

HIMACHAL PRADESH STATE FINANCIAL
CORPORATION, SHIMLA

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v.

PREM NATH NANDA AND ORS.

OCTOBER 31, 2000

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[K.T. THOMAS AND R.P. SETHI, JJ.]

State Financial Corporation Act, 1951—Section 29—Default in repayment of loan—Sale of mortgaged property of loanee by Corporation—Excess amount realised on sale—Refund of excess amount to loanee delayed on account of proceedings in Court—Interest on excess amount—Entitlement of—Held, on facts, interest cannot be granted to loanee.

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Appellant-Corporation granted a loan of Rs. 20.50 lacs to respondents for construction of a hotel. The respondents defaulted in repayment of the loan. The Corporation took possession of the mortgaged hotel under Section 29 of the State Financial Corporation Act, 1951. Notices for sale of the hotel were advertised in the newspapers. Out of four bidders, the Corporation accepted and entered into an agreement with one of the bidders P for sale of the hotel. Before the excess amount received from P could be paid by the appellant, the respondents filed a Writ Petition before High Court challenging the sale. The excess amount was put in a separate Current Account of the Corporation. During the pendency of the petition, one R offered Rs. 60 lacs to the Corporation for vacant possession of the hotel. The offer was reported to the High Court by the Corporation which was recorded in the proceedings. The High Court disposed of the case allowing the Corporation to sell the hotel to R. The High Court directed the Corporation to refund the excess amount with interest at the rate of 13% per annum to the respondents. Hence, the appeal by the Corporation questioning the legality of payment of interest.

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The appellant contended that there was no fault on their part to refund the excess amount to the respondents; that the delay was occasioned on account of the pendency of the writ petition filed by the respondents; and that since the excess amount was put in a separate Current Account of the Corporation, it did not earn any interest on the amount.

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A Allowing the appeal, the Court

HELD : 1.1. The Corporation deals with public money for public benefits. Defaults in payments of the loans and advances thus, ultimately affects the public at large. An obligation is cast upon the loanee to pay back the amount of the loan on advance received under the State Financial Corporation Act, 1951. In case of failure to make the payment, the Corporation is expected to adopt an approach which has to be public oriented rendering a helping hand to the loanee to come out of the financial losses and constraints, if any, but without causing any loss to the Corporation. To protect the public interest, the Act provides a mechanism for recovery of loan. Section 29 of the Act authorises the Corporation to take over the management or possession or both of the industrial unit and transfer the same by way of lease or sale where it finds that any industrial concern, who had taken loan, had made default in repayment of any loan advanced or any instalment thereof or in meeting of its obligation in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Corporation. [304-G-H; 305-A]

1.2. Powers conferred under Section 29 of the Act are intended to achieve the object of the Act. The amount realised in consequence of the sale or lease of the property of the defaulter can be adjusted in the liability of the defaulter and the excess amount thus realised, if any, to be paid to the person whose unit was proceeded against under Section 29 of the Act. The activities of the Corporation are visualised not as profit earning concern but an extended arm of the State to harness the business potential of the country to benefit the common man. There is no statutory obligation on the part of the Corporation to pay the interest on the excess amount realised. However, in appropriate cases interest may be awarded in lieu of compensation or damages for allegedly wrongfully retaining the amount payable to a party. [305-B-C]

***Satinder Singh v. Umrao Singh*, [1961] 3 SCR 676; *Laxmichand v. Indore Improvement Trust*, [1975] 1 SCC 565 and *Sovintorg (India) Ltd. v. State Bank of India, New Delhi*, [1999] 6 SCC 406, relied on.**

1.3. The High Court has not assigned any cogent reason for payment of interest. In the absence of the agreement and the statutory provision, interest could not be claimed by the respondents as a right. The High Court did not refer to any circumstance on the basis of which the interest could have been granted as an equitable relief. [306-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 441 of 1999. A

From the Judgment and Order dated 3.1.97 of the Himachal Pradesh High Court in C.W.P. No. 515 of 1993.

WITH B

I.A. No. 2 of 2000

J.S. Attri, Vineet Kumar, R.S. Suri, Rajesh and S.S. Nehra for the appearing parties. C

The Judgment of the Court was delivered by

SETHI, J. The only point in controversy in the present appeal is as to whether the respondent-loanee is also entitled to interest at the rate of 13% on the amount to be refunded which was admittedly realised by the sale of his industrial unit, in excess of his liability in a loan transaction. D

Vide the impugned judgment in this appeal, the High Court has directed the refund of the excess amount, if any, after calculations along with interest at the rate of 13%, the rate on which the Corporation is stated to have charged the respondents on the amount of loan advanced to him. E

The facts giving rise to the present appeal are that on his request the appellant-Corporation sanctioned on 18.12.1983 a term loan of Rs.15 lacs against the total cost of the Project of the respondent for construction of a hotel unit. The appellant-Corporation had also sanctioned an additional loan of Rs.5.50 lacs on 6.8.1986. The total sanctioned loan of Rs.20.50 lacs was dispersed to the respondents during the period from 6.7.1984 to 1.5.1987. The respondents committed defaults in the payment of the loan amount with the result that the appellant-Corporation took over the possession of the hotel under Section 29 of the State Financial Corporations Act, 1951 (hereinafter called "the Act"). Notices for sale of the hotel were advertised in the Newspapers. Four parties negotiated the sale of the assets of the hotel with the appellant-Corporation. The offer of M/s. Pradeep Kapur & Associates was accepted whereafter agreement of purchase was made between the Corporation and the purchaser on 13th March, 1993. The respondents challenged the sale through Writ Petition No. 515 of 1993. During the pendency of the Writ Petition it was submitted that one Rana Iqbal Singh was prepared H

