

(2019) 08 CHH CK 0219

Chhattisgarh High Court

Case No: First Appeal No. 41 Of 2003

M/s Rajaram And Brothers
through Suryakant Gupta And
Ors

APPELLANT

Vs

Punjab National Bank through
Branch Manager

RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Banking Regulation Act 1949 - Section 21(A)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: P.K.C. Tiwari, Ashutosh Trivedi, N.K. Shukla, Ashwin Panikar

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 28-11- 2002 passed by the

District Judge, Rajnandgaon (CG) in Civil Suit No. 2-B/96 wherein the said court decreed the suit filed by the respondent/plaintiff against

appellants/defendants for recovery of Rs.56,000/- with interest.

2. Respondent/plaintiff filed a civil suit for recovery of Rs.56,000/- on 7-3-1996 which was registered as Civil Suit No. 2- B/1996 before the trial

Court. Appellants/defendants filed written statement and counter claim on 9-7-1996. The main dispute between the parties is with respect to entries

made on 6-10-1993 in the ledger pertaining to the defendants marked as Ex. P/11 (D& E). There was a credit balance in the account to the extent of

Rs.304/- on 6-10-1993. Two entries with respect to penal interest were made. Respondent bank has not mentioned the grounds for charging penal

interest and not explained on what ground the bank is entitled for higher rate of interest. The bank officials inspite of specific questionings could not

explain the grounds for charging penal interest and they are also not able to prove on what basis the bank can further charge interest on the amount of

interest when the principal amount was not due to the borrower and had amount in his credit on the date of charging of the said interest.

3. Learned counsel for the appellants would submit that the trial court has not properly appreciated the evidence of Shri M.L. Pandey (PW/1) who

deposed before the trial court that without perusal of ledger of the period of his incumbency he cannot say that the transaction of the appellants was

satisfactory or not. He further deposed that the ledger of that period is not filed in the case. He would further submit that the trial court has not

appreciated the provisions of Section 21(A) of Banking Regulation Act 1949 . The court has to examine as to whether the interest has been applied

for as per circular of Reserve Bank of India or the contract between the parties or not. The trial court erred in holding that counter claim is barred by

limitation. The trial court has not evaluated the evidence in its true perspective, therefore, the same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondent would submit that the finding of the trial court is based on proper marshaling of the

evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether statement of account contains particulars or details of debit entries. As per Ex.P/11 on

16-9-1993 the amount of Rs.304/- is credit entry. It means, no amount was in debit side and contrary to that there was credit entry of Rs.304/- which

shows that the appellants were not liable to pay any amount to the Bank. Gyanchand Kothari (PW/3) admitted that credit entry of Rs.304/- is made in

the bank account (para 4). He deposed that interest which is subsequently entered into account on 16-10-1993 to the tune of Rs.18,706/- can be

ascertained only after register is produced, but no register was produced before the trial Court regarding entries made as interest subsequent to credit

entry of Rs.304/-. The bank is under obligation to submit particulars or details of debit entries as per law laid down by Hon'ble the Supreme Court in

the matter of Central Bank of India vs. Ravindra and others, reported in 2001 AIR SCW 4468 (para 55).

7. From the evidence of Gyanchand Kothari (PW/3) it is clear that on 27-5-1993 the operation of account was closed (para4). When the operation of

account is closed the respondent was under obligation to inform the appellant regarding debit entries and the period of interest or penal interest but that

is not done in the present case. The trial court recorded finding that the court is not competent to appreciate about interest (judgement para 19 and

20). Finding of the trial court is not sustainable because in the present case account was earlier closed and thereafter interest was charged and it was

not informed regarding period of interest and regarding penal interest, therefore, finding of the trial court is not sustainable.

8. Accordingly, the appeal is allowed and decree is passed in favour of the appellants and against the respondent as under:

i) The suit filed by the respondent/plaintiff is dismissed with cost.

ii) Parties to bear their own costs.

iii) Pleader's fee, if certified, as per schedule or whichever is less.

iv) A decree be drawn up accordingly.