PUNJAB AND SIND BANK

v.

M/S. ALLIED BEVERAGE COMPANY PVT. LTD. AND ORS.

(Civil Appeal No. 8443 of 2010)

OCTOBER 1, 2010

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Interest: Rate of interest – Cash credit facility granted by Bank to a Company – Company suffered losses – Its account with Bank declared as Non-performing Assets – Recovery suit – DRT directed Company to pay outstanding dues alongwith 18% p.a. thereon with monthly rests – High Court modified the order of the DRT by reducing the pendente lite and future interest to 14% p.a. with 12 monthly rests – Held: High Court fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest to 14% p.a. which would be simple interest – The approach and the course adopted by the High Court acceptable – Recovery of Debts due to Banks and Financial Institutions Act, 1993 – s.19(20) – Banking Regulation Act, 1949 – s.21A – Code of Civil Procedure, 1908 – s.34.

The appellant-Bank granted to the respondent-Company the cash credit facility duly secured by way of hypothecation of company's assets. The Company suffered set back in its business and its account with the Bank was declared as Non-performing Assets.

The Bank sent a legal notice to the directors of the Company under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling them to pay the outstanding dues along with interest due thereon. The Company approached the bank for settlement of the accounts. However, the *lite* and

A future interest. The DRT allowed the application. The DRAT upheld the decision of the DRT. The Company filed the writ petition. The High Court modified the order of the DRT by reducing the *pendente lite* and future interest w.e.f. 04.07.2003 to 14% p.a. with monthly rests, against B the rate of interest @ 18% p.a. with monthly rests, awarded by the DRT. The Bank filed the instant appeal.

Dismissing the appeal, the court

HELD: The provisions of Section 19(20) of the C Recovery of Debts due to Banks and Financial Institutions Act, 1993, Section 21A of the Banking Regulation Act, 1949 and Section 34 CPC are relevant while considering the rate or quantum of interest payable *pendente lite* and future interest. In the instant case, the D Company had agreed for settlement but it was not successful due to financial difficulties and all other circumstances. The High Court fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest E to 14% p.a., which would be simple interest, in respect of period *pendente lite* and future interest. The approach and the course adopted by the High Court is acceptable and no order is passed to either enhance the rate of interest as claimed by the Bank or further reduce as F requested by the Company. [Paras 9, 13, 14] [1129-G; 1137-F-G; 1138-A]

Central Bank of India v. Ravindra and Others (2002) 1 SCC 367 – relied on.

G *N.M. Veerappa v. Canara Bank* (1998) 2 SCC 317; *Syndicate Bank, Chennai v. Mohan Brothers and Ors.* (2004) 10 SCC 549 – referred to.

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Case Law Reference:

(2002) 1 SCC 367	**relied on**	**Para 11**
(1998) 2 SCC 317	**referred to**	**Para 10**
(2004) 10 SCC 549	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION : From the Judgment & Order dated 24.08.2007 of the High Court of Delhi at New Delhi in Civil Writ Petition WP (C) No. 6069 of 2007.

WITH

C.A. No. 8444 of 2010.

Rajiv Dutta, Kumar Dushyant Singh, R. Nedumaran, Deepak Bhattacharya, Rajesh Kumar, Priyanka Kumari, Satish Aggarwal, Gurbir Singh Raikhy, Surya Kant for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the judgment and order dated 24.08.2007 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.6069 of 2007 wherein the Division Bench of the High Court disposed of the writ petition filed by M/s Allied Beverage Company Pvt. Ltd. (hereinafter referred to as "the Company") modifying the order dated 09.06.2005 passed by the Debts Recovery Tribunal-III, Delhi (hereinafter referred to as "the DRT") in Original Application No. 47 of 2003 preferred by the Punjab & Sind Bank (hereinafter referred to as "the Bank") to the extent by reducing the *pendente lite* and future interest w.e.f. 04.07.2003 to 14% p.a. with annual rests, which would be the simple interest, against the rate of interest @ 18% p.a. with monthly rests, awarded by the DRT, Delhi.

