In the Court of Sh. Virinder Aggarwal,
District Judge, Ferozepur.
(Unique identification no.PB0045).

CNR No.:PBFZ0100-6344-2023
CIS No.CA/221/2023
Case no.91 of 12.09.2023
Date of Decision.26.03.2025

State Bank of India, a body corporate constituted under State Bank of India Act, 1955 having its Central Office at Madam Cama Road, Nariman Point, Mumbai and one of its Local Head Office at Sector-17, Chandigarh and having one of its Regional Office at Jalandhar and having one of its Branch office at Mamdot, Tehsil and District Ferozepur through its Branch Manager Shri Ameet Singh.

... Appellant/Plaintiff.

Versus

Sher Singh(since deceased) son of Munsha Singh, through his legal heirs:-

I. Mala Bibi widow of Sher Singh;

2. Des Singh son of Sher Singh;

3. Jagdish Singh son of Sher Singh, all residents of village Mattar Hithar, Tehsil Guruharsahai, District Ferozepur.

... Respondents/Defendants.

<u>Appeal against the judgment and decree dated 09.08.2023, passed by the Court of learned Civil Judge (Sr. Division), Ferozepur.</u>

Present: Sh. Sandeep Sharma, Advocate, counsel for the appellant.
Respondent no.1 has died.
Respondents no.2 and 3 exparte.

J U D G M E N T

1. Appellant/Plaintiff bank filed this appeal against the judgment and decree dated 09.08.2023 passed by learned Civil Judge (Sr. Division), Ferozepur, whereby suit of the plaintiff bank was partly decreed. Appellant/plaintiff prayed for modification of judgment and decree and for decree for recovery of Rs.17,41,185/-with pendentelite and future interest at the agreed rate instead of recovery of Rs.9,12,254/-alongwith 6% per annum interest.

2. Briefly stated, plaintiff bank filed mortgage suit for decree of recovery of Rs.17,41,185/-by sale of mortgaged land fully detailed and described in the head note of the plaint and by sale of hypothecated crops and other movable or immovable property and assets of defendant on the grounds that defendant approached plaintiff bank for grant of accommodation by way of Kissan Gold Credit Loan of Rs.9 Lakhs vide application dated 30.09.2012, which was sanctioned to the defendant. Defendant executed mortgage deed on 10.10.2012 thereby

mortgaging the suit land in order to secure the loan advanced by the plaintiff bank and defendant agreed to repay the loan amount alongwith interest @ 14% per annum with half yearly rests. Defendant defaulted in making payment of loan amount and a sum of Rs.17,41,185/-is outstanding against defendant. Hence, the suit.

3. Notice was served upon the defendants. Defendant failed to appear and it was revealed that defendant has since died, so, application was moved to implead L.Rs of defendant, which was allowed and L.Rs of defendant failed to appear inspite of service to contest the claim of the plaintiff bank and case was fixed for exparte evidence of the plaintiff on 18.07.2022.

4. In order to prove his claim, plaintiff examined PW1 Sanjeev Kumar, Branch Manager, State Bank of India and thereafter closed the evidence.

5. After hearing learned counsel for the plaintiff, learned Civil Judge vide its judgment and decree dated 09.08.2023 decreed suit of the plaintiff.

6. Aggrieved by the aforesaid judgment and decree, as observed earlier appeal in hand is preferred by the appellant/plaintiff.

7. Notice of the appeal was given to the respondents. Legal heir no.1 of respondent no.1 has died, whereas, legal heirs no.2 and 3 of respondent no.1 have not put in appearance despite service, as such, they were proceeded against exparte. Record of the the court of learned Civil Judge was requisitioned.

8. I have heard learned counsel for the appellant and have gone through the record very carefully.

9. Learned counsel for the appellant/plaintiff bank argued that learned Civil Judge has not properly appreciated the pleadings and evidence of appellant bank as learned Civil Judge has not taken into consideration that account of the defendant was declared non-performing asset and as per notification of Reserve Bank of India, accrued interest was not credited in the account of defendant, rather, it was separately calculated and was shown in account statement as written by hand. But learned Civil Judge has ignored this fact without discussing the notification issued by Reserve Bank of India and further learned Civil Judge has granted interest @ 6% per annum,whereas, learned Civil Judge has ignored the fact that present suit is mortgaged suit and agreed rate of interest is 14% per annum with half yearly rests and the court has no discretion to curtail interest when rate of interest is

agreed between the parties. So, impugned judgment be modified and appeal of the appellant bank be allowed.

