

¹ *Whether reports of Local Papers may be allowed to see the judgment?*

It is submitted that Section 34 of the Code of Civil Procedure stipulates that the commercial rate is to be taken as the rate at which interest is to be charged.

I have heard learned counsel for the appellant and gone through the record. Learned counsel for the appellant submits that judgment cannot be sustained in view of the two judgments of this Court in State Bank of India v. M/S Himalaya Engineer Works and others (1997 (2) Sim.L.C. 373) and Punjab National Bank v. M/S Mahitt India Pvt. Ltd., Solan (1997 (3) Sim. L.C.323). He submits that the Court has no discretion but to award interest at the contractual rate. He also relies upon the judgment of the Hon'ble Supreme Court in Central Bank of India v. Ravindra and others (2002 1 SCC 367), wherein the Hon'ble Supreme Court has held:

"49. We are, therefore, of the opinion that the two Judge Bench decision of this Court in *Corpn. Bank v. D.S.Gowda* (1994) 5 SCC 213) and the three Judge Bench decision in *Bank of Baroda v. Jagannath Pigment & Chemicals* (1996) 5 SCC at p. 280 are correctly decided and are, therefore, affirmed. A creditor can charge interest from his debtor on periodical rests and also capitalize the same so as to make it a part of the principal. Such a course can be justified by stipulation in a contract voluntarily entered into between the parties or by a practice or usage well

established in the world to which the parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or usage or practice can stand abrogated by legislation such as usury laws or debt relief laws and so on.

58. Subject to the above we answer the reference in the following terms:

(1) Subject to a binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage interest on loans and advances may be charged on periodical rests and also capitalized on remaining unpaid. The principal sum actually advanced coupled with the interest on periodical rests so capitalized is capable of being adjudged as principal sum on the date of the suit.

(2) The principal sum so adjudged is "such principal sum" within the meaning of Section 34 of the Code of Civil Procedure, 1908 on which interest pendente lite and future interest i.e. post decree interest, at such rate and for such period which the court may deem fit, may be awarded by the Court.

(3) *Corpn. Bank v. D.S.Gowda* (1994) 5 SCC 213 and *Bank of Baroda v. Jagannath Pigment & Chem.* (1996) 5 SCC at p. 280) have been correctly decided." (Paras 49 & 58, pages 400, 404 and 500).

He submits that the learned District Judge has not at all applied his mind to the facts of the case.

I have heard learned counsel for the appellant and gone through the record which shows that there is no stipulation in the written contract between the parties for payment of interest at quarterly rests as prayed for. Ex.PW-1/A is the arrangement letter executed between the parties which stipulates that the rate of interest would be 3% below the State Bank of India lending rate of 13.5 % per annum. There is no stipulation for charging interest with quarterly rests. Ex.PW-1/C is the Agreement of Guarantee and provides for levy of interest at 13.5% on quarterly basis. Ex. PW-2/F is a letter addressed to the defendants stating that the interest would be 4% below the State Bank of India advance rate of 12.5% per annum and it has been increased to 14% per annum. Exs. PW-2/G and PW-2/H advise that the rate of interest is 15% per annum. Ex.PW-2/J stipulates interest at 12 ½ % per annum. In none of these letters except Ex.PW-1/C there is a stipulation for payment of interest on quarterly rests. The documents on record would show that the contention now raised in appeal that interest is to be allowed at 15 ½ % per annum with quarterly rests is contrary to the documents on record. The judgments cited by the learned counsel for the appellant are

distinguishable. No doubt in the case of a commercial transaction, interest is to be allowed at the contractual rate, but in the present case, I find that the documents stipulate different rates. In these circumstances, there is no illegality in the decree passed by the learned District Judge. Under the circumstances, it cannot be said that the discretion which was exercised by the learned District Judge is not in accordance with law, more especially when every document contains a different stipulation for interest. There is no substance in the appeal which is accordingly dismissed. There shall be no order as to costs.

July 31, 2007(PC)

(Dev Darshan Sud) , J.