

Syndicate Bank, Chennai

v.

Mohan Brothers

(Supreme Court Of India)

HON'BLE MR. JUSTICE B.N.KIRPAL HON'BLE MR. JUSTICE SHIVARAJ
PATIL HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

Special Leave to Petition (Civil) No. 2479 Of 2000 | 06-03-2002

(1) One of the contentions which arises for consideration is whether the contractual rate of interest should have been awarded in the instant case. Mr K.N. Raval contends that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has an overriding effect and according to S.19(20) discretion is given to the Tribunal to award interest and the Tribunal is in no way bound to comply with or apply the provisions of S.34 of the Code of Civil Procedure. He further states, in the alternative, that if S. 34 applies, then by virtue of the proviso to S.34(1) CODE OF CRIMINAL PROCEDURE, this being a commercial transaction, the rate of interest can exceed 6 per cent per annum but shall not exceed the contractual rate of interest.

(2) Our attention has been invited to a Constitution Bench decision in Central Bank of India v. Ravindra¹. The Court in that case was concerned with S.34 CODE OF CRIMINAL PROCEDURE, it, inter alia, observed that the "interest pendente lite and future interest (i.e. interest post-decree not exceeding 6 per cent per annum) shall be awarded on such principal sum". This seems to indicate that interest pendente lite and post-decree cannot be awarded in excess of 6 per cent per annum and furthermore in paragraph 55(8) (SCC page 404) there is also an observation that the "award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by S.34 CODE OF CRIMINAL PROCEDURE dehors the contract between the parties". (emphasis added) Mr Raval draws our attention to the fact that at p. 378 of SCC where S.34 CODE OF CRIMINAL PROCEDURE is extracted, perhaps by oversight the proviso to S.34(1) was omitted. The said proviso 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) A reading of the decision in Central Bank case shows that no reference has been made to the proviso which specifically deals with the awarding of interest arising out of a commercial transaction.

(4) Under the circumstances, we think it appropriate that this case is heard by a larger Bench, inasmuch as the interpretation of the proviso to S.34(1) CODE OF CRIMINAL PROCEDURE is clearly involved and there should be no observations made in this case which are in conflict with the decision in Central Bank of India v. Ravindra.