

Before Hon'ble G. R. Majithia & R. K. Nehru, JJ.

DEVINDER KUMAR & ANOTHER,—Appellants.

versus

SYNDICATE BANK & OTHERS,—Respondents,

R.S.A. No. 2665 of 1989

4th June, 1993

Code of Civil Procedure (V of 1908)—S. 34—Interest—Expression principal sum to mean original amount lent—Interest pendente lite payable on principal sum—But no interest payable on interest due on principal sum.

Held, that the expression “principal sum” means original amount lent without the addition thereto of any interest whatsoever. The Court, while decreeing the suit will adjudge (i) the principal sum and (ii) any interest on such principal sum prior to the date of institution of the suit. Both amounts adjudged by the Court by way of “principal sum” as well as “interest” thereon for the period prior to the institution of the suit together may be termed as “aggregate amount adjudged” as payable on the date of the suit. But interest under Section 34 of the Code is not payable on such aggregate amount.

(Para 11 & 21)

Further held, that interest pendente lite is payable on the principal sum adjudged, but no interest is payable on the amount of interest adjudged on such principal sum.

(Para 21)

Code of Civil Procedure (V of 1908) S. 34—Future interest to be awarded on contractual rate of interest and if no such rate is established then at same rate at which monies are lent by nationalised banks for commercial transactions.

Held, that the future interest will be awarded on the contractual rate of interest and if the contractual rate of interest is not established, at the rate at which the monies are lent or advanced by the nationalised banks in relation to commercial transactions.

(Para 11)

Code of Civil Procedure (V of 1908)—Order 39 Rule 2, 11—Conjoint reading of Clause (a) and (b) of Order 39 Rule 2 make it abundantly clear that principal and interest are to be adjudged

separately—Interest under either clause of Rule 11 can be awarded only on principal sum—Interest due before the date of filing suit not to be treated as principal.

Held, that a conjoint reading of Clauses (a) and (b) of sub-rule (1) of Rule 2 of Order 34 makes it abundantly clear that the "Principal" and "interest" have to be ascertained separately and declared to be due as such. Rule 2 does not contemplate merger of interest in the principal and determination of the aggregate amount due on account of both.

(Para 11)

Further held, that interest under Rule 11(a) (i) of Order 34 of the Code is payable on "the principal amount found or declared due on the mortgage". Under sub-clauses (iii) of Rule 11(a) such interest is also payable on the amount adjudged due to the mortgagee for costs, charges and expenses upto the date of the preliminary decree and added to the mortgage money. The Court thus has been empowered to award interest under Rule 11(a) on all components of the amount found or adjudged due to the plaintiff except on the "interest". Similarly, subsequent interest upto the date of realisation or actual payment can also be awarded under Rule 11(b) only on the "aggregate of the principal sums specified in clause (a)" thereof. It is, thus, evident that interest under either of the two clauses of Rule 11 can be awarded only on the principal. Interest due before the date of filing of the suit is not treated as principal. It is also evident from the fact that the amount of interest due to the plaintiff has to be determined separately.

(Para)

B. S. Rana, Advocate, S. K. Mittal, Advocate, *for the Petitioners.*

A. K. Jaiswal, Advocate, *for the Respondent No. 1.*

JUDGMENT

G. R. Majithia, J.

(1) This regular second appeal is directed against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge decreeing the suit of the plaintiff-respondent-Bank for recovery of Rs. 93,377-39 with future interest at the rate of 19 per cent per annum from the date of institution of the suit till realisation of the decretal amount.

