till realisation. Not satisfied with obtaining the said order of recovery of the amount under Section 31 of the S.F.C. Act, the appellant issued notice under section 29 of the S.F.C. Act. It appears that the respondent was also indebted to the United Bank of India. On October 18, 1986 the civil court which

was trying the suit filed by the Bank against the respondent, on considering the statements made by the counsel for the parties before it, restrained the appellant from selling the mortgaged properties except with the permission of the court and directed the respondent to continue to pay Rs.45,000/- per month till the re-scheduling of the loan and thereafter as per the arrangement under the re-scheduling of the loan. The appellant initiated proceedings under Section 29 of the S.F.C. Act to take possession of the mortgaged properties on May 3, 1990. That action of the appellant was challenged by the respondent in the High Court of Punjab and Haryana by filing a writ petition. On September 28, 1992, the High Court disposed of the writ petition holding that the appellant could not invoke section 29 of the S.F.C. Act till the rights under section 31 were exhausted and directed it to re-schedule the loan; the respondent was also directed to deposit a sum of Rupees three lakhs. That order of the High Court was unsuccessfully challenged in the special leave petition before this Court. While dismissing the special leave petition No.3DD/93 on 15.2.1993, this Court left it open to the appellant to approach the civil court for modification of the decree to re-schedule the loan. The appellant re-scheduled the loan in March 1993. The appellant then filed an application in the court of Additional District Judge for executing the order of recovery of the decretal amount. On May 10, 1993, the Executing Court ordered the sale of mortgaged properties and notice to the United Bank of India on the execution petition. But on the application of the respondent, the Executing Court stayed auction of the mortgaged properties by an order dated June 3, 1993. Having failed in the Executing Court to have the stay of the sale vacated, the appellant filed revision petition before the High Court which was disposed of by the judgment and order dated November 21, 1995 which is assailed in this appeal. Mr. A.K.Chopra, learned counsel appearing for the appellant, contended that in the revision arising out of the execution proceedings, the High Court ought not to have modified the decree and deprived the appellant of the fruits of the decree by changing the rate of interest for the period from July 16, 1982 to March 21, 1986 and waiving the interest for the period from March 21, 1986 to March 22, 1993, the date when the loan was re-scheduled. Dr. Abhishek M. Singhvi, learned senior counsel appearing for the respondent, vehemently pleaded for granting interest holiday for the period commencing from March 21, 1986 to March 22, 1993 to the respondent as due to terrorist activities in the State of Punjab, he suffered set back in the business and during this period the appellant failed to re-schedule the loan. He argued that subsequent events as reflected in the correspondence between the parties would show that an understanding and arrangement was reached which precluded the appellant from pursuing its remedies under the order of recovery of the civil court. He has also pointed out that in the case of industries which suffered at the hands of the terrorists, the appellant granted substantial relief and prayed for such relief in the case of the respondent. Before we examine the merits of the contentions of the learned counsel, we would like to record that to workout an amicable settlement between the parties, the case was adjourned from time to time. On February 9, 1999 we directed the parties to submit the statement duly working out the figures of principal amount and the interest due and payable for the following period without prejudice to their rights and contentions : "(i) from 15.1.1983 to 30.6.1986

on the amount of Rs.17,07,466.28p. simple interest at the rate of 17.5 per cent per annum;

(ii) from 1.7.1986 to 30.6.1993 simple interest at the rate of 13.5 per cent per annum; and

(iii) from 31.7.1993 to 31.12.1998 simple interest at the rate of 17.5 per cent per annum."

Accordingly, the parties have filed their statements. On a perusal of the statements, we find that there is not much of difference between the two. According to the statement filed by the appellant showing adjustment of the amounts paid by the respondent first against the interest and then against the principal, the amount outstanding as on 31.12.1998 is given as Rs.33,79,550.48p. On the same basis, the amount shown as outstanding in the statement filed by the respondent is Rs.33,80,601.94p. Various suggestions and counter-suggestions were made but the parties could not arrive at any settlement with regard to the quantum of instalments and their mode of adjustment against the amounts due. Be that as it may, now adverting to the contentions of the learned counsel, it cannot be lost sight of that the relationship between the appellant and the respondent is one of the creditor and the debtor and that the transaction of advancing loan is governed by the terms of the Agreement. But we need not refer to the terms of the agreement to work out rights and obligations of the parties because in the proceedings initiated under Section 31 of the S.F.C. Act, the learned Additional District Judge, Chandigarh, passed the following order of recovery on April 2, 1985: "For the reasons recorded above I pass order for the recovery of Rs.17,07,466.28 with future interest at the rate of 17-1/2% per annum from 15.1.83 until realisation together with incidental and miscellaneous expenses may be debited to the loan account of the respondent by way of sale of the property mentioned in the annexure attached with the petition. The respondent shall also pay the costs of the proceedings to the petitioner counsel fee Rs.500/-."

