

**Punjab Financial Corporation, Chandigarh v. M/s. Stylo
Industries and others (R. N. Mittal, J.)**

The dependency of the son on the father would continue atleast until he had completed his education. Considering the status and circumstances of the family to which the deceased and the claimant belong, it is reasonable to assume that the education in this case would have continued till atleast Graduation, if not higher. 16 in the circumstances must, therefore, be taken to be the appropriate multiplier here. As regards the loss to the son, this must be taken to comprise the balance after deducting what the deceased would have spent upon himself. So considered, the loss here deserves to be computed at Rs. 7,000 per annum. On this basis compensation payable would work out to Rs. 1,12,000.

(14) The compensation payable to Maninderjit Singh claimant is consequently hereby enhanced to Rs. 75,000 making it a round figure after making an allowance for the amount to be deducted on account of the contributory negligence of the deceased. The claimant shall be entitled to the amount awarded along with interest at the rate of 12 per cent annum from the date of the application to the date of the payment of the amount awarded. The liability for the amount awarded shall be joint and several of the respondents driver, owner and Insurance Company.

(15) In the result, the appeal filed by the claimant is hereby accepted ; while the other appeal is hereby dismissed. The claimant shall be entitled to his costs in both these appeals. Counsel's fee Rs. 500 (one set only).

N. K. S.

Before R. N. Mittal, J.

PUNJAB FINANCIAL CORPORATION, CHANDIGARH,—
Petitioner.

versus

M/S. STYLO INDUSTRIES AND OTHERS,—*Respondents*

First Appeal from Order No. 965 of 1983.

May 4, 1984.

State Financial Corporations Act (LXIII of 1951)—Sections 31(6) and 9—Appeal filed in High Court by Corporation—Cross-objections in the said appeal filed by borrower—Such cross-objections—Whether maintainable in appeal under the Act.

Held, that sub-section (6) of section 31 of the State Financial Corporations Act, 1951 provides that the claims of the Financial Corporation shall be investigated in accordance with the provisions contained in the Code of Civil Procedure in so far as they may be applied thereto. It is thus clear that the provisions of the Code of Civil Procedure so far as they can be made applicable may be applied for investigating the claims. Sub-section (9) says that a party aggrieved by an order of the District Judge may file an appeal to the High Court and upon such appeal, the High Court may after hearing the parties pass such order as it thinks proper. No particular procedure has been prescribed that has to be followed by the High Court in appeals. It is well settled that if no procedure for appeals is prescribed, the High Court may follow the same procedure which is followed by it in other appeals. Therefore, cross-objections are maintainable by the respondents in an appeal under the Act.

(Para 12)

First Appeal from the order of the Court of Shri R. P. Gaind Additional District Judge, Hoshiarpur dated 3rd November, 1983, entitling the petitioner to recover the amount advanced to the respondents by sale of the mortgaged properties subject to the condition that the interest is charged according to the terms of the mortgage deed. Since the date of refinance the Corporation would be entitled to the interest at the rate of 9½ per cent up to the date till the default is committed. After the default the Corporation would be entitled to the interest at the rate of 12½ per cent. After the increase in the bank rate the Corporation would be entitled to the interest at the rate of 13½ per cent. The Corporation shall submit a corrected statement of account in terms of the observations before executing the order. Subject to this modification the right of the Corporation to recover the amount is upheld by the sale of the mortgaged properties. The correct statement of account in terms of the order shall be filed before executing the order in question and a notice that of shall be issued to the respondents. In the meantime the interim attachment already effected and the ad-interim notice already issued are confirmed.

CROSS-OBJECTION NO. 19-C-II/1984:

Cross Objections on behalf of Respondents, Under Order 41 Rule 22, praying that the Cross-Objections of the respondents be allowed with costs. The judgment and decrees of the learned Additional District Judge dated November 3, 1983 be modified in so far as the grant of rate of interest is concerned as submitted. This Hon'ble Court may also grant any other additional or in the alternative to which the respondent may be found entitled to.

H. S. Sethi, Advocate, for the Appellant.

R. K. Chhibbar, Advocate, for Respondent No. 1.

Punjab Financial Corporation, Chandigarh v. M/s. Stylo
Industries and others (R. N. Mittal, J.)

JUDGMENT

Rajendra Nath Mittal, J.

(1) This appeal has been filed by the petitioner appellant against the order of the Additional District Judge, Hoshiarpur, dated 3rd November, 1983.

