

(2003) 04 CAL CK 0031

Calcutta High Court

Case No: G.A. 4304 of 2002

Shaw Wallace and
Company Limited

APPELLANT

Vs

Ghoom Investment
Company Pvt. Ltd.

RESPONDENT

Date of Decision: April 7, 2003

Acts Referred:

- Bengal Money Lenders Act, 1940 - Section 30A
- Civil Procedure Code, 1908 (CPC) - Section 34

Citation: AIR 2004 Cal 126

Hon'ble Judges: Debiprosad Sengupta, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Sudipto Sarkar, S.N. Mookherjee and T. Aich, for the Appellant; Pratap Chatterjee Sr. Advocate, D. Banerjee and A. Mitra, for the Respondent

Final Decision: Dismissed

Judgement

Asok Kumar Ganguly, J.

As the matter was heard at length before this Court, with the consent of parties, we treated the appeal on the day's list and we dispose of this appeal by this Judgment.

2. In this case, the appeal arises out of the order dated 8-8-2002 passed by a learned Judge of the First Court taking interlocutory business and, by the order under appeal, the learned Judge passed a decree for the principal sum of Rs. 20 lacs and further passed a decree for interim interest at the rate of 20% per annum on the principal sum to be calculated from 1-8-1995 till the date of the filing of the suit. The learned Judge also granted interim interest and interest on Judgment at the aforesaid rate of 20%. The learned Judge further held that the rest of the claim shall be tried after the filing of the Written Statement and trial shall be held unconditionally. Certain directions for expeditious hearing of the suit were also given.

3. The facts of the case are that the respondent granted inter-corporate loan to the appellant for a sum of Rs. 20 lacs, which was to be repaid with interest at the rate of 30% on the expiry of 90 days. Upon the expiry of 90 days, two cheques amounting to Rs. 20 lacs for the principal amount and Rs. 1,17,715/- on account of interest were issued. But on presentation, the cheque for the principal amount was dishonoured. Proceedings under Negotiable Instruments Act were initiated and are pending. The cheque for the interest amount was honoured.

4. Basically on these facts, an application was made by the respondent before the learned Judge for pronouncing a final judgment for a sum of Rs. 1,38,59,747/-.

5. In assailing the judgment of the First Court, the learned counsel for the appellant urged that the interest at the rate of 30% was for a temporary period of 90 days. Once this period was over, the respondent cannot claim any interest and there is no question of claiming interest @ 30%. The learned counsel also argued that once the learned Judge had held in the order under appeal that "there is some dispute as regard the applicability of rate of 30% interest after the expiry of 90 days" and granted unconditional leave to the appellant for trial and gave liberty to file Written Statement, in the background of these facts, the direction of the learned Judge for payment of 20% interest is bad in law and cannot be sustained.

6. It Was further urged before this Court that in the plaint, there is no pleading for any statutory rate of interest and under those circumstances the grant of interest @ 20% by the learned Judge u/s 30A of the Bengal Money Lenders Act is wholly improper. It was also urged that the provisions of Bengal Money Lenders Act (hereinafter called "B. M. L.") are not applicable and that the Court cannot re-write a contract after holding that the contractual rate of 30% interest is disputed and granting leave to the appellant to defend that claim in the suit. The learned counsel also urged that the Court cannot grant a rate of interest which is not demanded by the plaintiff. It was also argued that Section 30A of BML Act is not a provision which enables any one to claim interest.

7. The learned counsel for the respondent on the other hand supported the order under appeal and urged that defence under BML Act was taken by the appellant in its affidavit filed before the learned Judge. It was pointed out that on behalf of the appellant it was admitted before the learned Judge that the transaction in question is a Commercial one and is in respect of an intercorporate loan. The learned counsel also urged that the interpretation of the ninety days period for 30% interest given by the appellant is not correct. Reliance was placed on the receipt in order to contend that the rate of 30% was per annum and that the same is also reflected in the letter dated 1 -4-1995 written by the respondent to the appellant at the time of sending the cheque of Rs. 20 lacs as a loan for a period of 90 days with interest at the rate of 30% per annum. The said letter, it was pointed out, demanded receipt together with promissory note and post dated cheques. Accordingly, receipt and promissory note were sent by the appellant. So in facts of this case, it was urged that the order under appeal does not call for any interference.

8. In support of the contention that after the expiry of 90 days, interest at the rate of 30% is not payable by the appellant, the learned counsel for the appellant relied on certain decisions, which may now be considered.

