

**1985 GLH 781**

**A. P. RAVANI AND R. A. MEHTA, JJ.**

Central Bank of India .. Appellant

Versus

M/s P. B. Garments Industries Private Ltd. and Others .. Respondents

First Appeal No. 649 of 1984

D/- 15-3-1985\*

\*First Appeal against the decision of Civil Judge (S.D.), Kutch-Bhuj, in Special Civil Suit No. 51 of 1979.

**(A) Code of Civil Procedure, 1908 - S. 34 - Interest - Liability in relation to sum adjudged in the decree arising out of commercial transaction - Rate of interest to be awarded - Ordinarily in Commercial transactions, the contractual rate of interest should be the rule and departure a rare exception.**

Proviso to Section 34 of Civil Procedure Code inserted by Amendment in 1976 provides 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; a commercial transaction is defined to be connected with industry, trade or business of the party incurring the liability. Undoubtedly, this was a commercial transaction and, therefore, ordinarily the rate of interest shall be contractual rate or such rate at which moneys shall be lent by the Nationalised Banks in relation to commercial transactions; otherwise it will amount to court granting credit facility of someone else's money, at a lower rate of interest. The Bank would not have advanced a commercial loan at a lesser rate of interest. Because the party has committed default in payment and the Bank is required to file a suit against such party, such a defaulting party cannot have the benefit of lesser rate of interest. Therefore, ordinarily in such transactions, the contractual rate of interest should be the rule and departure a rare exception. ([Para 8](#))

**(B) Code of Civil Procedure, 1908 - O. 20, R. 11 - Commercial transactions of advancing money by the Public Financial Institutions - Granting of installments in such transactions is ruled out.**

In such transactions by the Public Financial Institutions where money is advanced on security including personal guarantees, the granting of

installments is ruled out because that would frustrate the very purpose of taking security and granting of lesser rate of interest is also ordinarily ruled out. ([Para 9](#))

**Appearances :**

Mr. K. S. Nanavati with Mr. M. D. Farooqui, Advocate for the Appellant  
Mr. J. V. Mehta, Advocate for Respondents Nos. 1 and 2. Respondent No. 3 served

**PER R. A. MEHTA, J.:-**

**1.** The appellant, original plaintiff Central Bank of India has preferred this appeal against the judgment and decree in so far as the trial court has refused to decree the interest at the contractual rate of 16 1/2% per annum and against the quarterly installment of Rs. 5,000/with interest due against the decretal dues of Rs. 9,23,521.44 P.

**2.** The respondents-defendants are a Private Limited Company and their two Directors have been held personally, jointly and severally liable along with the Company because they have given personal guarantees. The defendants had executed several documents on 30th July, 1977 for obtaining advances and credit facility one was letter of credit facility with a limit of Rs. 5,00,000/-, one was overdraft facility with a limit of Rs. 25,000/- and the third was cash credit with a limit of Rs. 8,00,000/-. Thus, there was a total credit facility upto the limit of Rs. 13,25,000/-. There were also personal guarantees executed by the Defendants Nos. 2 and 3 for Rs. 13,25,000/- with 16 1/2% interest per annum. On the date of the suit no amounts were due under the letter of credit facility and overdraft facility.

**3.** As per the statement of accounts produced, a sum of Rs. 9,23,521.44 P. was due and payable by the defendants as on 31st December, 1978 and the statement of that account is at Exhibits 38 to 45 and from 1-1-1979 interest is due at the rate of 16 1/2% per annum. On behalf of the defendants, Defendant No. 2 Prafulchandra R. Shah had deposed at Exhibit 71. He has stated that when he was the Director of Defendant No. 1 Company the Factory was started in 1977. He has stated that his Garment Unit in the Kandla Free Trade Zone was facing financial difficulties. His brother defendant No. 3 was a Director of Kanti Cotton Mills which was closed before about a year. He has stated that the Unit had to incur huge debts. He has stated that Defendants Nos. 2 and 3 have large family and social obligations and they have no other property except the factory of the unit and the Kanti Cotton Mills and that his sons have no income of their own and they are dependent on them and they have got to be married and their marriage expenditure was required to be met and, therefore, it was prayed