(2) Briefly, the facts are that the business of the appellant is to grant loans to the industrial concerns on the security of their movable and immovable properties. Respondent No. 1 is an industrial concern engaged in the business of manufacturing the bench vices and machine vices. Respondent Nos. 2 to 7 are its partners. Respondent No. 1 made an application to the appellant for loan which was sanctioned in its favour to the tune of Rs. 5,90,000. Out of the said sanctioned loan, Rs. 4,28,100 were advanced by the appellant to respondent No. 1 and the balance was withheld in view of the default committed by the respondents in its repayment. Mortgage deed dated 1st February, 1977 was executed by the respondents in favour of the appellant. The amount was payable by them to the appellant with interest, in instalments. They, however, committed default in repayment. Consequently the appellant filed an application under Section 31 of the State Financial Corporation Act of 1951 for the recovery of Rs. 5,73,061.82 with future interest at the rate of 15½ per cent per annum from 15th December, 1981 along with incidental charges and miscellaneous expenses to be debited to the account of the respondents in terms of the mortgage deed.

(3) The application was contested by Ashok Kumar, respondent No. 2 who pleaded that the rate of interest claimed by the appellant was excessive and not in accordance with the terms of the mortgage deed. It was further pleaded that after the Industrial Development Bank of India (I.D.B.I.) had re-financed the loan, the appellant was entitled to 3½ per cent per annum above the I.D.B.I. re-finance rate of interest. On the pleadings of the parties the trial Court framed the following issues:—

(1) Whether the amount of interest claimed by the Corporation is illegal as alleged? If so, with what effect? OPJD.

(2) Relief.

It held that from 16th July, 1977 the loan advanced to the respondents was re-financed by the I.D.B.I. at the rate of 6 per cent interest per annum. The appellant was entitled to charge interest at the rate of $3\frac{1}{2}$ per cent above that interest from the respondents. Thus it was entitled to charge interest at the rate of $9\frac{1}{2}$ per cent per annum from the date of the re-finance. In terms of clause 6 in the case of default the appellant was entitled to charge 3 per cent more interest. Therefore, the maximum rate of interest that could be charged by the appellant was $12\frac{1}{2}$ per cent. It further held that after the increase in the bank rates the appellant was entitled to interest at the rate of $13\frac{1}{2}$ per cent. In the aforesaid terms it passed a decree in favour of the appellant. It has come up in appeal against the order of the Additional District Judge to this Court.

(4) The respondents filed cross-objections. This judgment will dispose of the appeal as well as the Cross Objections.

(5) First I shall deal with the appeal.

(6) The first question that arises for determination is at what rates the appellant is entitled to charge interest on the loan. In order to determine the question, it is necessary to refer to the relevant clauses of the mortgage deed which read as follows :—

"1. In pursuance of the said agreement and in consideration of the sum of Rs. 5,90,000 (Rupees five lacs and ninety thousand only) agreed to be lent and advanced and to be paid by the Corporation to the Industrial Concern as under :—

* * * * *
 * * * The mortgagors hereby covenant with the Corporation that they shall repay to the Corporation at the Head Office of Corporation or such other place as the Corporation may require, the said amount of Rs. 5,90,000 (Rupees five lacs and ninety thousand only) hereinafter called "the said principal sum" in instalments as per schedule given hereunder :—

* * * * *
 together with interest on the said principal sum or the balance thereof remaining unpaid, for the time being, at the rate of $6\frac{1}{2}$ per cent (six and a half per cent above the bank rate subject to a minimum of $15\frac{1}{2}$ per cent (fifteen and a half per cent) per

Punjab Financial Corporation, Chandigarh v. M/s. Stylo
Industries and others (R. N. Mittal, J.)

annum calculated on the basis of daily products on the said first instalment of Rs. 77,700 (Rupees seventy seven thousand and seven hundred only) from the date of presentation of this indenture for registration and on the balance amount(s) comprised in the said second instalment from the date(s) of disbursement thereof and payable half-yearly on the 15th June and 15th December each year the first of such payments to be made on the 15th June, 1977 and will in case and so long as the said principal sum or on so much thereof as shall for the time being remain unpaid at the place aforesaid and in half yearly instalments. However, a rebate of 3 per cent (Three per cent) in the interest rate aforesaid shall be allowed if instalments of principal and interest are paid on the due dates. If the Corporation gets from the Industrial Development Bank of India, refinance in respect of the loans granted hereunder then notwithstanding the higher rate of interest stipulated above the rate of interest payable by the mortgagors shall be $3\frac{1}{2}$ per cent) above the rate charged by Industrial Development Bank of India on the amount covered by such refinance reckoned from the date the Corporation avails of such refinance upto the date of repayment thereof, the rebate of $3\frac{1}{2}$ per cent (Three and a half per cent) referred to above will cease from the date the Corporation's lending rate is linked with Industrial Development Bank of India refinance rate of interest. * * * *