A 3. **Brief facts:**

(a) Vide application dated 28.04.1997, the Company approached the Bank and requested for grant of financial facilities in its name. After verifying the documents submitted by the Company, the Bank acceded to the request and granted B the Cash Credit (CC) (Hypothecation) limit to the tune of Rs. 60,00,000/-, Term Loan of Rs.20,00,000/-, FOBLC/FOBP facility to the tune of Rs.10,00,000/- and Import/Inland Letter of Credit facility to the tune of Rs.25,00,000/-. However, the Cash Credit and the Import/Inland Letter of Credit limit was not to C exceed Rs.60,00,000/-. The aforesaid credit facilities given by the Bank were duly secured by way of hypothecation over stock of raw materials, finished products, goods in transit and in process, finished goods, generator sets and tanks on which the first charge has been created by the Haryana Financial D Corporation (hereinafter referred to as "the Corporation") and the Bank had the second charge over all the above materials. Additionally, the said credit facilities were also secured by way of equitable mortgage by deposit of original Title Deeds in respect of immovable property bearing Plot No. 9, Road E No. W-8, DLF Qutab Enclave, Phase-III, village Nathurpur, Teh. and Dist. Gurgaon measuring about 450.78 sq.mts. belonging to Shri Surinder Kumar Sadhu - Director of the Company. On 16.07.1997, the Bank sanctioned and granted the abovementioned loan/credit facilities to the Company. The F Company submitted all the required documents with the Bank. Because of certain reasons, the business of the Company suffered a set back and its account with the Bank was declared as Non-performing Assets (NPA) on 31.03.1999. As on that date, an amount of Rs.60,99,482.77/- was due in Cash credit G account and Rs.15,05,470/- in respect of the Term loan account. The account of the Company was transferred to NPA Account on 01.04.1999.

(b) On 16.09.2002, the Bank sent a legal notice to the H Directors of the Company under the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Securitization Act') through its Manager, calling them to regularize the account by paying the outstanding dues payable to the Bank along with interest due thereon and that in failure of the same, the Bank would be constrained to take appropriate legal action under the Securitization Act against them. On receipt of the notice, the Company approached the Bank for settlement of accounts and gave a proposal in writing and also deposited a sum of Rs.2,50,000/- towards token money. However, the settlement could not be materialized as the same was on the lower side and as such the amount of token money was credited to the Company's account.

(c) On 04.07.2003, the Bank filed an application before the DRT being O.A. No. 47 of 2003 for recovery of Rs.1,47,42,616.77 along with *pendente lite* and future interest. During the pendency of the application, the Company further gave a proposal for settlement but the same could not be materialized. However, on 09.06.2005, the Presiding Officer allowed the application and directed the Company to pay the outstanding amount with *pendente lite* and future interest. The Presiding Officer further directed that a Recovery Certificate be prepared and the parties therein should appear before the Recovery Officer-I, DRT-III Delhi on 09.08.2005 for execution of the same. Being aggrieved by the order passed by the Presiding Officer, the Company preferred an appeal being Appeal No. 70 of 2006 before the Debts Recovery Appellate Tribunal (hereinafter referred to as 'the DRAT'), Delhi and the same was dismissed vide order dated 29.03.2007.

(d) Challenging the order dated 29.03.2007 passed by the DRAT, the Company preferred Writ Petition (C) No. 6069 of 2007 before the High Court on 10.07.2007. Vide order dated 24.08.2007, the High Court disposed of the writ petition modifying the order in respect of interest to the extent mentioned therein. Dissatisfied with the order passed by the

A High Court, the Bank filed appeal arising out of S.L.P.(C) No. 24745 of 2007 and the Company preferred appeal arising out of S.L.P.(C) No. 3373 of 2008 before this Court.