10. This court has considered the contentions of counsel for the appellant and with his able assistance have gone through the file carefully.

11. Learned Civil Judge has recorded his findings with regard to decretal amount in paras no.8 and 9 of the impugned judgment, which reads as under:.

> *8. Plaintiff has claimed accrued interest to the tune of Rs.8,28,930.75Ps to claim the total amount to be Rs.17,41,185/-. There is no documentary proof to support that any such accrued interest can be charged by the plaintiff. In the account statement Ex.P15, accrued interest is written in hand without any explanation. Case of the plaintiff is based on books of accounts. Plaintiff is entitled to amount which is reflected in the books of account. Nothing can be added to such amount by writing in hand underneath the account statement. Presumption of truth is attached to the account statements which are regularly*

> *maintained in the ordinary course of business. Writing certain amount in hand is having no evidentiary value.*
>
> *9. In view of the above discussion, plaintiff is entitled to Rs.9,12,254/ as principal amount. LRs No. (ii) and (iii) of defendant are liable to pay the amount to the extent they inherited the property of defendant.*

12. Learned Civil Judge has ignored para no.13 of the plaint of plaintiff bank where plaintiff bank has specifically pleaded as under:

> *….the account has already become irregular and termed as non-performing assets accounts as per the guidelines of Reserve Bank of India. As per the rules and regulations of the plaintiff bank, no interest is charged in non-performing assets account, rather, provision for the same has been made but not actually credited in the said accounts. The same is calculated on the side of it. The plaintiff bank is also entitled to recover the pendente-lite and future interest at the agreed rate, which is at present 14% per annum with half yearly rests on crop loan account.*

13. Plaintiff bank examined Sanjeev Kumar, Branch Manager as witness, who has tendered into evidence his affidavit Ex.PW/A by

way of examination-in-chief and in that testimony Sanjeev Kumar PW1 has specifically deposed that interest subsequent to the period when the account of the defendant was declared as NPA was not debited in his account, rather, the same was separately accounted and calculated on the side of it and this is contained in para no.14 of the affidavit. Learned Civil Judge has not discussed all this. Statement of account Ex.P15 clearly shows that amount of Rs.9,12.254.25 paise as interest credited upto 12.06.2017 and after that no accrued interest has been credited in the account of defendant and it is deposed by PW1 that subsequent accrued interest comes to Rs.8,28,930.75 paise. Testimony of PW1 has not been rebutted by the defendant. The procedure adopted by the plaintiff bank is inconsonance with the notification issued by RBI. As per circular RBI/2009-10/93 in para 4.5 Reserve Bank of India dealt with interest application which reads as under:

> *4.5.1 In case of NPAs where interest has not been received for 90 days or more, as a prudential norm, there is no use in debiting the said account by interest accrued in subsequent quarters and taking this accrued interest amount as income of the bank as the said interest is not*

> *being received. It is simultaneously desirable to show such accrued interest separately or park in a separate account so that interest receivable on such NPA account is computed and shown as such, though not accounted as income of the bank for the period.*

14. In view of the above, I am of the considered opinion that learned Civil Judge has committed mistake by withholding grant of interest of Rs.8,28,930.75 paise which has accrued to the plaintiff in the account of defendant after the account of defendant has been declared NPA.

15. As regards grant of pendentelite and future interest is concerned, learned Civil Judge has recorded its findings in para no.10 and 11 of the judgment, which reads as under:

> *10. Although plaintiff has claimed interest @ 14% per annum with half yearly rests from the filing of the suit till decree and future interest on the same rate but the law regarding the interest payable in a mortgage suit has been settled by the Hon'ble Supreme Court in N.M.Veerappa Vs. Canara Bank 1998(1) PLR 503 . Hon'ble Supreme*

Court in para No.18 of the judgment has summarized the law. The same is reproduced as follows:-

18 . From the aforesaid rulings the following principles can be summarized :

(a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c)(i) or Order 34 Rule 4(1) or Order 34 Rule 7(c)(i), respectively in suits for foreclosure, sale or resumption.