that small installment may be granted and looking to the economic condition he prayed that installment of Rs. 5,000/- quarterly be granted. He also stated that he had his personal income of Rs. 2,000/- to Rs. 2,500/- and that he had cash deposit of about Rs. 1,00,000/- to Rs. 1,25,000/- and that he was getting 12% interest on that amount and he was a member of Hindu Undivided Family in which there were total 7 members residing together and he did not have movable or immovable property. He has stated that Defendant No. 3 was getting Rs. 5,000/- per month when Kanti Cotton Mills was being run. He stated that he will not be in a position to say what installment the Defendant No. 3 could pay. The Defendant No. 3 has not entered the witness box. He has not even appeared before this Court. He has not prayed for any installment. He has not contested this appeal. Defendant No. 2 has admitted in the cross-examination that it is true that there was contract with the Bank regarding rate of interest. As per the contract, the rate of interest was at the rate of 16 1/2%. In spite of that, only a decree for the principal amount has been, granted and against that there is no cross appeal or cross objection filed by any of them. 4. It is curious and inexplicable as to why in such circumstances the secured loan of the Bank has been put to jeopardy for an incredibly long period. The learned Judge has granted quarterly installment of Rs. 5,000/- with "interest due". It is not clear as to whether Rs. 5,000/- includes interest. It is also not clear whether the defendant is required to pay every quarter Rs. 5,000/- only inclusive of interest, or Rs. 5,000/- plus interest. Defendant No. 2 has clearly stated that he wanted installment of Rs. 5,000/- and he could pay Rs. 5,000/- only per quarter and the learned Judge seems to have accepted the same without any question. Calculating the interest at the rate of 6% as per the decree, the yearly interest would be more than Rs. 54,000/- and the decretal amount is more than Rs. 9,00,000/-. Quarterly installment of Rs. 5,000/- would bring only Rs. 20,000/- and that would certainly not be sufficient even to pay up the interest. The interest amount on the principal amount would go on mounting and the decree would never be satisfied. This installment of Rs. 5,000/- inclusive of interest also gets support from the further direction in the decree which is as under :

"The defendants should continue to pay the amount due every quarterly at the rate of Rs. 5,000/- per quarter. If they fail to pay any one installment the plaintiff shall be entitled to recover the whole of the remaining amount due together with cost and interest at a time in one lump sum."

Thus the learned Judge makes it clear that quarterly installment of Rs. 5,000/- is the only thing required to be paid inclusive of interest. In the alternative, assuming that interest has to be paid over and above quarterly installment of Rs. 5,000/- the yearly payment towards principal decretal

dues will be Rs. 20,000/- per year and for the dues of Rs. 9,23,000/- it would require 45 years to pay up the dues of the Bank. The learned Judge does not seem to have given any serious thought whatsoever to this aspect of the matter while granting decree for installment.

**5.** The learned Judge has also not considered that commercial loans by the Bank and Public Finance Institutions are given on securities of immovable property or movable property or personal guarantees of other solvent persons. In the present case, apart from the dues being secured by hypothecation of goods the Defendants Nos. 2 and 3 had given personal guarantees to the tune of Rs. 13,25,000/-. While giving such guarantees they must have professed to be solvent to that extent and induced the Bank to accept the personal guarantees. It is of course impossible to believe that they are in insolvent circumstances. If installments were to be granted in such secured commercial transactions with Public Financial Institutions, the whole purpose of securing the advance would be lost. These securities are taken only with a view to see that dues can be recovered from all the securities taken. Even when the principal debtor may not be in a position to pay, the liability of such persons such as sureties and guarantors is joint, several and co-extensive and in such circumstances, the decree for installment and relief for installment cannot be justified and, therefore, that direction is clearly illegal, unjust and without any valid reason and is required to be quashed and set aside. It is curious to note that Defendant No. 2 who had stated in his deposition that it was his duty to discharge the debt by paying installment of Rs. 5,000/- quarterly, has not paid any single installment until now nor any other defendant has paid any dues towards the decree. In view of the default clause in the impugned decree, an execution application has been filed in 1982, and we are told that till today no recovery has been made!

**6.** On the question of interest, there is no dispute that the contractual rate of interest is 16 1/2% per annum. The learned Trial Judge also upheld this observing that no doubt the rate of interest is stated as 16 1/2%, but further held that it cannot form the basis of contractual rate of interest on the ground that the plaintiff had not shown the exact amount which was advanced to the defendants under the Cash Credit Scheme and the statements of accounts produced by the plaintiff did not show the exact amount advanced to the defendants under the said Scheme. This is absolutely incorrect.

