

HIGH COURT OF ORISSA : CUTTACK

RFA NO.23 OF 2010

From the judgment and decree dated 15.10.2009 and 29.10.2009 respectively passed by Shri R. Prasad, 2nd Additional Civil Judge (Senior Division), Bhubaneswar in C.S. No.8/42/145 of 2009/2004/2000.

Mideast Integrated Steel Ltd & others ... Appellants.

Versus.

Industrial Promotion & Investment
Corporation of Orissa Ltd. ... Respondent

For Appellants : Mr. Ashok Mohanty,
Senior Advocate.

For Respondent : Mr. S.K. Padhi,
Senior Advocate.

PRESENT

THE HON'BLE SHRI JUSTICE B.K.NAYAK

Date of hearing : 19.11.2014 : Date of judgment: 24.12.2014

B.K.NAYAK, J. Judgment and decree respectively dated 15.10.2009 and 29.10.2009 passed in C.S. Nos.8/42/145 of 2009/2004/2000 by the learned 2nd Additional Civil Judge (Senior Division), Bhubaneswar have been challenged in this appeal by defendants- appellants.

2. The plaintiff, Industrial Promotion & Investment Corporation of Orissa Limited (IPICOL) is a wholly Government owned Company, incorporated with the object of promoting and financing the medium and large scale industries within the State of Orissa.

3. The case of the plaintiff runs as under :

(a) For the purpose of building infrastructure facilities for facilitating establishment of steel plant in Daitary region of the State and to utilize funds as Government contribution in equity in the ventures whenever necessary, the plaintiff decided to raise funds through issue of steel bonds in the year 1994-95. With this objective, the State Government in the Finance Department by Order No.37889 dated 07.11.1994 constituted one Empowered Committee with the Chief Secretary as its Chairman to take decision for utilization of proceeds raised on issue of bonds.

(b) Defendant no.1 was incorporated as a public limited company on 07.09.1992 for establishing 0.6 Metric tones pig iron per annum plant near the Duburi in the district of Jajpur. Defendant nos.2 and 3 are the group of companies of defendant no.1. Defendant nos.4 and 5 are respectively, the Chairman and the Managing Director of defendant no.1-company and are also promoters of the company.

(c) Defendant no.1 through its Chairman and Managing Director approached the plaintiff and the State of Orissa in December,1996 for subscription of an amount of Rs.25,00,00,000/- (Rupees twenty five crores) in equity/preference share/optionally convertible debenture (OCDs) with a view to financing the above company for establishment of the Pig Iron Plant at Duburi. On consideration of proposal the plaintiff sanctioned a loan of Rs.20,00,00,000/- (Rupees twenty crores) on 07.02.1997 out of the resources raised by it from issue of steel bonds. As per the terms and conditions of the loan sanction order, the loan was for a period of six months

with an interest @ 30% per annum, by way of secured optional convertible debentures and the plaintiff would hold the second charge on the assets of defendant no.1. The loan was to be paid and the debentures be redeemed on the expiry of six months from the date of loan. The proposed terms as per the sanction letter dated 07.02.1997 were accepted by defendant no.1 through its Managing Director whereafter defendant no.1 issued two debentures certificates dated 10.06.1997 for 1,36,986/- (one lakh thirty six thousand nine hundred eight six) and 95,890/- (ninety five thousand eight hundred ninety) numbers of debentures of Rs.730/- (Rupees seven hundred thirty) each in favour of the plaintiff for a total amount of Rs.17,00,00,000/- (Rupees seventeen crores) carrying interest @ 30% per annum repayable on expiry of six months from the date of disbursement of the loan. That apart corporate guarantee from defendant nos.1 and 2 were furnished and some shares from defendant nos.1 and 2 were pledged as security.

4. Out of the sanctioned amount the plaintiff disbursed Rs.7,00,00,000/- (Rupees seven crores) on 07.02.1997 and Rs.10,00,00,000/- (Rupees ten crores) on 21.02.1997.

5. The defendants defaulted in repayment of the loan, both principal and interest after the due date and instead requested vide their letter dated 02.08.1997 for extension of time for repayment. The matter was considered by the plaintiff and since the defendants had not paid interest even, recall notice vide letter no.922 dated 11.5.1998 was issued,

which was received by the defendants on 13.05.1998. Notices had also been issued by the plaintiff to the guarantors. Thereafter, defendant no.4 in his capacity as Chairman of defendant no.1 issued letter dated 15.09.1998 to the plaintiff requesting to reduce the interest on loan to 16% from 30% and to extend time for repayment up to November,2001. The defendants also indicated a schedule for repayment of OCDs of Rs.17,00,00,000/- (Rupees seventeen crores) with interest @ 16% per annum starting from December,1999 up to November,2001. The plaintiff did not agree to the request. Again letter dated 15.05.1999 was issued by the Managing Director of defendant no.1 with request to reduce interest from 30% to 16% with offer to give further security for the loan amount. The plaintiff-company also rejected the defendants' request and the Managing Director, IPICOL was authorized to take legal action against the defendants. In the meantime, several meetings with the defendants took place asking the defendants to furnish additional security. However, lastly, the defendants having failed to repay the loan, the plaintiff was compelled to file the suit claiming Rs.34,54,63,014/- towards principal and interest.

6. The defendants filed their written statement taking formal pleas that there was no cause of action and the suit was barred by limitation and was not maintainable. It was specifically stated by them that the term of payment of interest @ 30% per annum cannot be said to have been accepted by the defendants, since the parties did not have equal bargaining power and the defendants signed the agreement only in token of receipt of sanction letter, which cannot be equated with

acceptance of terms governing sanction of the loan. It is stated that the defendants are not liable to pay interest @ 30% which is arbitrary. The allegations of the plaintiff with regard to some fraudulent pledge of some shares with the plaintiff which had already been pledged with Industrial Development Bank of India (IDBI), was stated to be a computer error. Other averments of plaintiff were denied.

