

**(2011) 02 P&H CK 0450**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 872 of 2006

Sher Singh

APPELLANT

Vs

Punjab Financial Corporation

RESPONDENT

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**Date of Decision:** Feb. 11, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 11

**Citation:** AIR 2011 P&H 91 : (2011) 3 BC 400 : (2011) 164 PLR 456 : (2011) 5 RCR(Civil) 467

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Sabina, J.

Plaintiff had filed a suit for permanent injunction restraining the Defendant from recovering the loan amount along with interest @ 20% per annum.

2. The case of the Plaintiff, in brief, was that he was a retired Subedar from Army. He had applied for a loan from the Defendant to instal a rice husk and rice bran grinding unit on 22.2.1991. A term loan of Rs. 6,75,000/- was sanctioned to the Plaintiff, which was to be recovered along with interest @ 11.5% per annum. Plaintiff was also allowed the loan to the tune of Rs. 1,50,000/- as working capital and the same was to be repaid along with interest @ 14% per annum. Another loan of Rs. 1,30,000/- was sanctioned in favour of the Plaintiff as soft seed capital assistance along with interest @ 1% per annum. After completion of construction, Plaintiff installed machinery in the unit. Plaintiff received Rs. 4,05,000/- from the Defendant vide various cheques and Plaintiff also received a sum of Rs. 1,47,000/- On various dates up to 20.12.1993. However, the remaining amount of loan had not been released to the Plaintiff. The unit was partly completed in the year 1993. Instead of releasing the remaining loan to the Plaintiff, the Defendant sent a notice claiming interest @ 20% per annum instead of 11.5% agreed interest. Plaintiff also received

letters for recovery of working capital amount which was never released by the Defendant. Plaintiff also received a letter qua recovery of soft seed loan amount and the interest @ 20% per annum was charged instead of agreed rate of interest @ 1% per annum. Plaintiff was forced to deposit an amount of Rs. 1,40,000/- to get back his unit as the same was locked by the Defendant. Plaintiff received another letter dated 17.5.1997, wherein, it was mentioned that the loan to the tune of Rs. 1,70,000/- had been cancelled.

3. Defendant, in its written statement, admitted the factum of sanction of loan to the Plaintiff. It was averred that on the date of execution of mortgage deed dated 2.9.1992, the rate of interest between the parties was fixed @ 20% per annum. Hence, the Plaintiff was liable to pay the said rate of interest and only on loan qua soft seed capital assistance, Plaintiff was liable to pay interest @ 1%. However, in case of default the interest prevailing on term loan was liable to be charged as mentioned in the mortgage deed. Plaintiff had been released the loan to the extent of Rs. 6,55,000/- out of the total loan amount. Plaintiff was advised to advance 25% of the cost of raw material to the suppliers so that loan qua working capital could be released to the Plaintiff. Another letter was written to the Plaintiff on 11.5.1994 and inspection was conducted on 18.7.1994 but the same could not materialise as no representative of the Plaintiff turned up at the spot. Again a reminder was sent to the Plaintiff on 26.7.1994 for compliance of formalities required for release of working capital but of no avail. In this situation, the Defendant took over the possession of the unit, which was restored to the Plaintiff on 31.10.1996. Plaintiff did not approach the Corporation for release of the balance loan, nor submitted the requisite documents so the Corporation had to cancel the loan amount.

4. On the pleadings of the parties, following issues were framed by the trial Court:

1. Whether the Plaintiff is entitled to the relief of a permanent prohibitory injunction as claimed through this suit against the Defendants? OPP.

2. Is this suit not maintainable ? OPD

3. Whether the court has no jurisdiction to entertain and try this suit ? OPD

4. Whether this suit is barred u/s 11, Code of Civil Procedure? OPD

5. Relief.

5. The trial Court dismissed the suit of the Plaintiff vide judgment and decree dated 1.8.2002. Aggrieved by the same, Plaintiff preferred an appeal and the same was also dismissed vide judgment and decree dated 24.10.2005 passed by Additional District Judge, Rupnagar. Hence, the present appeal by the Plaintiff.

6. I have heard the Appellant and learned Counsel for the Respondent and have gone through the record of the case carefully.

7. Admittedly, the Plaintiff applied for loan from the Defendant for running rice husk and rice bran grinding industry. Punjab Financial Corporation, Chandigarh (the Corporation for short) had sanctioned a loan to the tune of Rs. 6,75,000/- as term loan and Rs. 1,50,000/- towards working capital to the Plaintiff vide Ex.P-2 dated 30.9.1991. Plaintiff was also sanctioned soft seed capital assistance to the tune of Rs. 1,30,000/- vide Ex.P-3 dated 30.9.1991 by the Corporation. Plaintiff, however, defaulted qua payment of installments and notices were issued by the Corporation to the Plaintiff in this regard Plaintiff was also advised to ensure payment of installments, failing which penalties would come in force and interest @ 20% per annum would be charged. A total amount of Rs. 7,85,000/- had been disbursed to the Plaintiff by the Corporation i.e. Rs. 6,50,000/- towards term loan and Rs. 1,30,000/- towards soft seeds capital assistance. Plaintiff had also executed a mortgage deed in favour of the Corporation on 2.9.1992. Since the Plaintiff failed to repay the installments, the unit was taken over vide Ex.D-10 dated 1.3.1996. On the request of the Plaintiff, a compromise was effected between the parties and Plaintiff was restored the possession of the unit vide letter dated 3.10.1996 Ex.D-11. A perusal of the same reveals that it was agreed that the Plaintiff was to pay Rs. 1,40,000/- being 20% of the default immediately and thereafter, Rs. 10,000/- per month in the initial six months w.e.f. July, 1996 and the amount of remaining instalments would be worked out after keeping in view the overall extension of repayment period by two years. Ex.D-12 is the possession certificate dated 31.10.1996. The Plaintiff, however, failed to pay the amount in terms of Ex.D-11. The Corporation again took the possession of the unit vide Ex.D-14 on 26.2.1998. The working capital loan of the Plaintiff was cancelled on 14.5.1997 as he had failed to appear at the site for inspection despite notices issued to him. As per the Corporation, Plaintiff was liable to pay Rs. 39,64,643/- including interest up to 15.2.2002 towards term loan and Rs. 7,72,738/- up to 15.9.2001 with interest.

8. Ex.D-1 is the mortgage deed executed by the Plaintiff in favour of the Corporation on 2.9.1992. Ex.D-2 is the bond of guarantee executed on the same day. Ex.D-3 is another mortgage deed executed by the Plaintiff on 2.9.1992 and Ex.D-4 is the bond of guarantee. Ex.D-20 is the statement of accounts of M/s Sher-e-Punjab Rice Husk and Rice Bran Grinding Industry, Ropar maintained by the Corporation. The Defendants, in order to prove the relevant documents on record, have examined DW-1 S.L. Batash.

9. The dispute between the parties is now qua rate of interest. The case of the Defendant Corporation is that interest @ 20% per annum was liable to be charged in view of the condition mentioned in the mortgage deed, whereas; the case of the Plaintiff is that only simple interest was liable to be charged at a lesser rate. Since the Plaintiff had failed to repay the instalments then penal interest was liable to be charged. In these circumstances, the Courts below had rightly dismissed the suit of the Plaintiff.

10. No substantial question of law arises in this regular second appeal, which would warrant interference by this Court. Accordingly, the same is dismissed.