6. PROVIDED FURTHER and it is hereby agreed and declared that—

- (i) the stipulated dates of payment of interest and instalment of principal are essential factors of the contract between the mortgagors and the Corporation. If, after refinance from Industrial Development Bank of India becomes available, the mortgagors do not comply with any of their obligations under these presents or in the event of the mortgagor's default in paying the half yearly interest as aforesaid at the stipulated rate on the dates hereinabove specifically

mentioned or in paying the instalments of the said principal sum on the dates hereinabove specified, the Corporation will be entitled to charge interest at the rate exceeding the stipulated rate by three per cent per annum for any half year, in respect of which the default is made for such further time thereafter during which the default whether in paying the interest or the instalments of the said principal sum may continue. The Corporation will also be entitled to charge compound interest at the aforesaid higher rate for the entire period during which default may continue; * * * *”

From a reading of the above clauses, it emerges:—

- (i) that the respondents were liable to pay interest on the loan at the rate of $6\frac{1}{2}$ per cent per annum, above the bank rate, subject to a minimum of $15\frac{1}{2}$ per cent per annum, till the loan was refinanced by the I.D.B.I.
- (ii) that if the respondents paid the instalments of the principal and interest on due dates, they were entitled to a rebate of 3 per cent in the interest;
- (iii) that if the appellant got from the I.D.B.I. refinance in respect of the loan, the respondents became liable to pay interest on the re-financed amount $3\frac{1}{2}$ per cent above the rate paid by the appellant to the I.D.B.I.;
- (iv) that the rate of interest mentioned in clause (iii) was payable by the respondents till the date of repayment of the loan by the appellant to the I.D.B.I.;
- (v) that in case the interest on the principal or any part thereof or other moneys which became payable under the mortgage deed and not paid by the respondents on the due dates, they became liable to pay compound interest at the above said rates with half yearly rests;
- (vi) that if the respondents failed to pay the instalments after refinance on the due dates, the appellant became entitled to charge compound interest at the rate exceeding the stipulated rate by 3 per cent per annum, till the default continued.

Punjab Financial Corporation, Chandigarh v. M/s. Stylo
Industries and others (R. N. Mittal, J.)

(7) It is not disputed that the appellant was entitled to charge interest at the time when the loan was advanced at the rate of $15\frac{1}{2}$ per cent and if the instalments were paid in time, at the rate of $12\frac{1}{2}$ per cent. It is also not disputed that the appellant received the loan from the I.D.B.I. on interest at the rate of 6 per cent. Therefore, it became entitled to charge $9\frac{1}{2}$ per cent interest on the loan after the amount was refinanced by the I.D.B.I. if the instalments of the principal and the interest were paid in time and $12\frac{1}{2}$ per cent interest if the instalments were not paid in time. The finances were admittedly provided by the I.D.B.I. regarding this loan with effect from 16th July, 1977. Therefore, the appellant was entitled to charge interest on the amount of loan after the date of refinance till the loan was returned by the appellant to the I.D.B.I. at the rates as stated above. However, if the refinanced amount was returned by the appellant, it became entitled to charge interest at the same rates, at which it was entitled to do so before refinance. The main question to be seen is whether the loan was returned by the appellant to I.D.B.I. and if so on what date.

(8) There is no plea in the application that the refinanced loan was returned by the appellant. There is also no proof regarding the said matter. The statement of Shri A. K. Dhawan, the only witness produced by the appellant, is of no assistance. He gave a different version and said that the appellant became entitled to charge interest at the rate of $15\frac{1}{2}$ per cent from the date of notice of the appellant recalling the loan. There is no such clause in the mortgage deed under which after the notice of recall the appellant could claim interest at the rate of $15\frac{1}{2}$ per cent. In the circumstances it cannot be held that the amount of refinance was returned by the appellant to the I.D.B.I. Therefore, after refinance of the loan by the I.D.B.I. the appellant is entitled to charge interest at the rate of $9\frac{1}{2}$ per cent or $12\frac{1}{2}$ per cent as the case may be. I affirm the finding of the trial Court in this regard.

