

Jainath Prasad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-04-1999

Judge : Aftab Alam, J.

Acts : [Banking Regulation Act, 1949](#) - Sections 21A

Appeal No. : C.W.J.C. No. 10784 of 1998

Appellant : Jainath Prasad

Respondent : State of Bihar and ors.

Advocate for Def. : A.P. Jittu, Standing Counsel Navneeti Prasad Singh, Adv.

Advocate for Pet/Ap. : D.K. Tandon, Adv.

Disposition : Petition partly allowed

Judgement :

Aftab Alam, J.

1. In Jahuri Yadav v. Bank of India, a learned Judge of this Court, sitting singly, passed a very brief order reported in 1998 (3) Pat LJR 214, declaring that in agricultural loans it was not permissible for the Bank to charge interest at a rate higher than 6.5%. The declaration was said to be in accordance with the decision of the Supreme Court in Corporation Bank v. D. S, Gowda, (1994) 5 SCC 213 :

(1994 AIR SCW 2721).

2. The order passed by this Court in the case of Jahuri Yadav seems to have caused a state of uncertainty in the matter of recovery of Bank loans. A case came to the notice of this Court in which a District Certificate Officer had issued a general direction to all the Banks in the district asking them to recalculate their dues in agricultural advances charging interest @ 6.5% as directed in the order passed by this Court. It was also reported to this Court that relying upon the order passed in the case of Jahuri Yadav a large number of suits were filed In civil Courts seeking direction to the Banks to determine the overdue amounts in recovery proceedings by charging interest @ 6.5%. The case in hand is another case in which the petitioner seeks relief(s) on the basis of the order passed by this Court in the case of Jahuri Yadav. (1998 (3) Pat LJR 214).

3. On 12-9-1990 the petitioner took a loan of Rs. 1.20.000/- for purchase of a tractor from the State Bank of India, Agricultural Development Branch, Motihari. According to the agreement executed by the petitioner and his wife, the loan amount with interest was repayable in nine installments in the following manner :

Instalments

Date of Payment

1st instalment Rs. 13,333 + interest

1-1-92

2nd instalment Rs. 13,333 + interest

1-1-93

3rd instalment Rs. 13,333 + interest

1-1-94

4th instalment Rs. 13,333 + interest

1-1-95

5th instalment Rs. 13,333 + interest

1-1-96

6th instalment Rs. 13,333 + interest

1-1-97

As regards the rate and application of interest the relevant clause (6) in the loan agreement provided as follows :

'(6) Interest -- Interest will be charged annually at the rate of 4% above the State Bank increase or decrease in the interest rates. Change notice board. Interests will be realised every year in the advance/advances are not paid by the dates fixed then the balance outstanding in the books of accounts on the said date would be liable to 2% penal interest up to the date of payment.'

4. It is undeniable that the petitioner was not able to keep the repayment schedule given in the loan agreement as quoted above.

5. The basic facts concerning the petitioner's loan from the Bank can be taken from the counter-affidavit filed on behalf of the Bank which appears to be quite reliable on the fact position of the case. It is stated that the full loan amount was disbursed to the petitioner on 17-12-1990. From that date till June 1992, deposits made towards repayment of loan only amounted to Rs. 55,906.15 and thereafter no repayment was made in the Loan Account. In the meanwhile, the overdues increased with the accrual of interest. As regards the application of interest it is stated in paragraph 9 of the counter-affidavit, as follows :

'xx xx xx the Bank as per the

agreement itself was entitled to charge penal

Interest apart from interest charged in the

month of May and November at the agreed

rate of 12.5%, which was accordingly done.'