(2) Facts first :—

Syndicate Bank, Rewari branch (hereinafter the plaintiff-Bank) allowed overdraft loan facility to M/s Sapra Textile Agency, Kewal

Bazar, Rewari, a partnership concern. Sarvshri Jagdish Chander, Devender Kumar and Smt. Daya Wanti were the partners of the firm. The loan of Rs. 50,000 was advanced by the plaintiff-Bank to them on January 12, 1977 and the partners executed pronote, security bonds, hypothecation of agreement and other relevant documents in favour of the plaintiff-Bank, Shri Sham Dass, father of Sarvshri Jagdish Chander and Devinder Kumar and husband of Smt. Daya Wanti mortgaged his property bearing No. EP-403/1561 situate at Rewari by depositing title deeds as co-obligant. The partners of M/s Sapra Textile Agency also hypothecated their stock-in-trade consisting of all types of textile goods against the overdraft loan facilities. The debt was acknowledged by the debtors on January 10, 1980. The loan was not repaid necessitating the filing of the suit for recovery of Rs. 93,377-39 P. on December 5, 1980.

(3) In the body of the plaint, it is not stated as to what is the principal amount and how the liability of Rs. 93,377.39 P. was created. The suit was contested by M/s Sapra Textile Agency, its partners and Shri Sham Dass Sapra, co-obligant. Shri Sham Dass Sapra, father of Shri Jagdish Chander and husband of Smt. Daya Wanti, appellants, stood surety for the repayment of the loan. They are collectively referred to as the defendants.

(4) From the pleadings of the parties, the following issues were framed :—

- (1) Whether Shri K. V. Sirinivasan is authorised to sign and verify the pleadings and institute this suit on behalf of plaintiff bank ? OPP.
- (2) Whether the overdraft loan facility to the extent of Rs. Fifty thousands was sanctioned in favour of the defendants Nos. 1 to 4 by plaintiff bank as alleged ? OPP
- (3) Whether defendant No. 5 stood as co-obligant for repayment of the said loan as alleged ? OPP
- (4) Whether defendant No. 5 mortgaged his property No. 403/1561 situated at Rewari in favour of the plaintiff bank as alleged, if so, to what effect ? OPP
- (5) To what amount plaintiff is entitled to recover from the defendants by way of principal and to what amount by way of interest OPD.
- (6) Whether the suit of plaintiff is within time ? OPP
- (7) Relief.

(5) Under issue No. 1, it was held that the suit was filed by an authorised person and this issue was accordingly decided in favour of the plaintiff-bank issue Nos. 2, 3 and 4 were disposed of together and it was held that a loan of Rs. 50,000 with interest at the rate of 19 per cent per annum was advanced to M/s Sapra Textile Agency and its partners, namely, Sarvshri Jagdish Chander, Devinder Kumar and Smt. Dayawanti, and Shri Sham Dass Sapra stood as co-obligant for the repayment of the said loan and that he mortgaged his property bearing No. 403/1561 situate at Rewari in favour of the plaintiff-Bank and these issues were accordingly decided in favour of the plaintiff-Bank. Under issue No. 5, it was held that the plaintiff-Bank was entitled to recover a sum of Rs. 93,377-39 with interest at the rate of 19 per cent per annum from the defendants. Under issue No. 6, it was held that the defendants made a valid acknowledgement of pre-existing liability on January 10, 1980 and the suit was within limitation. On ultimate analysis, the trial Court decreed the suit for recovery of Rs. 93,377-39 in favour of the plaintiff-Bank and against the defendants, with future interest at the rate of 19 per cent per annum from the date of institution of the suit till realisation of the decretal amount.

Shri Devender Kumar and Smt. Dayawanti, partner of M/s Sapra Textile Agency challenged the judgment and decree of the trial Court in first appeal before the first appellate Court. The plaintiff-Bank filed Cross-objections saying that the trial Court erred in not passing a preliminary decree under Order 34, rule 4, Civil Procedure Code. The appeal filed by Shri Devender Kumar and Smt. Dayawanti, defendants was dismissed and the cross-objections filed by the plaintiff-Bank were accepted by the first appellate Court,—*vide* judgment and decree dated March 24, 1989. Instead of a final decree, a preliminary decree was passed in favour of the plaintiff-Bank and in paragraphs 13 and 14 of its judgment, the first appellate Court observed thus :—

“13. Amended plaint filed on 14th December, 1985 shows that plaintiff bank had prayed for a preliminary decree. Above facts show that house had been equitably mortgaged with the bank. So, under Order 34, rule 4 of the Civil Procedure Code, a preliminary decree should have been passed. Accordingly, instead of final decree, a preliminary decree in favour of the plaintiff bank is passed. If the amount alongwith future interest as decreed by the trial Court is not paid within six months, then, the bank may apply for the framing of final decree and thereafter the decree will be passed.