(9) Faced with the aforesaid situation Mr. Sethi sought to urge that the question whether the refinanced amount had been returned by the appellant to the I.D.B.I. or not, cannot be gone into in these proceedings. In support of his contention, he made reference to *The Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. Pvt. Ltd. and others* (1) and *Bhawani Parshad Kapur v. The Himachal Pradesh Financial Corporation* (2). I regret my

(1) A.I.R. 1978 S.C. 1765.

(2) A.I.R. 1983 H.P. 43.

inability to accept the contention. In order to decide issue No. 1, a finding is required to be recorded whether the appellant had returned the refinanced amount to the I.D.B.I. or not. Without deciding the said question, it is not possible to determine the rate of interest which the appellant is entitled to charge on the loan from the respondents. The two cases to which reference has been made by Mr. Sethi are distinguishable. In *Gujarat State Financial Corporation's case* (supra) the point for determination was whether an application under section 31(1) of the State Financial Corporation Act, would be covered by Article 1(C) of Schedule II of the Bombay Court Fees Act or it should bear a fixed court fee in the sum of Rs. 0.65 Paise. The High Court held that the application should bear *ad valorem* Court fee. Supreme Court reversed the finding observing that the provision contained in sub-section (6) does not expand the contest in the application made under S. 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property. In *Bhawani Parshad Kapur's case* (supra) a plea was raised by the appellant that he had suffered a loss of Rs. 27,800 on account of breach of terms of contract committed by the Corporation and that he was entitled to adjust that amount against the claim of the Corporation. The validity of the agreement between the parties was also challenged. The learned Bench held that such questions cannot be raised in proceedings under Section 31 of the Act. The question raised in the present case is different. In my view, Mr. Sethi cannot derive any benefit from the observations in the said cases.

(10) The second question for determination is whether the appellant is entitled to incidental charges and miscellaneous expenses. The learned counsel for the appellant has argued that the trial Court has not allowed the amount claimed as incidental charges and miscellaneous expenses though the respondents did not deny the same.

(11) I find substance in the submission of the learned counsel. The appellant in its petition claimed a decree of Rs. 5,73,061.82 as detailed in annexure 'B' with future interest and other incidental charges and miscellaneous expenses. In annexure 'B' the amounts on account of incidental charges and miscellaneous expenses have been debited to the account of the respondents. They, in their written statement, did not dispute the said amounts. They disputed only the interest. It is also relevant to point out that at the request of the respondents, the repayment of the outstanding loan was

Punjab Financial Corporation, Chandigarh v. M/s. Stylo
Industries and others (R. N. Mittal, J.)

re-scheduled on 13th December, 1979. Before the date various amounts on account of incidental charges and miscellaneous expenses had been debited in their account. They however, did not raise a dispute regarding that. After taking into consideration the aforesaid circumstances, I am of the view that the appellant is entitled to incidental charges and miscellaneous expenses as claimed by it.

(12) Now I advert to cross-objections filed by the respondents. A preliminary objection has been raised by Mr. Sethi that no cross-objections are maintainable in appeal under the State Financial Corporation Act. I have given thoughtful consideration to the argument but do not find substance in it. Sub section (6) of Section 31 provides that the claims of the Financial Corporation shall be investigated in accordance with the provisions contained in the Code of Civil Procedure in so far as they may be applied thereto. It is thus clear that the provisions of the Code of Civil Procedure so far as they can be made applicable, may be applied for investigating the claims. Sub section (9) says that a party aggrieved by an order of the District Judge may file an appeal to the High Court and upon such appeal, the High Court may after hearing the parties pass such order as it thinks proper. No particular procedure has been prescribed that has to be followed by the High Court in appeals. It is well settled that if no procedure for appeals is prescribed, the High Court may follow the same procedure which is followed by it in other appeals. In the above view, I am fortified by the observations of the Supreme Court in *Collector, Varanasi v. Gauri Shanker Misra and others*, (3). In that case, their Lordships were dealing with the appeals under section 19(1)(f) of the Defence of India Act, where no special procedure had been prescribed for their disposal. It was observed by their Lordships that the appeals under the said provision have to be disposed of in the same manner as other appeals to the High Court. After the appeal is reached the High Court it has to be determined according to the rules of practice and procedure of that Court. It is further observed that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that court. The Karnataka High Court in *K. Chandrashekara Naik and another v. Narayana and another* (4), dealt with the question as to whether cross-objections were maintainable under section 110-D of the Motor Vehicles Act. That section provides that subject to the provisions

(3) A.I.R. 1968 S.C. 384.