6. As the result of accrual of interest the over dues as on 29-6-1997, the date was on which certificate proceeding was instituted against the petitioner stood at Rs. 2,18,048; adding to it the Court-fee amount of Rs. 6,640/- the certificate was issued for Rs. 2.24,488/- (sic). It is further stated that after the initiation of the certificate proceeding when distress warrant was issued against the petitioner, he deposited a further sum of Rs. 1,38,015/-. Thus against the certificate amount of Rs. 2,24,488/- there was still an outstanding balance of Rs. 86,433(sic) plus the interest accrued on the certificate amount in terms of Section 17 of the Bihar and Orissa Public Demands Recovery Act from the date of the institution of the certificate proceeding in June 1997 till date.

7. It was in those circumstances that the District Certificate Officer, Motihari issued a notice, dated 23-9-1998 in Certificate Case No. 36/1997-98 asking the petitioner to make payment of Rs. 90,000/- being the bank's over dues till that date. At that stage that the petitioner came to this Court in this writ petition seeking to challenge the notice and making the grievance that despite all the payments made by him the loan amount seemed to be further growing. In this case a direction was prayed for, asking the respondents to Issue a fresh demand charging interest @6.5% as decided in the case of Jahuri Yadav v. Bank of India, (1978 (3) Pat LJR 214).

8. This takes us to the order passed by this Court in the case of Jahuri Yadav, (1998 (3) Pat LJR 214) and it will be useful to reproduce here the main part of the order :

'In the counter-affidavit It has been mentioned the rate of interest charged on the principal amount advanced to the petitioner. Learned counsel for the petitioner submits that in the case of agricultural loan the Bank is not entitled to charge the compound interest and at best the Bank can charge interest @ 6.5%. In support of his contention, learned counsel has relied upon a decision in the case of Corporation Bank v. D. Section Gowda, reported in 1994 (5) SCC 213 : (1994 AIR SCW 2721). The Apex Court In the aforesaid Judgment has held that in case of

agricultural loan, the Bank is not entitled to charge compound interest. It has also been held that all the interest can be charged @6.5%. Accordingly relying upon the aforesaid decision I direct the Bank to issue a fresh demand upon the petitioner and the petitioner is directed to pay the entire dues including the interest calculated @6.5% within three months from today.'

9. Mr. Navneeti Prasad Singh, counsel appearing for the respondent Bank submitted that in the Supreme Court decision referred to in the above-quoted order, it was nowhere held that in an agricultural loan the Bank was not entitled to charge interest at a rate higher than 6.5%. The submission made by Mr. Singh is quite correct, I went through the decision of the Supreme Court in *Corporation Bank v. D. Section Gowda* (as reported in (1994) 5 SCC 213 : (1994 AIR SCW 2721)) very carefully but I did not find any observation even remotely suggesting that in an agricultural loan the rate of chargeable interest could not exceed 6.5%. In fact the figure 6.5 is nowhere to be found in the decision of the Supreme Court and I initially thought that the mention of 6.5% in the order was the result of some printing mistake in the law report. I, therefore, called for the original records of the case of *Jahuri Yadav* (C.W.J.C No. 512/1997, disposed of on 25-3-1998). From the perusal of the records of the case it appears that the law report reproduced the order accurately and faithfully and the order does state that 6.5% was the highest rate at which interest could be charged in an agricultural loan. It thus becomes plain and clear that the order of this Court in the case of *Jahuri Yadav* though refers to the decision of the Supreme Court and though it was professedly passed following the Supreme Court decision, it was in fact quite contrary to what was held by the Supreme Court in that case.

10. The Supreme Court decision reported in the case of *Corporation Bank v. D. Section Gowda*, (1994 AIR SCW 2721) was in fact a common Judgment in two civil appeals being Civil Appeal No. 4214/1982 (*Corporation Bank v. D. Section Gowda* and another) and Civil Appeal No. 544/1986 (*Bank of India v. Karnam Ranga Rao* and others). In the former case the borrower D. Section Gowda had taken a loan from the Corporation Bank for construction of a house in the city of Bangalore. The loan taken by D. Section Gowda was not an agricultural loan by any means and on this loan the Bank had charged Interest @ 16.5% per annum