**7.** The hypothecation agreement and cash credit against goods (Exhibit 40) in para 7 prescribes compound interest at the rate of 16 1/2% over the Bank rate subject to a minimum of 16 1/2% per annum. Exhibit 63 also refers to same credit account, namely, packing credit account. It is the same

as Cash Credit-cum-Packing facility. Moreover, it would not make any difference as to under which of the three accounts the amounts were advanced because in respect of every account the contracted rate of interest is 16 1/2% and the learned Judge was obviously in error in holding that the contractual rate of 16 1/2% interest would not be attracted on the ground that the plaintiff had not shown the exact amount which has been advanced under the Cash Credit Scheme. The other reason given by the learned Trial Judge that the Defendant No. 1's financial position is stringent is also without any basis. The learned Judge has observed as under:

"It appears that looking to the stringent financial position of the defendant No. 1 it appears that the said Exhibit 40 was also passed by the defendant under pressure and so the same cannot be relied upon."

This agreement Exhibit 40 was executed on 30th July, 1977 at the time of obtaining advance and at that time there was no question whatsoever about the stringent financial position of defendant No. 1 or any pressure on defendant No. 1. This Exhibit 40 is also produced for inspection before the Registrar of Companies on 5-9-1977 as per endorsement on the said document. Exhibit 40 in para 7 clearly stipulates compound interest at the rate of 16 1/2%. Thus the learned Judge has clearly erred. The learned Judge has observed that the plaintiff in order to claim contractual rate of interest ought to have shown the exact amount advanced to the defendants under each head, namely, Cash Credit-cum-Packing Credit and over-draft limit. Over-draft limit was only Rs. 25,000/- and no amount was due under that head. Letter of Credit facility was not availed of at all. Therefore, the only account that had remained was Cash Credit-cum-Packing credit facility and Exhibit 63, the statement of accounts, clearly shows the head of the account, i.e. account of the defendant in respect of packing credit account. Interest amounts have also been shown separately and periodically. The accounts are properly maintained. Thus, all the reasons given by the learned Trial Judge for not awarding 16 1/2% rate of interest are erroneous and without any basis and it appears that reasons have been stretched to give unduly low rate of 6% interest only, as against the contractual rate of 16 1/2% interest.

**8.** Proviso to Section 34 Civil Procedure Code inserted by Amendment in 1976 provides 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; a commercial transaction is defined to be connected with industry, trade or business of the party incurring the liability. Undoubtedly,

this was a commercial transaction and, therefore, ordinarily the rate of interest shall be contractual rate of such, rate at which moneys shall be lent by the Nationalised Banks in relation to commercial transactions; otherwise it will amount to the Court granting credit facility of somebody else's money, at a lower rate of interest. The Bank would not have advanced a commercial loan at a lesser rate of interest. Because the party has committed default in payment and the Bank is required to file a suit against such party, such a defaulting party cannot have the benefit of lesser rate of interest. Therefore, ordinarily in such transactions, the contractual rate of interest should be the rule and departure a rare exception.

**9.** In such transactions by the Public Financial Institutions where money is advanced on security including personal guarantees, the granting of installments is ruled out because that would frustrate the very purpose of taking security and granting of lesser rate of interest is also ordinarily ruled out.

**10.** In the result, the appeal is allowed and the Judgment and decree of the Trial Court is modified and the direction in respect of interest is substituted by 16 1/2% per annum instead of 6% and the direction for installment is quashed and set aside. Rest of the decree will stand as modified as herein-above. The appeal is accordingly allowed with costs.

**11.** Before parting with this matter, we must express our feeling of great distress over the fact that though the execution proceeding was filed in 1982 because the defendants then did not pay any installment, there is no significant progress in the matter. It now appears that there are some legal difficulties in effecting the recoveries by sale of goods lying in Kandla Free Trade Zone. However, that does not mean that other properties of Defendants Nos. 1, 2 and 3 and their persons cannot be simultaneously proceeded with. We are told that the plaintiff Bank has prayed for the execution not only against the properties of Defendant No. 1 but also against the properties of Defendants Nos. 2 and 3 as well as against their persons. The Executing Court should now see that the decree is executed in all manner and against all persons simultaneously and expeditiously.

(JAA)

Appeal allowed.