

(2010) 08 DEL CK 0290

Delhi High Court

Case No: Regular First Appeal No. 271 of 1996

State Bank of India

APPELLANT

Vs

Sunrise Data Preparation Centre
and Others

RESPONDENT

Date of Decision: Aug. 2, 2010

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: S.L. Gupta, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

P.K. Bhasin, J.

The appellant bank is aggrieved by the judgment and decree passed by the learned Additional District Judge in a suit filed by it under the provisions of Order XXXIV of the CPC for recovery of Rs. 383591.20 along with interest thereon at the contractual rate of 17.5% per annum with quarterly interest from the date of filing of the suit till the date of realization to the extent interest has been awarded only at the rate of 6% per annum.

2. The appellant bank had filed the suit for recovery of Rs. 3,83,591.20 against respondents Nos. 1 and 2 herein as the principal borrowers and respondents Nos. 3 and 4 as the guarantors. Respondent No. 3 while offering guarantee for the repayment of the financial facility awarded to the respondents Nos. 1 and 2 for their business had created an equitable mortgage by way of deposit of title deeds in respect of his property No. 57/59, Punjabi Bagh, New Delhi.

3. The suit had to be filed since the respondents had failed to clear bank's dues on becoming due as per the loan agreement. None of the defendants had contested the suit and as far as defendant No. 3, respondent No. 3 herein, is concerned, he had volunteered to make the payment of the suit amount since he wanted to get back the title deeds of his property. Consequently, the trial Court decreed the suit

but while decreeing the suit it awarded interest at the rate of 6% per annum only though the contractual rate of interest as per the loan and guaranty documents executed between the parties was 17.5% per annum with quarterly rests.

4. There was no representation on behalf of the respondents at the time of the hearing of the appeal and so only the counsel for the appellant had made his submissions.

5. Learned Counsel for the appellant submitted that even though the grant of pendente lite and future interest and its rate was in the discretion of the Court but that discretion was to be exercised judiciously and in the present case there was no justification whatsoever for scaling down the rate of interest from 17.5% per annum to 6% per annum. Learned Counsel further contended that appellant bank had filed a suit after waiting for almost three years from the date when its money became due from the respondents-defendants and even in the suit respondent No. 3 came out with his offer to make the payment of the suit amount after six years of the filing of the suit and as far as the principal borrowers are concerned, they did not even contest the bank's claim. Learned Counsel further contended that even the respondent No. 3, who was the guarantor, had offered to make the payment of the suit amount because he had realized that if the principal borrowers would not be paying the bank's dues his property would be put to auction and there was every possibility of his property fetching lower price than the prevalent market price. It was also contended that even the costs of the suit were not granted to the plaintiff without assigning any reason by the trial Court.

6. Considering all the facts and circumstances, this Court is also of the view that the learned trial court was, in the facts and circumstances narrated above was not justified in scaling down the rate of interest to 6% per annum as against the agreed contractual rate of 17.5% per annum with quarterly rests. I am also in an agreement with the submission that discretion which vests in the Court in the matter of grant of pendente lite and future interest has to be exercised judiciously and for good reasons only the defaulter borrowers should be shown indulgence in the matter of rate of interest. In the present case, respondents Nos. 1 and 2 had availed of the financial facilities granted to them by the appellant bank in the year 1986 and thereafter they became defaulters in repayment. The respondent No. 3 guarantor also did not come forward immediately on receipt of demand notice to make the payment to the appellant bank and instead waited for about seven years before coming forward with the offer of repayment of the bank's dues as claimed in the suit. So, the denial of interest to the plaintiff by the trial Court at the contractual rate was not justified. The learned trial Court has also not given any reason for not awarding costs of the suit of the appellant bank and I am of the view that there was no justification in denying the same.

7. In the result, this appeal succeeds. The trial Court's judgment and decree is modified to the extent that the appellant bank would get interest on the decretal

amount @ 17.5% per annum from the date of the filing of the suit till the date when respondent No. 3 actually made payments. The appellant shall also be entitled to costs throughout.