4. Heard learned senior counsel for the Bank as well as learned senior counsel for the Company.

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5. The following questions arise for consideration:

(i) Whether the High Court is justified in reducing the interest @ 18% p.a. with monthly rests to 14% p.a. with 12 monthly rests without appreciating the C contractual rate of interest.

(ii) Whether the High Court has power and jurisdiction under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to change the periodicity of the payment of interest as has D been done in the present case, wherein as per the original judgment and decree dated 09.06.2005 passed by the DRT, the interest was payable at 18% p.a. with monthly rests, whereas the Division Bench of the High Court has reduced the rate of E interest from 18% p.a. to 14% p.a. with 12 monthly rests.

(iii) Whether the claim of the Company for further reduction of the rate of interest to the extent of 12% F p.a. is feasible and acceptable.

6. Inasmuch as we are only concerned with the rate of interest in these appeals, there is no need to traverse all the factual details as placed before the High Court and the Tribunal except certain facts which we have adverted to in the earlier G paragraphs.

7. In order to appreciate the claim of the Bank as well as the Company with regard to interest, it is useful to refer the relevant provisions as applicable to the case on hand. Chapter H IV of the Recovery of Debts due to Banks and Financial

Institutions Act, 1993 deals with procedure of Tribunals. Among the various provisions, we are concerned about Section 19 (20) which reads as under:

> "**19. Application to the Tribunal:-**
>
> (20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice."

8. In order to regulate the banking companies, the Government of India brought legislation, namely, the Banking Regulation Act, 1949. Here again, we are concerned about the provision relating to rate of interest which is provided in Section 21A which reads thus:

> **"21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts.-** Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

9. In addition to the above statutory provisions, Section 34 CPC is also relevant while considering the rate or quantum of interest payable *pendente lite* and after passing of the decree. It reads thus:

> **"34. Interest.-** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be

A paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems B reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so C 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. D

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970). E

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

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(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie." G

10. In *N.M. Veerappa* vs. *Canara Bank*, (1998) 2 SCC 317 = AIR 1998 SC 1101, this Court while considering Section 21A of the Banking Regulation Act, 1949 which was introduced by Act 1 of 1984, w.e.f. 15.02.1984 has held, in para 23, as H follows:-

" ... . Firstly, it will be noticed that the effect of the "non-obstante clause" in Section 21-A is to override the Central Act, namely, the Usurious Loans Act, 1918 and any other "law relating to indebtedness in force in any State". Obviously it does not expressly intend to override the Code of Civil procedure among the Central statutes. It is now well settled that the scope and width of the non-obstante Clause is to be decided on the basis of what is contained in the enacting part of the provision. Aswini Kumar Ghosh vs. Arabind Bose. Further, by no stretch of imagination can the Code of Civil Procedure, 1908 be described as a 'law relating to indebtedness in force in any State'. As stated above, the provision in Section 21-A refers, so far as Central legislation is concerned, only to the Usurious Loans Act. 1918 and not to the Code of Civil Procedure, 1908 and it then refers to other laws relating to indebtedness in force in any State. *Therefore, the provision of Section 21-A of the Banking Regulation Act, 1984 cannot be held to have intended to override a Central legislation like the CPC or Order 34 Rule 11 CPC."*

(Emphasis supplied)

11. Learned senior counsel appearing for the Bank as well as the Company and even the High Court heavily relied on the ratio laid down in the Constitution Bench decision in *Central Bank of India* vs. *Ravindra and Others*, (2002) 1 SCC 367. The question before the Constitution Bench was as to the meaning to the phrases "the principal sum adjudged" and "such principal sum" as occurring in Section 34 CPC as amended by the Code of Civil Procedure (Amendment) Act (66 of 1956) w.e.f. 01.01.1957.

12. While considering the above issue, the Constitution Bench has also considered "interest", "penal interest", several "usury laws" and finally made certain observations which are binding on the banking institutions as well as all others dealing

A with money transactions with them.