with quarterly rests. Apart from this the Bank also charged penal interest and service charges. The mortgage suit filed by the Bank for the recovery of its overdues against D. Section Gowda was decreed by the trial Court for the amount claimed by the Bank. The High Court relying on Section 3(1) of the Mysore Usurious Loans Act, 1923 held that the borrower was entitled to relief and reduced the interest rate to 12.5% per annum with annual rests. As to the levy of the penal interest the High Court held that there was no stipulation in the agreement to support it. In regard to the service charges it allowed the Bank a lump sum of Rs. 25,000/- referring to a circular of the Reserve Bank. The borrower's appeal was thus allowed and the case was remitted to the trial Court for determining the dues in the light of the High Court's decision. In the Bank's appeal the Supreme Court examined in detail the facts of the case in the light of the circulars issued by the Reserve Bank, the provisions of Section 21-A of the [Banking Regulation Act, 1949](#) and the provisions of the Mysore Act. One of the questions framed by the Supreme Court in case of Gowda was whether interest rate of 16.5% per annum with quarterly rests on a secured loan can be said to be so excessive as to render the transaction substantially unfair. Answering the question in the negative the Supreme Court set aside the High Court's Judgment and restored the decree passed by the trial Court. There is no need to go into any further details of this case as it was not a case of agricultural loan and the decision in D. Section Gowda's case (1994 AIR SCW 2721) is of no help for determining the highest rate of interest, if any, in agricultural loans advanced by Banks.

11. This takes us to the case of Bank of India v. Karnam Rangarao and others which too was decided by the same Judgment and which was in fact a case of agricultural loan. In Karnam Rangarao the borrower had taken a loan of Rs. 10,000/- for raising sugarcane crop. Under the document executed by and between the parties the borrower was liable to pay interest @4% above the rate prescribed by the Reserve Bank subject to a minimum of 13% per annum with quarterly rests. The Bank, however, had charged only half yearly rests and the amount of Rs. 30,564, for the recovery of which the suit was filed by the Bank was arrived at by charging half yearly rests. The borrower, though accepting having taken the loan, questioned the action of the Bank in charging interest with periodical rests i.e. compound interest. The trial Court held that for agricultural

loans in India, charging of compound interest was not permissible. The Bank was accordingly asked to submit a revised statement. In the revised statement submitted by the Bank the dues come down to Rs. 19,851.66 paise. The trial Court decreed the suit for the aforesaid amount with future interest @ 6% per annum. Future interest @ 6% was allowed in terms of Explanations 1 and 2 to the proviso to Section 34 of the Civil Procedure Code. The Bank's appeal filed against the trial Court's judgment was dismissed by the High Court and finally by the Supreme Court.

12. It is important to note here that though the case of Karnam Rangarao was indisputably a case of agricultural loan, even in that case the rate at which the Bank had charged interest was not in dispute. What was at issue in that case was the application of interest that is to say, the Bank's right to charge compound interest on agricultural advances. It is repeatedly observed in the decision of the Supreme Court in the case of Karnam Rangarao that the question raised in the appeal related to the, Bank's right to charge compound interest, i.e. interest with periodical rests on agricultural advances (see paragraphs 8 and 23 of the reported decision).

13. From the foregoing It is manifest that the order passed by this Court in the case of Jahuri Yadav that 'at best interest can be charged @ 6.5% has no basis in the Supreme Court decision in D. Section Gowda-Karnam Rangarao, (1994 AIR SCW 2721).

14. It is further to be noted that in the case of Jahuri Yadav, (1998 (3) Pat LJR 214) the attention of the Court was not drawn to the provisions contained in Section 21A of the [Banking Regulation Act, 1949](#). Section 21A is as follows :

'21 -A. Rates of interest charged by Banking Companies not to be subject to scrutiny by Court. Notwithstanding anything contained in the Usurious Loans Act. 1918, or any other law related to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any Court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.'