(b) But after the 1929 Amendment, because of the words used in the main part of Order 34 Rule 11, namely that "the Court may order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It has been so held in Jaigobind's Case by the Privy Council (AIR 1940 Federal Court 20) and by this Court in S.P. Majoo's Case (1969 (3) SCR 33) that the new provision gives a

certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned.

(c) It is no longer obligatory to award the contractual rate after date of suit and upto date fixed for redemption as above stated even though there was no question of the contractual rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918.

(d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from the date of suit under Order 34 Rule 11(a)(i) upto date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is fixed, such rate as the Court deems reasonable on the principal amount found or declared due on the mortgager is concerned.

(e) The Court has also power to award from date of suit under Order 34 Rule 11(a)(iii) a rate of interest on costs, charges and expenses as per the contract rate or failing

such rate, at a rate not exceeding 6%. This is the position of the discretionary power of the Court, from date of suit upto date fixed in the preliminary decree as the date for payment.

(f) Again under Order 34 Rule 11(b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest upto date of realisation or actual payment, on the aggregate sums specified in clause (a) of Order 34 Rule 11, could award interest at such rate as it deemed reasonable.

11. In view of the law laid down by Hon'ble Supreme Court, it is no longer obligatory to award the contractual rate from the date of suit and the Court may award such rate of interest as it deems reasonable. In the present case, defendant had availed the loan for the purpose of agriculture. The agriculture activity cannot be equated with commercial transactions. If contractual rate of interest is granted in agriculture loans, it would amount to equating the agriculture loans with other commercial

loans. The constitutional bench of Hon'ble Supreme Court in Central Bank of India Versus Ravindra 2001(3) PLR 837 has held that the agriculture loans are to be treated on a pedestal different from others. Charging and capitalization of interest on agriculture loans cannot be permitted in India except on annual or six monthly rests depending on the rotation of crops. Thus in given circumstances, I am of the considered opinion that interest at the rate of 6% per annum is reasonable. Plaintiff is entitled to simple interest @ 6% per annum from the date of filing of the suit till actual realization.

16. Learned Civil Judge has relied upon judgment of ***N.M.Veerappa Vs. Canara Bank, 1998(1) PLR 503***. Learned Civil Judge has mis-interpreted the findings recorded by Hon'ble Apex Court in para 18(d), which reads as under:

(d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from the date of suit under Order 34 Rule 11(a)(i) upto date fixed for payment in the preliminary decree, the same rate agreed in the

contract, or, if no rate is fixed, such rate as the Court deems reasonable on the principal amount found or declared due on the mortgager is concerned.

17. From this para, it is clear that where interest has been agreed between parties then the court has to grant interest at the same rate which has been agreed in the contract. The Court has discretion only in cases where no rate of interest is fixed. So, in such circumstances, I am of the considered opinion that learned Civil Judge has committed mistake in granting pendentelite and future interest @ 6% per annum instead of agreed rate of interest. As per hypothecation agreement, copy of which is Ex.P8, interest agreed was minimum 14% per annum. Similarly is condition stipulated in mortgaged deed Ex.P10.

18. As regards claim of half yearly rests is concerned, there is no stipulation in the mortgage deed or hypothecation agreement that interest would be charged with half yearly rests. So, plaintiff bank is entitled to recover the suit amount alongwith pendentelite and future interest @ 14% per annum. Accordingly, appeal filed by the appellant bank is allowed, judgment and decree passed by learned Civil Judge is modified and suit of the plaintiff is decreed for recovery of

Rs.17,41,185/-alongwith interest @ 14% per annum from the date of filing of suit till realization of the decretal amount. Remaining terms of the decree passed by learned Civil Judge would remain unchanged. Decree be drawn. Record of the court of learned Civil Judge be returned alongwith copy of this judgment. Appeal file be consigned to concerned record room, Ferozepur.

Pronounced. Sd/-**Virinder Aggarwal**
Dated: 26.03.2025 District Judge, Ferozepur.
yashpaul Executive Assistant (PB0045)