14. In the result, the appeal filed by the defendants is dismissed and the cross-objections filed by the plaintiff bank are accepted, with costs. File be consigned records after due compliance.

Defendants Devender Kumar and Smt. Dayawanti, aggrieved against the judgment and decree of the first appellate Court, have come up in regular second appeal.

(6) When this appeal came up for motion hearing before one of us while sitting singly, learned counsel for the appellants submitted that the interest *pendente Lite* can be awarded by the Court only on the principal sum adjudged and not on the whole amount claimed in the suit. Similarly, future interest can only be awarded on the principal sum as adjudged by the Court in its judgment and decree. In support of his submissions, the learned counsel relied upon a Single Bench judgment of this Court in *Makhan Singh v. Union Bank of India and others* (1). The correctness of this judgment was doubted and the appeal was admitted to Division Bench and request was made to the Chief Justice to enlist this case expeditiously. It is how the appeal has been laid before us for adjudication.

(7) Learned counsel for the appellants does not dispute that a loan of Rs. 50,000 was advanced to the defendants carrying interest at the rate of 19 per cent per annum. He also does not dispute the correctness of the principal amount and interest accruing thereon before the filing of the suit, viz. Rs. 93,377-39 P. claimed in the suit. His only grouse is that the trial judge was in error in allowing interest *pendente lite* and future interest at the rate of 19 per cent per annum from the date of institution of the suit till realisation of the decretal amount.

(8) The precise question which arises for determination is whether the trial Judge was right in awarding interest *pendente lite* and future interest on the principal amount claimed in the suit. The amount claimed in the suit includes the compound interest due on the principal sum of Rs. 50,000. Learned counsel for the appellants does not dispute that it obviously includes the principal amount and interest/compound interest accrued thereon till the filing of the suit. His only grouse is that the trial Judge was not

(1) 1999 (1) 95 P.L.R. 703.

correct in awarding interest *pendente lite* and future interest from the date of decree till realisation of the decretal amount at the rate of 19 per cent per annum.

(9) A perusal of the plaint does not indicate as to on what basis interest *pendente lite* and future interest at the rate of 19 per cent per annum was claimed in the suit. In para No. 7 of the plaint, it is stated that as per record of the plaintiff-Bank, a sum of Rs. 93,377-39 P. is due from the defendants. In para 8 of the plaint it is stated that the defendants had acknowledged the debt on January 10, 1980 and the suit was within limitation. In para 11 of the plaint, it is stated that a decree for a sum of Rs. 93,377-39 P. be passed in favour of the plaintiff and against the defendants with costs and future interest at the rate of 19 per cent per annum from the date of filing the suit till payment. There is no plea that interest *pendente lite* or future interest from the date of decree till realisation is payable on the contractual rate of interest.

(10) Section 34 of the Code of Civil Procedure provides for allowing of interest 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 future interest not exceeding six per cent per annum as the Court deems 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. It will be apt to reproduce Section 34 of the Code of Civil Procedure :—

“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 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 future interest at such rate not exceeding six per cent per annum as “the Court deems 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 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.

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.

Explanation II.—For the purpose 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.

- (2) Where such a decree is silent with respect to the payment of further interest of such principal sum as aforesaid, 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 therefore shall not lie."

Interest awardable under Section 34 of the Code of Civil Procedure may be divided into three heads, namely,

- (1) interest accrued due prior to the institution of the suit on the Principal sum adjudged (as distinguished from the principal sum claimed) ;
- (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.

