

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA 5/2004 in CIVIL APPEAL NO. 7426 OF 1996

CITIBANK N.A.
Appellant (s)

Appel

VERSUS

STANDARD CHARTERED BANK
Respondent (s)

Respo

With IA Nos. 5-6 in CA No. 9063/1996

[Heard by Hon'ble the Chief Justice and Hon'ble Ashok Bhan, J.]

Date: 26/10/2004 These I.As. are called on for orders today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)
Applicant in
IA 5-6 in CA9063/96

Mr. T.R. Andhyarujina, Sr. Adv.
Mr. Rajeev K. Virmani, Adv.

Mr. Shailendra Bhardwaj, Adv.

For Respondent(s)
Applicant in IA 5 Mr. E.C. Agrawala, Adv.
In CA 7426/96

UPON hearing counsel the Court made the following
O R D E R

Hon'ble Mr. Justice Ashok Bhan pronounced the order of the Court.

I.A. No.5 in both the appeals stand dismissed while IA N
o. 6 in CA

No.9063/96 stands allowed in terms of the signed order.

(J.S. Rawat)
Court Master

(Kanwal Singh)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. No. 5

in

CIVIL APPEAL NO. 7426 OF 1996

Citibank N.A.
...Appellant

..

Versus

Standard Chartered Bank
...

..

Respondent

WITH

I.A. No. 5-6

in

CIVIL APPEAL NO.9063 OF 1996

Canbank Financial Services Ltd.
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.....Appellan
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Versus

Citibank N.A.
...

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Respondent

O R D E R

This order shall dispose of IA No. 5 filed by the respondent-applicant

Standard Chartered Bank
vil Appeal

(hereinafter referred to as the "SCB") in Ci

No.7426 of 1996 seeking clarification in the judgment dated 7.7.2004 and for further directions. I.A. No. 5 has been filed by the respondent Citibank N.A. (hereinafter referred to as the "Citibank") in Civil Appeal No. 9063 of 1996 reporting compliance and recording satisfaction of the decree passed in the appeal.

Before advertng to the prayers made in the I.As. it is necessary to refer to few facts leading to the filing of the I.As.

Suit No. 24 of 1994 was filed by the SCB against Citibank seeking an order and decree against the Citibank to pay to SCB a sum of Rs.

55,73,92,241.57 p. with further interest on the principal sum of Rs.

48,27,91,095.89 p. @ 20 p.a. from the date of filing of the suit till repayment. Citibank

filed back to back suit being Suit No. 1 of 1995 against Canbank Financial Services Ltd.

(for short 'CANFINA") with a prayer that in the event a decree is passed against the

Citibank in Suit No. 24 of 1994 then CANFINA be ordered to deliver to the Citibank

the 9% IRFC Bonds of the face value of Rs. 50 crores along with the difference between

the amount that the Citibank may be ordered to pay to SCB in Suit No. 24 of 1994 and

the market value of the said bonds on the day on which the same are handed over by

CANFINA to the Citibank along with interest @ 20% on the principal amount of Rs.

51,07,12,328.77 from 1.1.1992 till the date of filing of the suit together with interest on

the principal amount @ 20% p.a. from the date of filing of the suit till repayment and/or

realization.

The two suits were tried by the Special Judge appointed under the Special

Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, hereinafter referred to as 'the Act'.

Suit filed by the SCB being Suit No. 24 of 1994 was decreed by the Special Court by a judgment and decree dated 12/13th March, 1996, inter alia, directing the

Citibank to pay the amount of Rs. 48,27,91,095.89 p. along with interest @ 20% p.a.

till filing of the suit aggregating to Rs. 55,73,92,241.57 p. with pendente lite interest @

20%. Subsequently, the suit being Suit No. 1 of 1995 filed by the Citibank against

CANFINA was also decreed by the judgment and decree dated 22.4.1996. The Special

Court passed the decree in favour of the Citibank directing the CANFINA to deliver to

the Citibank 9% IFRC Bonds of the face value of Rs. 50 crores within a period of 16

weeks along with the coupon interest @ 9% p.a. from 15.7.1991 till the bonds were

delivered. Learned Judge awarded lower rate of interest by observing thus :-

"...The Court realises that in so granting interest the Court is

making a difference from Suit No. 24 of 1994 and other suits where

it has granted interest at 20%. But all those cases have been the

cases where the Plaintiffs therein have had a strong case to which

the Defendants therein had virtually no defence.... "

Citibank being aggrieved against the judgment and decree granted against it in civil Suit No. 24 of 1994 filed Civil Appeal No. 7426 of 1996 and CANFINA being aggrieved against the decree passed in civil Suit No. 1 of 1995 filed Civil Appeal No.

9063 of 1996. Both these appeals were heard together and have been disposed of by a common order.

Civil Appeal No. 7426 of 1996 and Civil Appeal No. 9063 of 1996 were

allowed and the judgment and decree passed by the Special Court in Suit No. 24 of

1994 and Suit No. 1 of 1995 were set aside.

