

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

F.A.O. 120 of 2010 (O&M)
Date of Decision: 30.04.2010.

Punjab Financial Corporation

---Appellant.

VERSUS

M/S.Sepal Hotels Pvt. Ltd.

---Respondent.

**CORAM: HON'BLE Mr. JUSTCE RAKESH KUMAR
JAIN.**

Present:- Mr.G.S.Gill, Advocate, for
the appellant.

Mr.Sarjit Singh, Sr. Advocate, with
Mr. Pankaj Gupta, Advocate, for
the respondent.

RAKESH KUMAR JAIN. (ORAL)

This appeal is directed against order dated 22.11.1989 passed by learned Additional District Judge, Bathinda, vide which a petition under Section 31 of the State Financial Corporation Act,1951 (for short “the Act”) has been dismissed.

In brief, the facts of the case are that application under Section 31 of the Act was filed alleging that a sum of Rs.3,34,717,76 paise is due

from the respondent and the appellant was also entitled to recover further interest at the rate of 15.5.% per annum w.e.f. 15.6.1987, along with miscellaneous expenses and incidental charges. It was further prayed that:-

“(a) The sale of immoveable properties and the plant and machinery described in Annexure 'A' and the payment of sale proceeds to the Corporation of its full dues amounting to Rs.3,34,717.76 as per details in Annexure 'B' with further interest @ 15-1/2% per annum from 15.6.1987 alongwith other incidental charges and miscellaneous expenses that may hereafter be debited to the loan amount of the respondents in terms of the mortgage deed.

(b) An ad-interim injunction restraining the respondents from transferring or removing the machinery, plant and equipment from the premises of respondent firm without the permission of the Board of Directors of the Corporations.

(c) An ad-interim attachment of the mortgaged properties required by Section 32 of the State Financial Institutions Act.

Any other relief which this Hon'ble Court may deem fit and equitable for the protection of the interest of the Corporation.”

The said application filed under Section 31 of the Act, was decided by learned Additional District Judge, Bathinda, vide order dated 22.11.1989 observing as under:-

“ In view of my above discussion, I am of the opinion that it

cannot be ascertained how much amount is payable by the respondent to the Corporation. The Corporation is directed to calculate the amount payable by the respondent after giving rebate of 2% per annum in interest on the loan advanced for setting up industry in centrally declared backward area of Punjab. The Corporation is further directed to give a rebate of 1% per annum in interest on the loan refinanced by the IDBI from the date on which it was refinance till it remained refinanced. The corporation is further directed to calculate the penal interest which is payable by the respondent on the defaulted installment plus interest only till the default continued and submit the same in this Court on or before 20.12.1989 so that further recovery may be effected from the respondent. The respondent is restrained from transferring or removing the machinery, plant and equipment from the premises till the loan amount is paid to the P.F.C.”

Aggrieved against the aforesaid order dated 22.11.1989, P.F.C., filed F. A. O. No. 125 of 1990 in this Court which was disposed of vide order dated 4.12.2008 dismissing the appeal, meaning thereby, the observations made by learned trial Court in its order dated 22.11.1989 were upheld.

The matter did not rest here. The PFC went to the Supreme Court as well against the order dated 4.12.2008 by way of a Special Petition

for Leave to Appeal (Civil) No.(s) 17194/2009 titled “ Punjab Financial Corp Versus M/S. Sepal Hotels (P) Ltd. In which the following order was passed:-

“ This special leave petition involves the question of rate of interest alone which, in our opinion, is not the matter which should be considered by us in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is dismissed.”

After the finality of the order passed by the learned District Judge, Bathinda on 22.11.1989, a Local Commissioner/ Chartered Accountant was appointed for preparation of calculation of interest which was in dispute. Local Commissioner submitted his report dated 25.5.2009 (Annexure P-11) which was objected to by PFC by way of objection dated 6.6.2009 (Annexure P-12).

The respondent herein, also filled reply to the report (Annexure P-11) and after considering the report, the learned Additional District Judge, Bathinda vide the impugned order dated 22.11.1989, dismissed the objections observing as under:-

“ Coming to the first objection raised by the PFC that the local Commissioner has not depicted the various amounts disbursed by the PFC during the period 15.6.1977 to 31.3.1979 nor the dates of said disbursements have been allegedly incorporated in the calculations by the Local Commissioner. I find that this

objection has no factual foundation and deserves to be rejected outrightly. The PFC itself has made certain clerical errors in tabulating the various disbursements on respective dates in the chart produced in para No.5 at Sr.No.1 the date of disbursement of instalment is mentioned as 15.6.1977 whereas actually it was 18.1.1997, which date is confirmed by reference to the calculations submitted by PFC even and the report prepared by the Local Commissioner. Likewise against Sr. No.3 pertaining to disbursement of loan on 17.6.1977 amount has been mentioned as 67,700/- whereas actually it was Rs.65,700/-. While going through the calculations made by the Local Commissioner, I find that at dates of disbursement of the loan are duly incorporated in the calculations made by the Local Commissioner and as an when fresh disbursement of loan was made by ther PFC the amount due has been increased appropriately and accordingly. Meaning thereby the Local Commissioner has given due consideration to the various disbursements of loan made by the PFC in instalments from time to time and on the correct dates of disbursement with the consequence that interest has been properly worked out and no error has taken place. So I find no merit in the first objection raised by the PFC.