Interest up to the date of suit is a matter of substantive law and the section does not refer to payment of interest under the first head. It applies only to 2nd and 3rd heads. Interest *pendente lite* is one of procedure within the discretion of the Court. Interest on the Principal amount adjudged from the date of the decree to the date of payment cannot be allowed at a rate higher than 6 per cent per annum under the first proviso to Section 34 of the Code. Future interest exceeding 6 per cent per annum can be granted if the liability adjudged has

arisen out of a commercial transaction and, in no event, it shall exceed the contractual rate of interest, and if the contractual rate of interest is not established, the Court can grant interest at a rate allowed by the nationalised bank in relation to commercial transactions. Since it was not disputed that the money was advanced under a commercial transaction, the case will be squarely covered under the first proviso to Section 34 of the Code of Civil Procedure.

(11) In the instant case, loan of Rs. 50,000 was advanced on January 12, 1977. Civil Procedure Code (Amendment) Act (104 of 1976) received the assent of the President of India on September 9, 1976. In exercise of the powers conferred by sub-section (2) of Section 1, the Central Government issued a notification No. G.S.R. 15 (E), dated January 14, 1977 which appointed February 1, 1977 as the date on which the provisions of the new Act except Sections 12, 13 and 50 would come into force and May 1, 1977 as the date when Sections 12 and 50 would come into force. Another notification No. G.S.R. 416 (E), dated June 27, 1977, issued by the Central Government, fixed the 1st of July, 1977 as the date when Section 13 would come into force. The suit was filed on December 5, 1980, i.e. after the Civil Procedure (Amendment) Act, 104 of 1976 had been made applicable and Section 34 as amended by Act 104 of 1976 will be applicable to the instant suit. The expression "principal sum" means original amount lent without the addition thereto of any interest whatsoever. The Court, while decreeing the suit will adjudge, (i) the principal sum and (ii) any interest on such principal sum prior to the date of institution of the suit. Both amounts adjudged by the Court by way of "principal sum" as well as "interest" thereon for the period prior to the institution of the suit together may be termed as "aggregate amount adjudged" as payable on the date of the suit. But interest under Section 34 of the Code is not payable on such aggregate amount. It is made payable only on the principal sum adjudged. No interest is payable on the amount of interest adjudged on such principal sum. Interest, whether simple or compound, will remain "interest" for the purpose of Section 34 and shall never merge in the principal. The legislature while using the expression "in addition to any interest adjudged on such principal for any period prior to the institution of the suit" in Section 34 in contra-distinction to the expression "principal sum" has not made any distinction between the interest computed by way of simple interest or compound interest. The expression principal sum adjudged" in Section 34 of the Code means the original amount lent, without addition thereto of any interest whatsoever. This will be the position notwithstanding any agreement between the parties or any prevailing banking or trade practice to the contrary. Similarly

Rule 2 of Order, *inter alia*, taking of account of what is due to the plaintiff as the date of preliminary decree for "principal" and "interest on the mortgage". Under clause (b) of sub rule (1) of Rule 2 of Order 34 the Court has to declare the amount so due at that date. A conjoint reading of clauses (a) and (b) of sub-rule (1) of Rule 2 of Order 34 makes it abundantly clear that "principal" and "interest" have to be ascertained separately and declared to be due as such. Rule 2 does not contemplate merger of interest in the principal and determination of the aggregate amount due on amount of both. Interest under Rule 11 (a) (i) of Order 34 of the Code is payable on "the principal amount found or declared due on the mortgage". Under sub-clause (iii) of Rule 11 (a), such interest is also payable on the amount adjudged due to the mortgagee for costs, charges and expenses up to the date of the preliminary decree and added to the mortgage money. The Court thus has been empowered to award interest under Rule 11 (a) on all the components of the amount found or adjudged due to the plaintiff except on the "interest". Similarly, subsequent interest up to the date of realisation or actual payment can also be awarded under Rule 11 (b) only on the "aggregate of the principal sums specified in clause (a)" thereof. It is, thus, evident that interest under either of the two clauses of Rule 11 can be awarded only on the principal. Interest due before the date of filing of the suit is not treated as principal. It is also evident from the fact that the amount of interest due to the plaintiff has to be determined separately.