7. The trial court framed six issues and on consideration of the evidence on record decreed the suit.

8. In assailing the impugned judgment and decree, the learned counsel for the appellants has raised only two contentions, the first being the suit was barred by time in terms of Article 19 of the Limitation Act, 1963 and the trial court has not considered the question of limitation in its proper perspective. The second contention is that in case it is found that the suit was not barred by limitation, the grant of pendente lite and future interest by the trial court @ 16% per annum on the principal sum is on the higher side, which should be further reduced.

9. Learned counsel for the plaintiff-respondent, on the other hand, submits that Article 55 and not Article 19 of the Limitation Act applies to the present case, since the loan granted in favour of the appellants was made payable after six months of disbursement and, therefore, the period of limitation started running after completion of six months from the date of disbursement and, therefore, the suit was not barred by time if calculated accordingly. He also submits that assuming that Article 19 of the Limitation Act applies, since the appellants acknowledged the debt before the claim was barred, a fresh limitation

began to run from the date of such acknowledgement and, therefore, there is no limitation. A further submission is that the trial court has granted pendente lite and future interest on the principal @ 16% as against the contractual rate of 30% and, therefore, there is no necessity of further reducing the same.

10. Loan in favour of the appellants was disbursed in two phases, i.e., Rs.7.00 crores on 07.02.1997 and Rs.10.00 crores on 21.02.1997. The suit was filed on 03.08.2000, evidently more than three years from the date of disbursement of the loan amount. Article 19 of the Limitation Act prescribes a period of three years from the date the loan is made or advanced.

It is trite that where a loan is on an agreement and it is repayable on a future date, it cannot be said to be payable immediately when the loan is made or advanced. Therefore, a suit for recovery thereof is not for “*money payable for money lent*” within the meaning of Article 19, on the contrary, such transaction as per the loan agreement is payable on a future date and the matter is squarely covered under Article 55 of the Limitation Act.

This Court in the case of ***T. Yeruku Naidu and another v. J. Basava Raju : 1972 (1) C.W.R.294*** have held that where the plaintiff's suit for recovery of money from the defendants alleging that the defendants agreed to pay on execution of a bond the value of paddy by 05.05.1964 and the defendants failed to make payment by that date and the suit was within three years from the date stipulated for payment, it

was held that Article 55 of the Limitation Act applies and that the suit was within the limitation.

11. A similar view has also been expressed in the case of ***Sadhu Simmana v. Maji Thandu and another: 1972 (1) C.W.R.331.***

Learned counsel for the respondent has also relied on decisions of some other High Courts on similar lines, which need not be adverted to in view of the decisions of this Court cited above.

12. It is an admitted position that condition no.(a) of the loan sanction order says that the loan is for a period of six months and shall carry interest @ 30% per annum. As per condition no.(b) the repayment of the loan and redemption of debentures shall be made on the expiry of six months from the date of the loan. These conditions of the sanction order were accepted by the defendants-appellants and were made part of the loan agreement. The conditions make it abundantly clear that the loan was repayable only on expiry of six months from the date of disbursal. Counted from the date of expiry of six months of disbursal of the principal amounts, the suit is within three years from the date of expiry of six months as required under Article 55 of the Limitation Act. Specific period having been prescribed in the sanction order for repayment, the transaction falls within the ambit of Article 55 and not Article 19 of the Limitation Act, 1963.

13. Even assuming that Article 19 of the Limitation Act would apply, it is an undisputed position that the appellants by writing letters to the respondents on 15.09.1998 and 15.05.1999 asking for extension of time for repayment of the loan with request further to reduce the rate of

interest from 30% to 16%, they have acknowledged the debt (loan). The acknowledgments are before the expiry of three years from the date of disbursement of loan amount. Hence, further period of three years from the last acknowledgement would be counted.

The apex Court in the case of **J.C. Budhraja v. OMC : (2008)**

2 SCC 444 held as follows :

“**20.** Section 18 of the Limitation Act, 1963 deals with effect of acknowledgment in writing. Sub-section(1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The explanation to the section provides that an acknowledgement may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right.”

14. In the light of the discussions made above it must be held that the suit is within the period of limitation and not barred by time.

15. So far as the question of reduction of interest is concerned, the learned counsel for the appellants relied on the decision of the apex Court in the case of **Central Bank of India v. Ravindra and others : (2002) 1 SCC 367**. That is a case where the Bank granted loan with interest @ 11% per annum with quarterly rests and the defendants having

failed to repay, the bank filed the suit claiming the capitalized value of the interest with prayer to allow pendente lite and future interest and the contractual rate. The trial court decreed the suit in full, but the High Court modified the decree with respect to pendente lite and future interest and granted the contractual rate only on the original principal amount. The apex Court at the behest of the Bank ultimately held that 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. The interest once capitalized ceases to be interest and becomes a part of principal sum or capital and therefore the question of awarding interest on interest does not arise at all.

16. In the instant case, there is no term with regard to interest to be capitalized as principal. Therefore, the decision cited by the learned counsel for the appellants has no application to the present case.

That apart, it is also found that the trial court has granted pendente lite and future interest @ 16% per annum keeping in view the fact that the money given by the respondent by way of loan to the appellants was raised by the respondent from the steel bonds on which the respondent also paid interest @ 15.5% per annum. Therefore, the pendente lite and future interest does not call for any further reduction.

17. All the contentions of the learned counsel for the appellants having failed, I find no merit in the appeal, which is accordingly dismissed.

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B.K.Nayak,J.

Orissa High Court, Cuttack
The 24th December, 2014/Gs