
Ram Babu Keshwarwani Vs Oriental Bank of Commerce

First Appeal No. 503 of 1996

Court: Madhya Pradesh High Court

Date of Decision: May 12, 2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Section 96

Citation: (2003) 3 BC 428

Hon'ble Judges: A.K. Awasthy, J

Bench: Single Bench

Advocate: Om Namdeo, for the Appellant; None, for the Respondent

Judgement

A.K. Awasthy, J.

The appellant/defendant has filed this appeal u/s 96 of the CPC against the judgment and decree dated 5.7.1996 passed

by the Second Additional District Judge to the Court of District Judge, Sagar in Civil Suit No. 2-B of 1996 wherein the respondent/plaintiff's suit

for recovery of Rs. 80,146.25 with interest at the rate of 15.05 percent per annum with quarterly rest was decreed.

2. The case of the plaintiff/respondent Bank is that the respondent Bank is nationalised Bank and Surendra Kumar Sharma and J.R. Chouker are

authorised to verify, sign and present the plaint on behalf of the plaintiff/oriental Bank of Commerce. Plaintiff has pleaded that the defendant took

the loan of Rs. 95,000/- on 20.12.1988 from the plaintiff Bank for purchasing Mahindra diesel jeep and agreed to pay the interest at the rate of

15.05 percent with quarterly rest. That the defendant agreed to repay the loan in 35 instalments of Rs. 36607 per month and the jeep was

hypothecated in favour of the plaintiff Bank. That the defendant has not paid the amount of Rs. 80,146.25 even after the issuance of legal notice. It

is prayed that the amount of Rs. 80,146.25 be decreed in favour of the plaintiff Bank with interest at the rate of 15.05 percent per annum with

quarterly rest and the plaintiff be allowed to recover the amount by selling the hypothecated jeep.

3. The defendant has denied that he has taken the loan of Rs. 95,000/- with interest at the rate of 15.5 percent per annum with quarterly rest. It is

denied that the jeep was hypothecated in favour of the plaintiff. It is also denied that the sum of Rs. 80,146.25 is due on the defendant and the

plaintiff is entitled to get the amount and the alleged interest by selling the hypothecated jeep.

4. Learned Trial Court has framed the issues and examined the plaintiff's witnesses Rameshwar Prasad (P.W. 1) and Surendra Kumar (P.W.2)

and from the side of the defendant, the defendant examined himself and one witness Rakesh Kumar Jain. Learned Trial Court accepted the case of

the plaintiff and decreed the suit as stated above.

5. The appellant has assailed the decree on the ground that the appellant deposited F.D.R. of Rs. 71,000/- in the plaintiff/respondent Bank as a

guarantee and the F.D.R. was encashed without the permission of the defendant and the amount was adjusted. It is also a ground that the proper

opportunity to adduce the evidence by the learned Trial Court was not provided. That the rate of interest of 16.05 percent per annum and

quarterly rest was exhibitant and illegal.

6. Defendant Rambabu (D.W.1) has not deposed in his statement that his F.D.R. was encashed by the Bank and the amount of F.D.R. was

adjusted by the Bank against his outstanding loan. Rameshwar Prasad (P.W. 1), the Manager of the Bank has stated that the F.D.R. of the

defendant were not encashed and this allegation is false that the amount of F.D.R. is adjusted against the amount of loan of the defendant.

However, in paragraph 9 of his cross-examination Rameshwar Prasad (P.W. 1) has stated that he cannot say whether the F.D.R was encashed

and the amount was adjusted. Ex. P. 14 is the statement of account of the defendant and from Ex.P. 14 it is clear that the amount of F.D.R. was

not shown in the balance of the loan of the defendant. Consequently the statement of the appellant/defendant that his FDR was unauthorisedly

encashed by the Bank is not supported by the evidence on record.

7. From the order sheet of the Trial Court it is clear that the evidence of the plaintiff was closed on 9.5.1996 and the dependant took the

adjournment for adducing evidence. The dependant has not examined the witnesses on 15.5.1996 and 24.6.1996. The appellant has not disclosed

during the arguments that how his case was adversely affected by not providing more opportunities to adduce evidence. The appellant has not

prayed to issue the summons to the witnesses. It is not shown that what is the name of the witness who was material. Consequently the contention

of the learned Counsel for the appellant that the learned Trial Court has transgressed the principles of natural justice by not providing enough

opportunities to adduce evidence is without any merit,

8. Learned Counsel for the appellant has argued that the Bank has floated the scheme to the effect that in case of the substantial amount of loan is

paid then relaxation in the rate of interest is provided. The interest of 16.5 percent with quarterly rest is exorbitant. Consequently in my considered

opinion the respondent Bank should be provided with only 16.5 percent interest from the date of filing of the suit till realisation.

9. Consequently the appeal is partly allowed, only on the point of the rate of interest. The impugned judgment and decree is modified to the extent

that instead of interest at the rate of 16.5 percent with quarterly rest, the respondent-plaintiff is entitled to simple interest at the rate of 16 percent

per annum. Parties to bear their own costs.