(12) This precise question arose for consideration before a Full Bench of the Bombay High Court in *Union Bank of India v. Gaurishankar Upadyay* (2). After referring to the provisions of Section 34 of the Code of Civil Procedure, the Bench observed thus :—

"A clear picture which emerges from reading of this section is that the Court while decreeing the suit will adjudge, (i) principal sum and (ii) any interest on such principal sum prior to the date of institution of the the suit. Both amounts adjudged by the Court by way of "principal sum" as well as "interest thereon for the period prior to the institution of the suit together may be termed as "aggregate amount adjudged" as payable on the date of the suit. But interest under Section 34 is not payable on such aggregate "amount. It is made payable only on the principal sum adjudged.

No interest is payable on the amount of interest adjudged on such principal sum. Interest, whether simple or compound, will remain 'interest' for the purpose of Section 34 and shall never merge in the principal. The legislature while using the expression "in addition to the interest adjudged on such principal for any period prior to the institution on the suit" in Section 34 in contra-distinction to the expression "principal sum" has not made any distinction between the interest computed by way of simple interest or compound interest. The legislative scheme and intent being so clear, there is no scope for doubt that the expression "principal sum adjudged" would mean only the "principal sum". It will never include the interest whatsoever by the agreement between the parties. Interest under Section 34, therefore, can be allowed only on the principal sum and not on the principal sum plus interest accrued thereon till the filing of the suit. In view of the foregoing discussion, we hold that the "principal sum adjudged" used in Section 34 of the C.P.C. means the original amount lent without the addition thereto of any interest whatsoever. This will be the position notwithstanding any agreement between the parties or any prevailing banking or trade practice to the contrary. The first three questions are answered accordingly."

(13) Rules 2 and 11 of Order 34, Civil Procedure Code were interpreted by Full Bench of Bombay High Court as under :—

"From a reading of Rule 2 set out above, it is clear that it casts a duty on the Court to order, *inter alia*, taking of account of what is due to the plaintiff at the date of the preliminary decree for "principal" and "interest on the mortgage". Under clause (b) the Court has to declare the amount so due at that date. A conjoint reading of clauses (a) and (b) of sub-rule (1) of Rule 2 makes it abundantly clear that the "principal" and "interest" have to be ascertained separately and declared to be due as such. Rule 2 does not contemplate merger of interest in the principal and determination of the aggregate amount due on account of both. Rule 11 provides for award of interest from the date of decree up to the date fixed for payment, and in the event of same being not paid by such date, for further interest upto the date of realisation or actual payment. Interest under Rule 11(a) (i) is payable on "the principal amount

found or declared due on the mortgage.” Under Sub-clause (iii) such interest is also payable on the amount adjudged due to the mortgagee for costs, charges and expenses up to the date of the preliminary decree and added to the mortgage money. The Court thus has been empowered to award interest under Rule 11 (a) on all the components of the amount found or adjudged due to the plaintiff except on the “interest”. Similarly, subsequent interest up to the date of realisation or actual payment can also be awarded under Rule 11 (b) only on the “aggregate of the principal sums specified in clause (a)” thereof. Clause (a), as indicated above, specifically excludes interest due on mortgage from its purview. The principal amounts referred to in clause (b) therefore means only the principal amount found or declared on the mortgage and the principal amounts adjudged due to the mortgagee for costs, charges and expenses. Interest on any of these amounts, therefore, will not fall within the expression “aggregate of the principal sums” used in clause (b) of Rule 11. It is thus evident that interest under either of the two clauses of Rule 11 can be awarded only on the principal. Interest accrued due before the suit is not treated as principal. It is also evident from the fact that the amount of interest due to the plaintiff has to be determined separately [Rule 2(1) (a) (i) of Order 34].”

(14) A conjoint reading of Section 34 and Rules 2 and 11 of Order 34 of the Code would show that the expressions “principal sum adjudged”, “principal” and “aggregate of principal sum” specified in Section 34, Rule 2(1) (a) (i) and Rule 11 (b) of Order 34 of the Code mean only the “principal” and not “principal and interest”. Subsequent interest can be awarded on principal only. No interest is payable under Rule 11.