While doing so, it was held in Civil Appeal No. 7426 of 1996 :-

"Citibank becomes entitled to restitution of the total amount paid by it to Standard Chartered Bank (principal and interest) along with interest @ 12% p.a. from the date of receipt of payment by SCB provided it is paid on or before 01.09.2004 and in default to pay the interest @ 15% p.a. from the date of receipt of payment till it is repaid by the Standard Chartered Bank. Citibank would also be entitled to receive back the amount of costs it had paid to Standard Chartered Bank under the decree of the Special Court but the same would not carry any interest. Though the appellant had prayed that the interest be granted at the same rate at which it was granted by the Special Court (i.e.20% p.a.) but we have reduced the same keeping in view that interest rates have come down substantially in the recent years."

While Civil Appeal No. 9063 of 1996 was allowed by observing thus:-

"As a consequence to the aforesaid CANFINA becomes entitled to restitution of the total amount paid by it to the Citibank (principal and interest) along with interest @ 9% p.a. from the date of

payment provided it is paid on or before 01.09.2004 and in default to pay the interest @ 12% p.a. from the date of payment till it is repaid by the Citibank. Though the appellant had prayed for higher rate of interest but we deem it appropriate to grant the same rate of interest which had been granted by the Special Court, while decreeing the Suit No. 1 of 1995. We decline to grant costs in the appeal as the Special

Court had not granted any costs while decreeing the suit of Citibank. The parties in this suit shall bear their own costs throughout."

I.A. No. 5 in Civil Appeal No. 7426 of 1996 has been filed seeking

clarification and direction with the averment that this Court by ordering restitution has

directed the SCB to pay interest @ 12% per annum on the amount received by the SCB

from the Citibank whereas the Citibank has been directed to pay interest only @ 9% per

annum on the amount received by the Citibank which is inequitable thereby unjustly

enriching the Citibank by payment of interest at a higher rate of 3% per annum. That

Citibank is unjustly enriched to the extent of Rs. 21,81,44,923/-. That principle of

compensation/restitution for SCB and Citibank has to be the same. While directing

refund of monies the period for restitution to Citibank and to CANFINA is identical, i.e.

1996 to 2004. The interest @ 9% found reasonable to compensate CANFINA for 1996

to 2004 should have been applied to Citibank also. Citibank has filed its reply to the

interlocutory application.

Counsel for the parties have been heard.

Comparison by SCB with the decree in favour of CANFINA and against the

Citibank is wholly irrelevant. The decrees passed by the Special Court were for

different amounts with different rates of interest. Contention of the SCB that Citibank

was unjustly enriched is misplaced. In Civil Appeal No. 7426 of 1996 which arises

from Suit No. 24 of 1994 filed by SCB against Citibank was decreed with interest @

20% per annum by the Special Court whereas Suit No. 1 of 1995 was decreed with

interest @ 9% per annum only. While reversing the judgment and decree passed by the

Special Court we scaled down the rate of interest in Suit No. 24 of 1994 to 12%

(although the lending rate of banks for commercial transaction was much higher) as the

rate of interest had come down in the recent years. Award of interest @ 12% was

deemed to be just and equitable. Though we were of the opinion that keeping in view

the lending rates of the banks on commercial transaction the rate of interest should be

awarded at 12% per annum in Civil Appeal No. 9063 of 1996 as well but the same

could not have been done as the Special Court had awarded interest in favour of

Citibank at @ 9% per annum only. The Citibank could not be asked to pay interest at a

rate higher than what was granted to it in the suit. Since the Citibank had been

awarded interest @ 9% per annum we deemed it appropriate and upheld the award of

interest at that rate of interest against Citibank.

Citibank as per decree of the Special Court was directed to pay interest at

higher rate whereas the interest awarded in its favour was at a lower rate. Keeping that

difference in mind we granted different rates of interest in the two appeals. The

Citibank could not be asked to pay interest at a rate higher than as was granted to it by

the Special Court while decreeing the suit. The Special Court had awarded interest @

9% to Citibank and that is why Citibank could not be asked to pay interest at a rate

higher than what was awarded to it by the Special Court. The decision taken by

The decision

the Court was a conscious decision. The variation in the rate of interest ordered in the

two appeals was keeping in view the rate at which the interest was allowed by the

Special Court in the two suits. The order does not need any clarification or any further

direction.

Mr. Shanti Bhushan, learned senior counsel appearing for the respondents

relying upon the judgment of this Court in State Bank of Saurashtra vs. Chitranjan

Rangnath Raja & Anr., 1980 (4) SCC 516, submitted that this Court did not have the

jurisdiction to order restitution. According to him, it is the trial Court which could order

restitution as per law laid down by this Court in State Bank of Saurashtra, (supra).

This point was not argued at the time of hearing of the appeals. This point has not been

taken in the I.A. No. 5 either. Since this point was not raised the question of

clarification of the order would not arise. I.A. filed in Civil Appeal No. 7426 of 1996

is dismissed.

I.A. 5 in Civil Appeal No. 9063 of 1996 has been filed by the Citibank

reporting compliance and recording satisfaction of the restitution order in Civil Appeal

No. 9063 of 1996. Such an application cannot be entertained by this Court as this

Court is not the executing Court. This I.A. is also dismissed reserving liberty with the

applicant to report compliance and seek recording of satisfaction before the executing

Court.

I.A. No. 6 for exemption from filing typed copies of annexures is allowed.

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CJI.

New Delhi;

.....J.

October 26, 2004

[ASHOK BHAN]