- A** to purchase the property for Rs. 60 lacs in case the vacant possession was delivered to him. Such a statement made in the court was recorded in the proceedings of the court dated 23rd December, 1993. In view of the offer of 60 lacs as price of the unit, the Corporation presumably could not disperse the excess amount out of the amount received from M/s.Pradeep Kapur & Associates to the respondents. The excess amount was put in the Current Account of the Corporation so that it could be dispersed immediately to the respondents as per situation arising in the case. The Corporation did not earn any interest on that amount. As per the orders of the High Court dated 23rd December, 1993, the appellant-Corporation claims to have arranged a negotiation and called the said Rana Iqbal Singh in its office on 16.2.1994. The
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- C** counsel of earlier purchaser M/s.Pradeep Kapur & Associates submitted a letter along with an application which was presented before the High Court praying therein for recalling the order dated 23rd December, 1993 and for stay of consideration of the offer of third party, namely, Rana Iqbal Singh. The said application of the earlier purchaser was not decided by the High Court. However, the writ petition No.515 of 1993 was disposed of on 3rd January, 1997 vide the order impugned in this appeal.
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It is submitted on behalf of the Corporation that the High Court was not justified in granting the interest on the excess amount which was to be payable, upon calculation, to the respondents. The appellant-Corporation claims to have not faulted in refunding the excess amount. The delay was occasioned on account of the pendency of the writ petition filed by the respondents. As the appellant-Corporation did not earn any profit on the excess amount, it was not obliged to pay any interest.

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The corporation, subject to the provisions of the Act, can carry on and transact any of the business specified in Section 25 of the Act. The said section authorises the corporation to grant loans or advances to the industrial concerns on such terms and conditions as may be agreed to. The corporation deals with public money for public benefit. Default in payments of the loans and advances thus, ultimately affects the public at large. An obligation is cast upon the loanee to pay back the amount of the loan or advance received under the Act. In case of failure to make the payment, the corporation is expected to adopt an approach which has to be public oriented rendering a helping hand to the loanee to come out of the financial losses and constrains if any but without causing any loss to the corporation. To protect the public interest, the Act provides a mechanism for recovery of loan. Section 29 of the

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H Act authorises the corporation to take over the management or possession

or both of the industrial unit and transfer the same by way of lease or sale where it finds that any industrial concern, who had taken loan, had made default in repayment of any loan advanced or any instalment thereof or in meeting of its obligation in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the Corporation.

Powers conferred under Section 29 of the Act are intended to achieve the object of the Act. The amount realised in consequence of the sale or lease of the property of the defaulter can be adjusted in the liability of the defaulter and the excess amount thus realised, if any, to be paid to the person whose unit was proceeded against under Section 29 of the Act. The activities of the corporation are visualised not as profit earning concern but an extended arm of the State to harness the business potential of the country to benefit the common man. There is no statutory obligation on the part of the corporation to pay the interest on the excess amount realised. However, in appropriate cases interest may be awarded in lieu of compensation or damages for allegedly wrongfully retaining the amount payable to a party. Interest can be awarded on equitable grounds as was held by this Court in *Satinder Singh v. Umrao Singh*, [1961] 3 SCR 676, *Laxmichand v. Indore Improvement Trust*, [1975] 1 SCC 565 and *Sovintorg (India) Ltd. v. State Bank of India, New Delhi*, [1999] 6 SCC 406.

A perusal of the impugned order shows that the High Court has not referred to any ground justifying the payment of interest to the respondents. The respondents have also not referred to any circumstance warranting the exercise of powers of equity in their favour. The reliance of the learned counsel for the respondents on *Sovintorg (India) Ltd.'s* case (supra) is misplaced. In that case this Court has held:

“There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commission to also grant interest appropriately under the circumstances of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court

A in *Satinder Singh v. Umrao Singh*, [1961] 1 SCR 676.”

B From the record it appears that after getting a loan in the year 1983 and
 C 1986 the respondents committed persistent defaults in repayment which
 necessitated the action against them under Section 29 of the Act in the year
 D 1991. As no amount was paid till 13th April, 1993, the corporation sold the
 industrial unit, a hotel, for an amount of Rs. 39.75 lacs. Before the excess
 outstanding amount could be paid to the respondents, they filed a writ
 petition in the High Court challenging the action of the corporation and thus
 preventing it from making the payment. The counsel of the respondents even
 made an offer that there was a buyer to purchase the hotel for a sum of Rs.
 C 60 lacs. The negotiations with the prospective buyer could not mature on
 account of application filed by the earlier purchaser. The High Court instead
 of deciding the application of the earlier purchaser disposed of the writ
 petition vide the order impugned. As noticed earlier, the High Court has not
 assigned any reason much less a cogent one for the payment of interest. In
 the absence of an agreement and the statutory provision, interest could not
 D be claimed by the respondents as a right. The court did not refer to any
 circumstance on the basis of which the interest could have been granted as
 an equitable relief.

E Under the circumstances the appeal is allowed and the impugned order
 of the High Court, in so far as it directs the payment of the interest at the
 rate of 13% along with excess amount is set aside. No costs.

I.A. No. 2 of 2000

F In view of the judgment in Civil Appeal, the application has become
 infructuous. The same is dismissed having become infructuous.

B.S.

Appeal allowed.
 and I.A. dismissed.