(4) 1974 A.C.J. 522 (F.B.).

of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of award, prefer an appeal to the High Court. Sub-section (2) says that an appeal shall not be maintainable against an award of the Claims Tribunal if the amount in dispute in appeal is less than two thousand rupees. Following the aforesaid Supreme Court decision, the learned Bench observed that in appeal under section 110-D, the respondent can file cross-objections by invoking the provisions of Order 41 Rule 22 of the Code of Civil Procedure as the Act does not expressly lay down the procedure to be followed by the High Court in dealing with appeals filed before it. The Karnataka Motor Vehicles Rules also do not contain any provision relating to such procedure. It was further held that in such a contingency the special Act being silent with regard to the procedure to be followed by the appellate Court, such appellate jurisdiction has to be exercised in the same manner as the High Court exercised its general appellate jurisdiction and the appeal so filed must be related to the practice and procedure by the High Court. Similar view was taken in *Delhi Transport Undertaking and another v. Raj Kumar and others* (5) and in *M/s. Oriental Fire and General Insurance Co. Ltd. v. Nani Choudhury and others* (6). In *Major Triloki Nath Bhargava and others v. Jaswant Kaur and others* (7), a Division Bench of this Court followed the above view and held that the cross-objections are maintainable at the hands of respondents in appeal under section 110-D of the Motor Vehicles Act. The above reasoning is equally applicable in case of appeals under the State Financial Corporation Act. I, therefore, hold that cross-objections are maintainable by the respondents in the present appeal.

(13) It is contended by Mr. Chhibbar that the appellant is entitled to charge interest on the loan after it was refinanced by the I.D.B.I. at the rate of $9\frac{1}{2}$ per cent only in spite of the default committed by the respondents in making the payment of the instalments of the principal and the interest. It is further contended that the Court has erroneously held that in case of non-payment of the instalments in time, the appellant is entitled to charge interest @ $12\frac{1}{2}$ per cent and after increase in the bank @ $13\frac{1}{2}$ per cent.

(14) I have considered the argument of the learned counsel. After noticing various clauses of the mortgage deed, I have already

(5) 1972 A.C.J. 403 (Delhi High Court).

(6) 1974 A.C.J. 269 (High Court Nagaland).

(7) 1975 A.C.J. 259.

Ramesh Chander v. Bhushan Lal (S. S. Sodhi, J.)

held that after the loan was refinanced by the I.D.B.I., the appellant was entitled to charge interest at the rate of $9\frac{1}{2}$ per cent if the respondents paid the instalments in time and at the rate of $12\frac{1}{2}$ per cent if they made default in doing so. Therefore, the appellant is entitled to charge interest at the rate of $12\frac{1}{2}$ per cent on the refinanced amount after the respondents committed default in paying the instalments. However, the trial Court has erroneously held that after the increase in the bank rate, the Corporation is entitled to charge interest at the rate of $13\frac{1}{2}$ per cent on the refinanced loan. There is no clause in the mortgage deed which supports the above conclusion. The increase in the bank rate affected the rate of interest on the loan if it was not refinanced by the I.D.B.I. or the refinanced loan was returned by the appellant to the I.D.B.I. Consequently, I am of the opinion that the appellant is not entitled to charge interest at the rate of $13\frac{1}{2}$ per cent and the finding of the learned trial Court is liable to be set aside to this extent.

(15) For the aforesaid reasons, I partly accept the appeal and hold that the appellant is entitled to incidental charges and miscellaneous expenses. I also partly accept the cross-objections and hold that the appellant is not entitled to charge interest at the rate of $13\frac{1}{2}$ per cent on the refinanced loan, as indicated above. In view of the circumstances of the case, I leave the parties to bear their own costs.

H.S.B.

Before S. S. Sodhi, J.

RAMESH CHANDER,—Petitioner.

versus

BHUSHAN LAL,—Respondent.

Civil Revision No. 1005 of 1984.

May 8, 1984.

Code of Civil Procedure (V of 1908)—Section 21(2)—Suit triable by a Subordinate Judge 1st Class—Evidence recorded therein by a Subordinate Judge 2nd Class—Such evidence—Whether could be treated as a nullity—Denovo recording of the evidence—Whether necessary.