"Interest and its classes

37. *Black's Law Dictionary* (7th Edn.) defines "interest" inter alia as the compensation fixed by agreement or
B allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to *Stroud's Judicial Dictionary of Words And Phrases* (5th Edn.) interest
C means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy* the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right
D to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages ... this is the principle of Section 34 of the Civil Procedure Code. In *Sham Lal Narula (Dr)* v. *CIT* this Court held that interest is paid for the deprivation of the use of the money. The
E essence of interest in the opinion of Lord Wright, in *Riches* v. *Westminster Bank Ltd.* All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had
F had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time
G when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in *CIT* v. *Dr Sham Lal*
H *Narula* thus articulated the concept of interest: (AIR p. 414,

directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

(*6*) Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six-monthly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong.

(*7*) Any interest charged and/or capitalised in violation of RBI directives, as to rate of interest, or as to periods at which rests can be arrived at, shall be disallowed and/or excluded from capital sum and be treated only as interest and dealt with accordingly.

(*8*) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal

A para 8)

> "8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

E It is the appeal against this decision of the Punjab High Court which was dismissed by the Supreme Court in *Dr Sham Lal Narula case*.

38. However "penal interest" has to be distinguished from F "interest". Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrongdoer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the G damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and therefore cannot be permitted to be capitalised.

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39. *Mulla on the Code of Civil Procedure* (1995 Edn.) sets out three divisions of interest as dealt in Section 34 CPC. The division is according to the period for which interest is allowed by the court, namely,— (*1*) interest accrued due prior to the institution of the suit on the principal sum adjudged; (*2*) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the court deems reasonable; (*3*) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law (see *Secy., Irrigation Deptt., Govt. of Orissa* v. *G.C. Roy* SCC para 44-iv).

In conclusion, the Constitution Bench formulated certain principles. They are:

"(*1*) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

(*2*) Novation, that is, a debtor entering into a fresh agreement with a creditor undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal, any contract express

A or implied and an express acknowledgement of accounts, are the best evidence of capitalisation. Acquiescence in the method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to
B protest is not acquiescence.

(*3*) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such
C stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.

(*4*) Capitalisation method is founded on the principle that
D the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an opportunity of making the payment on the date of entry or
E within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded
F on being shown to the satisfaction of the court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

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(*5*) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding
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sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

13. By drawing our attention to the decision of this Court in *Syndicate Bank, Chennai* vs. *Mohan Brothers and Ors.*, (2004) 10 SCC 549, it is contended that in view of proviso to Section 34(1) CPC, if the liability in relation to the sum adjudged had arisen out of commercial transaction, the rate of such further interest may exceed 6% p.a. but shall not exceed the contractual rate of interest and the bank is entitled to claim interest as per the contract. It is true that in this decision, a three-Judge Bench, after finding that the decision in *Central Bank of India's case* (supra) shows that no reference has been made to the proviso which specifically deals with the awarding of interest arising out of commercial transaction, referred the issue to a larger bench. We were not informed about any decision by a larger Bench contrary to the decision in *Central Bank of India* (supra). Even otherwise, considering factual aspects, even the Company agreed for settlement but it was not successful due to financial difficulties and all other circumstances, we feel that the High Court has fairly neutralized the claim of the Bank as well as the sufferings of the Company and passed a workable order by reducing the rate of interest to 14% p.a., which would be simple interest, in respect of period *pendente lite* and future interest with effect from 04.07.2003, the day on which the Bank filed an application before the DRT. Though request was made by the Company for further reduction upto 12% p.a., since it was a commercial transaction and the Bank being a nationalized bank, we are not inclined to accede to their request.

A 14. The approach and the course adopted by the High Court is acceptable and we are not inclined to either enhance the rate of interest as claimed by the Bank or order further reduction as requested by the Company. Consequently, both the appeals are dismissed with no order as to costs.

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D.G. Appeals dismissed.