9. Reliance was placed on the decision in the case of [Union of India \(UOI\) Vs. A.L. Rallia Ram](#), . The learned counsel relied on the observations made by the Hon"ble Supreme Court on the question of the award of interest. The learned counsel relied on the principles laid down by the Supreme Court to the extent that in the absence of any usage or contract express or implied, or of any provision of law to justify the award of interest, interest cannot be allowed by way of damages caused to the parties by way of wrongful detention of their money. The learned counsel also relied on the decision of the Privy Council in the case of Bengal Nagpur Railway Company Limited and Ruttanji Ramji and others reported in 65 Indian Appeal page 66. The learned counsel relied on the observations of the Hon"ble Privy Council at page 71 of the report. The observations on which reliance was placed, are extracted below :--

"The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit, and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest, as for instance, u/s 80 of the Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent per annum, when no rate of interest is specified in the promissory note or bill of exchange. There is in the present case neither usage nor any contract, express or implied, to justify the award of interest. Nor is interest payable by virtue of any provision of the law governing the case."

10. Reliance was also placed on the judgment of the Supreme Court in the case of [Union of India \(UOI\) Vs. West Punjab Factories Ltd.](#), The learned counsel showed that the principles decided in Union of India v. A.L. Rallia (supra) were also followed in Union of India v. The West Punjab Factories, Ltd. (supra). The learned counsel, therefore, placed reliance on paragraph 16 in Union of India (supra) where the same principles have been reiterated namely that in the absence of any usage or contract, express or implied or of any provision of law to justify the award of interest, interest cannot be awarded by way of damages for the period upto the date of the suit.

11. Relying on the aforesaid provisions the learned counsel urged that the grant of interest by the learned Judge at the rate of 20 per cent in accordance with Section 30A of BML Act is wholly inconsistent with the legal principles enumerated above.

12. The learned counsel also submitted that a suit under Chapter 13A of the Original Side Rules does not lie for payment of damages.

13. While refuting the aforesaid legal contentions, the learned counsel for the respondent relied on a decision of the Privy Council in the case of Mathura Das v. Raja Narindar Bahadur Pal, reported in (1896) 23 I.A 138. The learned counsel submitted that the appellant cannot get any premium for its breach for payment of interest at the contractual rate. The learned counsel also submitted that no such case has been made out in the affidavit-in-opposition filed by the appellant before the learned Judge of the First Court. By relying on the ratio in the case of Mathura Das (supra) the learned counsel submitted that under similar circumstances the Privy Council held to the contrary.

14. Referring to the clauses in the mortgage deed the learned counsel pointed out that in the mortgage deed which was under consideration by the Privy Council in Mathura Das (supra) the payment of interest beyond initial period of one year was not provided and this has been noted by the Privy Council as follows :--

"the payment of post diem interest was not provided for by the mortgage deed" (page 144 of the report).

15. Construing the said deed the High Court held "there was no covenant for the payment of post diem interest" and therefore the High Court held that the only way the plaintiffs can recoup for the loss they have sustained by the non-payment of the mortgage money upon the due date, is by way of damages.

16. Sir Richard Couch delivering the Judgment in Mathura Das (supra) overruled the judgment of the High Court and held "if such a covenant, not being controlled by other parts of the deed, does not mean that interest is to run till payment, it is very difficult to say what it does mean". The covenant was further construed by the learned Judge by saying that the covenant to pay within a year ties up the hands of the mortgagee for that year and protects the mortgager (page 145).

17. In the said page of the report the learned Judge made it clear if the payment is not made within that year, "the mortgagee may proceed to realize "the amount", the obvious meaning of which is, principal and interest to the time of realization". And the learned Judge at page 146 of the report held that the plaintiffs are entitled to recover their principal debt with interest at the rate mentioned in the mortgage deed up to the date of the Subordinate Judge's decree, and thereafter at the rate of 6 per cent per annum and the learned Judge discharged the decree of the High Court. 18. The learned counsel for the appellant while trying to distinguish the principles in the case of Mathura Das (supra) urged that in Mathura Das (supra) the Court was considering the case of a mortgage deed, which is different from an ordinary monetary transaction, and in support of such contention reliance was placed on Order 34 of Civil Procedure Code.

19. Learned counsel also referred to para 510, page 237 of the 4th Edition of Halsbury's Laws of England (Volume) 32. The said passage runs as below :

"If the mortgage makes provision for payment of the principal on a day certain, with interest at a fixed rate down to that day, there is no implied contract for the continuance of interest at the same rate or at any rate at all after that day; but a stipulation in the mortgage that the mortgagor will not transfer the property until payment in full of principal and interest implies an agreement for the continuance of this original interest until payment. Interest is given in these cases, not as interest payable under the contract, but by way of damages for detention of the debt."