15. The provision of Section 21-A clearly prohibits the Court from reopening the rate of interest charged by a Bank on the ground of being excessive. In case of D. Section Gowda-Karnam Rangarao itself the Supreme Court quoted with approval the following observation made by a Division Bench of the Karnataka High Court in connection with the provisions of Section 21A.

'The Courts cannot reopen any account maintained by Banks relating to transaction with its customers on the ground that the rate of interest charged, In the opinion of the Courts, is excessive or unreasonable. Section 21A of the Banking Regulation Act is a restraint on such power of Court. However, in any case, if it is proved that the interest charged by Banks on loans advanced is not in conformity with the rate prescribed by the Reserve Bank then the Court could disallow such excess Interest and give relief to the party notwithstanding the provisions of Section 21A. Banks are bound to follow the directives Or circulars issued by the Reserve Bank prescribing the structure of interest to be charged on loans and any interest charged by Banks in excess of the prescribed limit would be illegal and void. Banks cannot charge compound interest with quarterly rests on agricultural advances.'

16. In a more recent decision in the case of the State Bank of India v. Yasangi Venkateshwara Rao, (1999) 2 SCC 375: (AIR 1999 SC 896) the Supreme Court while upholding the constitutional validity of the provision of Section 21A made the following observations :--

'We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound Interest will be paid. We fail to understand as to how the Court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged.'

17. It is, therefore, manifest that the order passed by this Court in the case of Jahuri Yadav is at variance with and contrary to two decisions of the Supreme Court In the case of (i) D. Section Gowda-Karnam Rangarao, (1994 AIR SCW 2721), and (ii) State Bank of India v. Yasangi Venkateshwara Rao, (AIR 1999 SC 896) besides being in violation of Section 21A of the [Banking Regulation Act, 1949](#) . I am, therefore, constrained to hold that the order passed in Jahuri Yadav, 1998 (3) Pat LJR 214 is per incuriam; it does not lay down the correct legal position and it is not to be followed for being violative of Article 141 of the Constitution.

18. No direction can, therefore, be given as prayed for by the petitioner to charge interest on the loan taken by him @ 6.5% per annum.

19. The question, however, remains whether the Bank in this case has charged interest In accordance with the law laid down by the Supreme Court in Karnam Rangarao. In this regard it may be recalled that the Bank has admittedly charged interest bi-annually in the months of May and November, that is to say, at half yearly rests, apart from charging penal interest and service charges. In course of hearing of the case Mr. Navneetl Prasad Singh produced a copy of the extracts from the ledger concerning the loan Account from which it appears that interest has been charged at varying rates e.g. on November 28, 1991 the interest was charged for the period 1-6-1991 to 30-11-1991 @ 14% and on December 6, 1995 interest was charged @ 15.5%. Leaving aside the rate of interest it is undeniable that the application of interest was made bi-annually. In other words, compounding of the interest with the principal was made twice in a year.

20. This was clearly impermissible in view of the Supreme Court decision in Karnam Rangarao.

21. In the case of Karnam Rangarao, (1994 (5) SCC 213: 1994 AIR SCW2721) the Supreme Court noticed six circulars issued by the Reserve Bank, of which circulars, dated 14-3-1972 and 5-10-1974 were directly on the subject of interest on current dues in respect of agricultural advances. The third circular, dated 13-3-1996 was general in nature and the fourth circular, dated 17-8-1996 clarified that the earlier directions in respect of agricultural advance would remain unaffected by the circular dated 13-3-1996. The fifth circular, dated 28-2-1978 was again general

In nature and the sixth and the last circular, dated 15-9-1984 stated that in respect of agricultural advances the Banks should not compound interest in case of current dues. It, however, provided that in case crop loans or Installments under term loans became overdue, Banks could add interest outstanding to the principal. However, it further added that where the default was due to genuine reasons, Banks should extend the period of loan or reschedule the installments under term loan. Once such a relief was extended the over dues would become current dues and In that event Banks should not compound interest. The Supreme Court noted that this revealed the concerned of the Reserve Bank towards the agriculturist loanees. On a consideration of the aforesaid circulars the Supreme Court held and found as follows (at pp. 2742-43, para 22 of AIR) :--