12. Next objection of the PFC is regarding rate of interest for the period subsequent to refinance. A perusal of the mortgage

deed as well as the contentions made by the PFC in para No.3 of the objections would reveal that from the date of refinance the rate of interest was to be 3-1/2% above the rate charged by IDBI. It is admitted on all hands that IDBI had refinanced the loan to PFC @ 6%. So as per the clauses of Mortgage Deed the rate of interest to be charged from the date of refinance which is 27.10.1977 is 6% + 3-1/2% totalling 9-1/2%. Now the Local Commissioner has made the calculations of interest from the date of refinance i.e. 27.10.1997 @ 6-1/2%. This rate of interest is explained as follows:

- (a) Rate of interest to be charged from the date of refinance as per Mortgage deed 9-1/2% less 2% rebate of interest ordered by the court vide order dated 22.11.1989 for setting up of industry in Backward District of Bathinda.
- (b) Another 1% rebate in interest in view of the policy of Punjab State Govt in view of the refinance of loan. So effective rate of interest is 9-1/2% by 3% rebate in rate of interest which has been ordered to be reduced by the court vide order dated 22.11.1989.

So the Local Commissioner has rightly reduced the rate of interest after the date of refinance from 9-1/2% to 6-1/2% by giving 3% rebate in rate of interest as ordered by the court. Thus effective rate of interest 6-1/2% in the loan amount after the date of refinance which rate is applicable for all period

when there is no default as per terms of mortgage deed 3% penal interest is to be additionally charged in the account on the defaulted amount for the period default continues which is also the direction given by the Court vide order dated 22.11.1989. So, when ever there occurred any default the Local Commissioner was required to calculate interest @ $6\frac{1}{2}\% + 3\%$ penal interest = $9\frac{1}{2}\%$ on the defaulted amount for the period the default continued. While going through the report of the Local Commissioner I find that from the calculation made from page 4 onwards of the report on all occasions when ever there occurred any default the Local Commissioner was charge 3% penal interest on the defaulted amount for the period the default continued. This penal interest has been calculated while working out calculations at pages 4 to 8. Meaning thereby the Local Commissioner has not made wrong calculations in any manner and has worked out the calculations as per due rate of interest to be charged. So I do not find any merit in this objection raised by the PFC.

Accordingly, I find that the calculation made by the Local Commissioner are correct and the respondent had made excess payment in the account to the tune of Rs.1,11,402/- and the calculation sheet submitted by PFC alongwith objections is incorrect as interest has been charged wrongly.”

Mr. G.S.Gill learned counsel for the appellant-PFC has vehemently argued that interest has been wrongly calculated by the Local Commissioner/ Chartered Accountant as he has given 6-1/2% interest while the PFC has charged 9-1/2% interest out of which 3% has been deducted towards penal interest.

His argument in the light of the finding returned by the Lower Court in para No. 12 of its judgment is that though the rate of interest 9-1/2 and less 2% rebate has been ordered by the Court of Additional District Judge, Bathinda and 1% rebate in interest in view of the policy of Punjab State Government, in view of the refinance of loan, therefore, effective rate of interest is reduced from 9-1/2% to 6-1/2% which has been rightly calculated by the Local Commissioner.

In view of the above, I find that the finding of the Court below is without any error. Learned counsel for the appellant has argued that the Local Commissioner has not depicted the various amounts disbursed by the PFC during the period from 15.6.1977 to 31.3.1979, nor the dates of said disbursement have been allegedly incorporated in the calculation made by him. Therefore, the said calculation cannot be relied upon. Again, while contesting this argument, learned Lower Court in para No.11 of the impugned order held that even the date of disbursement has wrongly been given by the PFC. Moreover, with the assistance of learned counsel for the parties I deem it appropriate that the Local Commissioner has specifically mentioned in his report the date on which the amounts

have been disbursed. Thus, I do not find any merit in the argument raised by learned counsel for the appellant.

No other point has been urged.

In view of the above, I do not find any illegality in the impugned order passed by the Lower Court and as such, the present appeal is dismissed.

No costs.

April 30,2010
Anoop

(RAKESH KUMAR JAIN)
JUDGE