

Shree Bharat Laxmi Wool Store, Panipat and others,

Vs

Punjab National Bank and another

Civil Appeal No. 2488 of 1982

(K. Jagannatha Shetty, R.M. Sahai JJ)

28.11.1991

### JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. The respondent-Bank instituted a suit in the Court of Sub-Judge, Panipat, for recovery of Rs. 81,137.39 against the appellants herein. The Subordinate Judge decreed the suit allowing contractual rate of interest at 10 ½% per annum from the date of suit till the date of realisation. The appeal against the decree was dismissed by modifying the interest payable as follows:

"That the future interest payable on the mount in suit is reduced to 6% per annum from the date of suit till realisation."

The High Court in second appeal did not agree with the modification made by the District Judge and it restored the rate of interest allowed by the Sub-Judge.

2. The award of interest from the date of suit till the date of payment is regulated by Section 34 of the Civil Procedure Code. Section 34 before the 1977 amendment provided that the court may award interest as it deems reasonable on the principal sum adjudged from the date of suit to the date of the decree and further interest at such rate not exceeding 6% as the court deems reasonable from the date of decree to the date of payment. Section 34 was amended by CPC (Amendment) Act 104 of 1976 and Section 13 of the Amending Act has added a proviso, which reads as follows:

"Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

3. This amendment was brought into force with effect from 1-2-1977 and by Section 97(c) of the Amending Act it has been made clear that the provisions of Section 34 as amended shall not affect the rate at which interest may be allowed on a decree in any suit instituted before the commencement of Section 13 and interest on a decree passed in such suit shall be ordered in accordance with the provisions of Section 34 as they stood before the amendment.

4. In the instant case, the suit was filed on 20-4-1972. The amendment of Section 34 referred to above, therefore, clearly is not applicable. The Court is required to allow proper rate of interest under the unamended Section 34. As we have seen earlier, Section 34 has two parts, first part

covering the period from the date of suit till the date of decree and second covering the period from the date of decree till the date of payment. We are concerned only with the second part. The trial court has awarded interest more than 6% under the unamended provisions for the period from the date of decree till payment. The High Court appears to have not noticed the non-applicability of the amendment to suits filed prior to the amendment.

5. In this view of the matter, the decree of the trial court as affirmed by the High Court is modified allowing interest on the decretal sum only at 6% from the date of decree till payment. On all other aspects the decree is kept undisturbed.

6. The appeal is accordingly disposed of with no order as to costs. Order accordingly.

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