(15) A brief reference to the judgments relied upon by the learned counsel for the plaintiff-Bank is necessary. Reliance was placed on the following judgments :—

- (1) *State Bank of India v. M/s Neeru Plastics and others*, (3).
- (2) *M/s S. M. Enterprises, Faridabad v. State Bank of India, N.I.T., Faridabad*, (4).

(3) 1984 P.L.R. 382.

(4) 1991 (2) 100 P.L.R. 410.

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- (3) *Smt. Usha Sachdeva and another v. Life Insurance Corporation of India, New Delhi*, (5).
- (4) *Chanan Singh v. Punjab National Bank, Chanaur and another*, (6).

(16) In *M/s Neeru Plastics* case, the plaintiff-Bank filed a suit for recovery of Rs. 93,347.10 on account of amount due under the Cash Credit (Factory Type) account with interest up to April 25, 1977 by sale of pledged goods and the machinery accepted as collateral security towards satisfaction of the aforesaid amount and also by sale of the property, the details of which were given in the plaint. The trial Court decree the suit in the following terms :—

“In the light of my findings on the above issues, the suit of the plaintiff is decreed for Rs. 93,347.18 with interest at the rate of 12 per cent per annum from the date of the suit till realization of the amount. The plaintiff shall be at liberty to realize this amount by sale of the goods and the machinery belonging to the defendants, and pledged with the plaintiff as collateral security and also by sale of the property No. XXI-837, Partap Nagar, Ludhiana, fully described in the head-not of the plaint, belonging to the defendants, the title deeds whereof are deposited with the bank by way of equitable mortgage as collateral security. However, if the defendants pay the decretal amount through instalments of Rs. 1,000 per month regularly with interest at the rate of 18 per cent per annum, starting from 15th April, 1980. the plaintiff shall not sell the goods, machinery and the immovable property.”

The plaintiff-bank, dissatisfied with the said decree of the trial Court as to the rate of interest allowed as well as the instalments allowed by it, filed appeal. No appeal or cross-objections were filed on behalf of the defendants. In appeal, the first appellate Court reduced the rate of interest from 12 per cent to 6 per cent though no cross-objections were filed on behalf of the defendants. However, as regards instalments, the decree of the trial Court was modified to the extent that the plaintiff-Bank would pay the same instalments of Rs. 25,000 per annum with future interest

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- (5) 1991 (1) 99 P.L.R. 579.
(6) 1992 (1) P.L.R. 647.

at the rate of 6 per cent on the principal amount of Rs. 80,000 with effect from February 29, 1980 till realisation of the entire decretal amount. It was also ordered that in case of default of payment of any instalment on due date, the remaining outstanding amount of decree would be realised by the plaintiff-Bank in lump sum through the sale of moveable or immovable property belonging to the defendants. The plaintiff-Bank still dissatisfied with the decree of the first appellate Court moved this Court in the regular second appeal. This Court passed a preliminary decree for a sum of Rs. 93,347.13 p. in favour of the plaintiff Bank. It further stated that as contemplated under Order 34, rule 4, Civil Procedure Code, the defendants were allowed six months' time to deposit or pay the decretal amount. The plaintiff Bank was also held entitled to interest at the rate of 18 per cent per annum on the decretal amount from the date of the suit till the date i.e. April 26, 1984, which was fixed by the Court for the payment of the mortgage debts. *The plaintiff was also held entitled to interest at the rate of 12 per cent per annum on the aggregate amount of the principal, interest and costs upto the date of realisation or actual payment.* A perusal of this judgment reveals that the learned Judge principally relied upon the decision rendered by this Court in *The Punjab and Sind Bank Ltd. v. Roor Mal Sondhi and another* (7).