'23. In so far as Civil Appeal No. 544 of 1986 is concerned it relates to the Bank's right to charge compound Interest i.e. interest with periodical rests on agricultural advances. We have already referred to the various circulars issued by the Reserve Bank from time to time in exercise of power conferred by Section 21 /35A of the Banking Regulation Act. We have pointed out that the said circulars/directives provide that agricultural advances should not be treated on a par with commercial loans insofar as the rate of interest thereon is concerned because the farmers do not have any regular source of income except sale proceeds of their crops which Income they get once a year. The question of recovery of interest with quarterly or six-monthly rests from farmers is, therefore, not feasible. The fact that the farmers are fluid at a given point of time every year has to be kept in mind in determining the point of time when they should be expected to repay the loan or pay the installment/interest on advances. Therefore, to allow the Banks to charge interest on quarterly or half-yearly rests from farmers would tantamount to virtually compelling them to pay compound interest, since they would not be able to pay the interest except once in a year i.e. when they receive the income from sale proceeds of their crops. The Reserve Bank has shown concern for the farmers by directing all banking Institutions to so regulate the recovery of interest as to coincide with the point of time when the farmers are fluid. It has, therefore, been emphasised by the Reserve Bank that interest should be charged once a year to coincide with the point of time when the farmer is fluid and interest on current dues should not be compounded although it may be done when the advance/

installment becomes overdue. Thus according to the circular/directives, so far as loans for agricultural purposes are concerned, at best interest may be charged with yearly rests and may be compounded if the loan/ installment becomes overdue. In the present case:, since interest was charged with six-monthly rests that was clearly in contravention of the Reserve Bank circulars/directives. Compounding of interest on current dues on agricultural advances having been discouraged, the Bank was not entitled to charge interest with shorter periodical rests and compound the same. The Bank could add interest outstanding to the principal and compound the interest when the crop loan or term loan becomes overdue having regard to the tenor of the circulars dated 14-3-1972. The High Court was, therefore, was fully justified in coming to the conclusion that the Bank was not entitled to charge interest with half-yearly rest.'

22. Thus the picture that emerges from the Supreme Court decision in Karnam Rangarao is that in agricultural advances so far as the rate of interest is concerned (percentage per annum), in view of Section 21A of the Banking Regulation Act, the Courts are precluded from reopening or questioning it as long as the rate remains within the limit fixed by the Reserve Bank. The Courts can interfere only in case the rate exceeds the limit fixed by the Reserve Bank. On the question of application or compounding of interest in agricultural advances, no compounding is permissible if the installments are paid on due time. In case of default the Banks may reschedule the repayment installments of a term loan having regard to any special circumstances adversely affecting the loanee farmer. In case, however, rescheduling of payment is not warranted then in the event of default and the installment(s) becoming overdue it is open to the Bank to add interest outstanding to the principal.

23. Thus the action of the Bank in charging Interest with half-yearly rests on the loan given to the petitioner was clearly not in accordance with the legal position as laid down by the Supreme Court.

24. This writ petition is accordingly disposed of with a direction to the Bank to make a recalculation of the petitioner's loan account in the light of this Judgment. If on recalculation it is found that the petitioner has made any excess payment, the

excess amount, with interest at the same rate as charged by the Bank and for the period the amount remained in the hands of the Bank will be refunded to the petitioner. In case, however, some overdue still remained with the petitioner he will make the repayment within two months from the date of the issuance of the fresh demand by the Bank in the light of this order failing which It will be open to the Bank to take coercive measure for the recovery of its overdue.

25. Having regard to the general importance of this question all the Banks and financial institutions are directed to review their accounts and recalculate their over-dues in cases of agricultural advances in the light of this order.

26. This writ petition thus stands partly allowed subject to the aforesaid observations and directions.

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