That order of recovery has become final. The revision petition which was filed before the High Court by the respondent arose not out of the said order of recovery but out of the order staying sale of mortgaged properties passed in the execution proceedings of the said order. Therefore, it was not open to the High Court to work out the amount of loan due and payable by the respondent as Rs.15,75,000 as against the figure mentioned in the order of recovery. So also the High Court was not justified in reducing the rate of interest to 13-1/2 per cent from 17-1/2 per cent mentioned in the order of recovery for the period [a] from July 16, 1982 to March 20, 1986, [b] from March 22, 1993 to June 30, 1994 and July 1, 1994 to November 30, 1995, and [c] to waive the interest for the period from March 21, 1986 to March 22, 1993, the date of re-scheduling of the interest. The appellant is also not entitled to claim compound interest on the decretal amount due because it is evident from the order of recovery that the learned Additional District Judge, Chandigarh awarded interest at 17-1/2 per cent per annum which can only mean simple interest and not compound interest. The contention of Dr. Singhvi that no interest could have been charged for the period from March 21, 1986 to March 22, 1993 as the appellant failed to re-schedule the loan for all those years, we are of the view that failure to re-schedule the loan by the appellant does

not entail the penal consequence of losing the right to recover the interest granted by the court for that period in the order of recovery passed under Section 31 of the S.F.C. Act. There can be no doubt that the appellant was bound to re-schedule the loan for repayment of the amount mentioned in the order of recovery in view of the order of the High Court in the writ petition and of this Court in the special leave petition, referred to above. But the said order of recovery was not subject to re-scheduling of loan and there was no direction in the order of the High Court in the writ petition that the delay or default in re-scheduling would result in losing the interest by the appellant. Further, there was also no such direction in the order of this Court passed in the said special leave petition. Therefore, the only relief that the respondent could justifiably claim is that during the period the re-scheduling of the loan was not attended to by the appellant, the recovery proceedings should be suspended and sale of mortgaged properties should not be proceeded with. For these reasons, the contention of Dr. Singhvi that the respondent should be given interest holiday during the period from March 21, 1986 to March 22, 1993 cannot be acceded to. We are also unable to accept the contention of the learned counsel for the respondent that in view of the subsequent correspondence between the parties to which our attention was invited the order of recovery gets modified. The arrangement and understanding as reflected in the correspondence between the parties can only be understood to prescribe the mode of recovery of amount payable under the order of recovery but not to modify the order of recovery. Even if it is accepted that the appellant had, in some cases, granted substantial relief to the debtors affected by terrorists activities, it is far beyond the powers of the Court to compel a creditor to forego part of its claim of interest on the ground of hardship to a debtor. In financial transactions such adjustments should be left to the parties to settle the matter in the best interest or exigencies of the business. The appellant is a statutory financial institution which carries on its activities by borrowing amounts so a direction of such a nature will upset its financial equilibrium and land it in a financial crisis making it non-viable. However, on the peculiar facts of this case, the only relief which we deem it fit to grant to the respondent during the period from 1.7.1986 to 30.6.1993 is to condone the default in repaying the amount for dual reasons stated hereinbefore. Consequently, interest at the reduced rate of 13.5 per cent per annum would be payable during the said period. Now reverting to the statements furnished by the parties, it is seen that according to the appellant a sum of Rs.33,79,550.48 is payable by the respondent (Rs.17,07,466.28 as principal amount and Rs.16,72,084.20 as interest). The appellant is entitled to recover the same in execution of the said order of recovery by sale of mortgaged properties. Without prejudice to that right of the appellant, in the facts and circumstances of this case, we consider it just and appropriate to give an option to the respondent to pay the said amount in instalments of Rupees one lakh per month till the whole amount due is cleared by depositing the instalments in the Executing Court regularly; the amount so deposited shall be appropriated first against the interest due and then against the principal. If the respondent files an undertaking opting to pay the amount due in instalments at the rate of Rupees one lakh per month on or before 10th of each month, the first instalment being payable before 15th of April,

1999 along with the first instalment of Rupees one lakh before the said date in the Executing Court, the Court shall not proceed with the sale of the mortgaged properties. In the event of not filing the undertaking aforementioned and not depositing Rupees one lakh before 15th April, 1999 in the Executing Court or in the event of default in depositing of two consecutive instalments on or before 10th of each month in the Executing Court, the Executing Court may proceed to recover the whole amount due in accordance with law by sale of the mortgaged properties and/or any other mode permissible under the law. For the above reasons, we are unable to uphold the order of the High Court under appeal and we set aside the same. The appeal is accordingly allowed. We direct the parties to bear their own costs.

JUDIS