(17) In *Roor Mal Sondhi's* case (Supra), the facts were as under :—

(18) The Punjab and Sind Bank Ltd., Amritsar brought a suit against Roor Mal Sondhi and Jullundur Mercantile Co-operative Bank Ltd., Jullundur, for Rs. 6610.12 Paise on account of principal and interest by sale of the mortgaged property. Roor Mal Sondhi, defendant No. 1, had opened an overdraft account with the plaintiff-bank on December 25, 1950, after creating an equitable mortgage of his house by depositing its title deeds with the plaintiff-bank as a collateral security for the loan. On June 25, 1954, the loan was renewed by defendant No. 1 and a fresh pronote and other documents were executed in connection therewith. In the plaint, the plaintiff-bank claimed a decree for recovery of Rs. 6,610.12 and this amount represented the principal amount and interest calculated thereon at the agreed rate of 10 per annum upto the date of institution of the suit. It was also prayed that future interest at the rate of 10 per cent per annum from the date

of the institution of the suit till realisation might also be allowed. The defendant urged before the trial Court that the plaintiff-Bank had added compound interest at the rate of 10 per cent per annum with monthly rests, which was against the contractual rate as well as the legal rate allowable and had further objected to the prayer of the plaintiff for the grant of future interest. On this rival pleas of the parties, the trial Court framed the following issue :—

“Whether the agreed rate of interest and the rate on which the interest is claimed are excessive and to what effect?”

This issue was decided in favour of the plaintiff-Bank holding that the agreed rate of interest was not excessive. The trial Court, however, did not allow interest subsequent to the date of the institution of the suit till realisation of the amount due. The plaintiff-Bank assailed the judgment and decree of the trial Court in first appeal before this Court. This Court interpreted the provisions thus :—

“It is needless to discuss the various authorities on the subject, because their gist has been given in Volume II of the Civil Procedure Code by D. F. Mulla, 13th Edition at page 1474. There it is stated.—

“.....Summarising the decisions under the Transfer of Property Act and under Order 34, it may be said that in suit on a mortgage the Court awarded—

- (1)
- (2) interest on the principal from the date fixed by the Court for payment of the mortgage-debt, also at the rate provided by the mortgage.....unless the rate is penal, in which case the Court may award interest at such rate as it deems proper, or the interest is excessive and the transaction was substantially unfair in which case also the Court may reduce it.”
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- (3) interest on the aggregate amount of principal, interest and costs, from the date fixed for payment of the mortgage-debt upto the date of realization or actual payment, at such rate as the Court deems proper. It may be allowed at the Court rate, that is, 6 per cent per annum, or at any rate”

many authorities have been cited in support of the passage quoted above. Reference may also be made to a Bench decision of Patna High Court given by Harries C.J. and Chatterji J. in *Sukhraj Rai v. Ratinath Panjiara* (8), where it was also held—

“Even if the plaintiff cannot recover interest before date of suit by virtue of provisions of the Bihar Money-lenders Act, the Court is bound to grant under Order 34, rules 2 and 4, Civil Procedure Code, *pendente lite* interest, as that Act does not deal with interest payable after suit and this power of the Court is not affected by rule 11 under which the Court has a discretion in the matter of awarding such interest but not to refuse it.

In the matter of awarding *pendente lite* interest, ordinarily the contractual rate ought to be allowed unless it appears to be penal or excessive.”

(19) In the instant case, as I have already mentioned above, the finding by the Court below was that the contractual rate of interest was not excessive. It had also not been found that the rate of interest was penal. Keeping the principles of law laid down in the authorities mentioned above, it would be seen that the plaintiff was entitled to interest at the contractual rate of 10 per cent per annum on the amount decreed from the date of the suit upto 31st of July, 1959, which was the date fixed by the Court for payment of the mortgage-debt. The plaintiff is also entitled to interest at the rate of 6 per cent per annum on the aggregate amount of principal interest and costs from the 31st of July, 1959 up to the date of realisation or actual payment.

The Bench relied upon the extracts from Mulla's Commentary on the Code of Civil Procedure, 1908, Vol. II, Thirteenth Edition. A perusal of the original text indicates that the author of the aforesaid Commentary, Thirteenth Edition based his observations on the decision of the Privy Council in *Raja Sir Mohammad v. Qazi Ramzan Ali* (9), and the decision of the Calcutta High Court reported as *Sunder Koer v. Rai Sham Kishan* (10). These authorities were given

(8) A.I.R. 1942 Patna 102.