20. Reference was also made to Fisher And Lightwood's Law of Mortgage, Ninth Edition. Attention of the Court was drawn to the following passage at page 627 of the treatise;

"Interest on mortgage debts.-- Contrary to the general rule as to loans, interest is payable upon mortgage debts, even though it is not expressly reserved, and although the mortgage is only equitable, including a charge by mere deposit of title deeds, and generally where the principal sum is a charge on specified property. Where, however, the contract provides expressly for reconveyance upon payment of the principal, interest will not be payable, unless the deed contains elsewhere an express or implied agreement for payment of interest."

21. These are the rival contentions of fact and law by the parties. This Court is of the opinion that the contention of the learned Counsel for the appellant cannot be accepted.

22. In the instant case, the fact that the appellant took the loan is not in dispute nor is there any dispute that it is an unsecured loan in a commercial transaction. The learned Judge of the First Court however held whether interest at the rate of 30 per cent is payable should be decided on a trial. In that context the learned Counsel urged that since there is no stipulation for payment of any interest in the contract after the period of 90 days no interest is payable after the expiry of that period. This Court cannot accept this contention in view of the clear enunciation of the proposition in Mathura Das (supra). Though in Mathura Das (supra) the decision was given on a construction of a mortgage deed but the construction on which decision was given was clearly on a contract for payment of interests. In this case by a letter dated 10th April, 2000 the learned Advocate of the appellant agreed to pay 41 lacs which showed that the appellant accepted that the contractual rate of interest ran beyond the period of 90 days, The construction, which is sought to be urged by the learned counsel for the appellant that beyond the period of 90 days the loan will carry no interest is a proposition, which is opposed to all the principles of justice and equity. If this contention is allowed then it will give a premium to a defaulting party for enjoyment of the loan amount without any payment of interest, which is contrary to the intention of the parties when contract was entered into. In fact the period of 90 days for which 30 per cent is to be paid is the period during which the appellant is protected from any action by the respondent inter alia on the ground that during this period appellant agreed to pay 30 per cent interest. The plea that if payment is not made within the period of 90 days the principal amount will become interest free has been expressly overruled in Mathura Das (supra).

23. Even though a mortgage deed has some different features and is different from a loan of commercial transaction, so far as the construction of the clauses relegating to interest is concerned, if there are express clauses for payment of interest, in that case there is not difference in principle. Therefore, there is no difficulty in applying the ratio of Mathura Das (supra) to the facts of this case.

24. Coming back to the passage in Halsbury, this Court finds that the passage recites that the principle of non-payment of interest at any rate after the repayment date is peculiar to a mortgage deed. It further states that even in a mortgage deed if there is a stipulation that the mortgagor will not transfer the property until full payment is made of the principal and the interest amount, that implies that interest will run until payment. Such interest is given not under the contract but for damages for detention of the debt.

25. These propositions cannot at all support the appellant. Here it is not a mortgage deed but is a commercial loan transaction. So the peculiar features of mortgage deed being absent, interest will run until repayment. This is normal in all loan transactions.

26. The propositions cited from Fisher and Lightwood's are expressly subject to the statutory provisions referred against foot note (p). The said foot note makes it clear that in view of the amendment in law. Court's discretion to grant interest from the accrual of cause of action till Judgment cannot be disputed.

27. We are therefore unable to ascertain how these propositions advance the case of the appellant.

28. Now coming to the question of applicability of Section 30A of BML, this Court finds that in the affidavit in opposition before the learned Judge of the First Court a defence under BML was taken by the appellant. Since such a defence was taken before the learned Judge, it was found by His Lordship that the realisation of 30% interest is to be tried in the suit. So the learned Judge relied on the statutory rate of interest in respect of an unsecured loan provided in Section 30A of BML. Therefore, in granting interest at the rate of 20% the learned Judge relied on the provision of law. Therefore, the learned Judge did not act contrary to the principles laid down in the decisions cited by the learned counsel for the appellant. Both in Bengal Nagpur Railway and A.L. Rallia, it was clearly stated that the Court can exercise its discretion for grant of interest on the basis of a provision of law. Here that has been done by the learned Judge of the First Court.

29. Therefore, this Court is of the opinion that the discretion exercised by the Learned Judge in Awarding 20 per cent interest is valid and proper and does not call any interference in this Appeal.

30. The appeal is, therefore, dismissed.

31. There will be, however, no order as to costs.

Debi Prasad Sengupta, J.

32. I agree.