

ALLAHABAD HIGH COURT

K.S.F. Corpn. Bangalore

Vs.

Nithyananda Bhavan

Misc. First Appeal No.818 of 1977

(K. Jagannatha Shetty and P.A. Kulkarni, JJ.)

29.06.1981

JUDGEMENT

Jagannatha Shetty. J.

1.The appellant is a Financial Corporation. The respondent, Narayana Ramachandra Naik, is a businessman and is the proprietor of a hotel called 'Nityananda Bhavan' at Ramadurg, Dist: Belgaum. In 1970, the Corporation sanctioned a loan of Rs. 2 lakhs for expanding the hotel business, out of which the respondent obtained Rs. 1,59,000/-. The loan was repayable with interest at 9 per cent per annum in twenty half yearly equal installments and the first of such installment was payable on 22nd Feb., 1972. If the installments were not paid on the due dates, they should carry interest at 11 per cent per annum from the due date up to the date of payment.

2. The respondent committed default in payment of the installments. The Corporation, therefore, moved the District Judge under Section 31 of the State Financial Corporations Act, 1951, for a declaration that the respondent was due in a sum of Rs. 2,00,348-36 and interest at 11 per cent per annum on Rs. 1,59,000/- from the date of petition till the date of payment. The respondent resisted the claim of the Corporation contending *inter alia* that the Corporation did not maintain proper accounts and it has not credited to the account all the amounts paid by him from time to time. He also disputed his liability to pay Interest 11 per cent per annum.

3. On the material placed by the parties, the learned Judge found no difficulty to accede to the claim of the Corporation, in regard to the arrears payable by the respondent and accordingly he decreed, but while allowing interest during the pendency of the proceedings and further, he awarded only 6 per cent per annum. To be more explicit, he has allowed 11 per cent interest in regard to the arrears of installments from the date of default, but limited the current interest to only 6 per cent during the pendency of the proceedings till payment.

4. Aggrieved by that part of the decree relating to the current interest, the corporation has preferred this appeal.

5. It was urged for the Corporation that the loan given to the respondent was a commercial transaction and 11 percent interest was a contractual rate of interest agreed upon between the parties and the Corporation is entitled to collect. It was also urged that the learned judge has not given any reason why that contractual rate of interest should be reduced to 6 per cent when particularly, it was not disputed that the respondent has admittedly defaulted to pay the installments as and when they became due.

6. There is in our opinion, a considerable force in the submission. The terms of the loan provide that respondent was liable to pay 9 per cent on the amount given to him and if there was a default in payment of the prescribed installments he should pay an additional 2 per cent interest from the date of default. In other words, the respondent was charged only 9 per cent interest for punctual payments and 2 per cent more for default and delayed payments. The question is, whether the Corporation should be denied of this contractual rate of interest for the period during which the proceedings were pending in the court below till payment of the decretal amount.

7. Section 34 of the Civil Procedure Code provides for grant of interest at such rate not exceeding 6 per cent per annum as the Court thinks fit. The proviso there under states:

"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 nationalized banks in relation to commercial transactions."

8. The proviso provides for awarding the interest at more than 6% per annum when the decree pertains to commercial transactions. The Court, however, shall not give more than the contractual rate and where there is no contractual rate, the rate at interest to be decreed should not exceed the prevailing Bank rate.

9. This Court in *V.P. Bhandar Ltd. v. Fatima Bi*¹ observed that the additional rate of interest of 2 per cent charged on the delayed payment of installments from the date of default should be regarded as reasonable as It is intended to be a compensation for the delay in the recovery and reinvestment of the amount.

10. While considering the validity of a similar claim of a Financial Corporation at Punjab for enhanced rate from the date of default in payment of loan, the Punjab and Haryana High Court in *M/s. Jyoti Cold Stores, Hoshiarpur v. Punjab Financial Corporation, Chandigarh*², observed (at p.39):

"The industrialists are allowed the facility of getting loan at very moderate rates from the Punjab Financial Corporation and this facility is allowed so that the industries in the State may get a fillip. In order that the Punjab Financial Corporation should be able to run efficiently and be able to help the industries it is necessary that the loans are repaid according to the contracts. In case of default, the provision for enhanced rate of interest cannot be considered unreasonable

¹(1970) 2 Mys LJ475 (at p.476)

² AIR 1973 Punjab and Har p.38

provided the enhanced rate of interest is charged from the date of default."

11. In the instant case, we are not concerned with the right of the Corporation or the liability of the respondent to collect or pay the contractual rate of interest at 11 per cent before the parties approached the Court. That right to the Corporation may be easily conceded, since that rate of interest cannot be said to be unreasonable or unconscionable. We are, however, concerned with the future interest which the Court has to award under the proviso to Section 54 of the Civil Procedure Code. The Court, under the said proviso, has to exercise a judicial discretion whether to award more than 6 per cent per annum. The Court being a donee of the statutory power, has a "duty to act fairly" in the discharge of its discretionary duty. The discretion conferred on the Court to award interest exceeding 6 per cent appears to have an object behind. It expressly pertains to commercial transactions. It impliedly distinguishes a commercial loan from an agricultural loan. Probably it expects a quick return from commercial investments unlike in the agricultural investments.

12. The Corporation has been constituted to give only commercial loans at a concessional rate when the prevailing Bank rate is about 18 percent. The Court, therefore, should give reason why the Corporation is not entitled to get more than 6 percent interest during the pendency of the proceedings till payment of the decretal amount. While awarding higher rate of interest, the Court must have regard to, among others, the object sought to be served by the loan transaction, and the condition of the business of the person; whether the person has suffered a heavy loss or whether his business is otherwise affected or crippled and such other cause, if any, for committing default in repaying the loan. The Court would be justified in awarding only 6 per cent interest if the person who was taken the loan has suffered beyond redemption. If, on the other hand, the person who has taken the loan is deliberately not repaying or intentionally withholding the payments so that he could continue to make use of loan at the concessional rate as against the higher Bank rate, the Court would be justified in awarding interest exceeding 6 percent up to the contract rate or if there is no contractual rate, at the prevailing Bank rate. In every case, the Court has to apply its judicial sympathy and must "act fairly" on the long settled principle governing the exercise of discretion.

13. Having regard to the circumstances of the present case, since the respondent has got adequate property of his own and since he has not proved that he has suffered much in his business, we see no reason why the Corporation should be denied of the contractual rate of interest at 11 per cent for the period during which the proceedings were pending in the Court till payment of the decretal amount.

14. In the result, the appeal is allowed in part and the decree under appeal is modified. The respondent shall pay interest at 11 per cent per annum from the date of the petition till the date of payment of the decretal amount.

15. In the circumstances of the cast however we make no order as to costs.
Order accordingly