(9) (1920) 24 W.N. 977=58 I.C. 89.

(10) (1907) 34 Cal. 150.

before the amendment of Rule 11(b) of Order 34 which was brought about in the Code of Civil Procedure, 1908 (for short, the Code) by the Code of Civil Procedure (Amendment) Act, 1956 (Act 66 of 1956). The Bench interpreted the provisions of Order 34, rule 11, of the Code as amended by Act No. 66 of 1956, but relied upon the judgments which had interpreted the unamended provisions. The Bench was called upon to interpret the amended provisions of Rule 11(b) of Order 34 of the Code and not the unamended provisions. The judgment in *Rocra Mal Sondhi's case* (supra) is a decision *per incuriam* since the statutory provisions as applied were not taken note of by the Bench.

(20) Clause (b) of Rule 11 of Order 34 of the Code was substituted by Act No. 66 of 1956. Prior to 1956, under clause (b) of Rule 11 of Order 34, interest from the specified date for payment till the date of payment could be awarded also on the interest in addition to the principal sum. This clause, in express terms, empowered the Court to grant subsequent interest on the aggregate of the principal sums specified in clause (a) and on interest. The object of the amendment of this clause by Act No. 66 of 1956 was not to allow interest on interest. It now refers only to the aggregate of the principal sums specified in clause (a) of Rule 11. Under clause (a) of Rule 11 of Order 34, the Court is empowered to award interest on all the component amounts found or adjudged due to the plaintiff except 'interest'. The amendment in Rule 11(b) of Order 34 was introduced on the report of the Joint Committee on the Amendment Bill. The Joint Committee in its report observed thus :—

“The committee also feels that interest on interest should not be allowed and, therefore, clause (b) of Rule 11 was redrafted.”

and the re-drafted provision reads thus :—

“subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause as the Court deems reasonable.”

On the same footing, the judgment rendered in *M/s Neeru Plastics case* (Supra) does not lay down the correct law and the same is overruled.

The judgment in *M/s Neeru Plastics case* (Supra) was rendered by J. V. Gupta, J. (as he then was). He followed the ratio of this judgment in *Smt. Usha Sachdeva case* (supra). These two judgments

were followed by Ashok Bhan J. in his judgments rendered in *M/s S. M. Enterprises and Chanan Singh* cases (supra). The learned Judge proceeded on the assumption that the interest legally recoverable could be allowed. In substance, in *Smt. Usha Sachdeva, S.M. Enterprises and Chanan Singh* cases, the learned Judges relied upon the ratio of the judgment rendered in *M/s Neeru Plastics* case (Supra) which we have already overruled being contrary to the Statutory provisions. We are in respectful agreement with the view taken by the Full Bench of the Bombay High Court in *Gaurishankar Upadyaya's case* supra and with respect to the learned Judges of this Court we do not approve of the view taken by them in the aforesaid cases. The same have been separately dealt with and are accordingly overruled.

(21) For the reasons stated above, we hold that the plaintiff-Bank will be entitled to recover interest *pendente lite* and future interest to be determined as under :—

- (i) Interest ~~pendente lite~~ is payable on the principal sum adjudged, but no interest is payable on the amount of interest adjudged on such principal sum ;
- (ii) Future interest will be awarded on the contractual rate of interest and if the contractual rate of interest is not established, at the rate at which the monies are lent or advanced by the nationalised banks in relation to commercial transactions. In the present case, the loan was advanced by the Bank and as such it is a commercial transaction.

(22) Consequently, the judgments and decrees of the Courts below are modified and the case is remitted to the trial Court for passing a fresh decree in terms of the directions given above.

(23) We had directed while admitting the appeal that the defendants would deposit a sum of Rs. 93,377.39 Paise. The counsel for the decree-holder is not in a position to inform us if the amount was deposited. It is was not deposited as indicated above, the trial Court will determine the rate of interest payable on the principal sum adjudged as indicated above and thereafter it will pass a preliminary decree.