



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(205)

RSA No. 2013 of 1998 (O&M)**Reserved on: 10.03.2026****Pronounced on: 13.03.2026****Uploaded on: 13.03.2026**

Rasid and another

...Appellants

Versus

State Bank of India

...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by: Mr. Sanjay Vij, Advocate and
Mr. Uday Vij, Advocate
for the appellants.

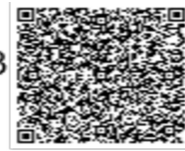
Mr. Mahesh Dheer, Advocate with
Mr. Dheeraj Siwach, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal has been filed by the appellants assailing the judgment and decree dated 30.04.1998 passed by the learned District Judge, Gurgaon, whereby the appeal preferred by the respondent–plaintiff bank was allowed and the judgment and decree dated 06.11.1997 passed by the learned Additional Civil Judge (Senior Division), Nuh was modified to the extent that the respondent–bank was held entitled to recover the decretal amount alongwith interest at the rate of 12.5% per annum from the date of suit till realization. The appellants herein namely Rasid and Habib are sons of defendant (Majid).

BACKGROUND FACTS

2. The respondent–plaintiff bank instituted a suit for recovery of Rs.81,246.80 against the defendant (Majid). The case of the bank, in brief, was



that the defendant had approached the bank on 08.03.1988 for grant of loan for purchase of a tractor. The bank sanctioned a loan of Rs.68,000/- on 12.03.1988. The loan carried interest at the rate of 4% below the State Bank of India advance rate with a minimum of 12.5% per annum. In order to secure the repayment of the said loan, the defendant executed several loan documents including a mortgage deed whereby his agricultural land was mortgaged with the bank. Apart from the mortgage, the defendant also executed an agreement of hypothecation regarding the tractor purchased through the loan amount.

3. The loan amount was withdrawn by the defendant on 12.03.1988 and the same was debited to his loan account. The defendant failed to adhere to the repayment schedule and consequently the account became irregular. The defendant also executed revival letters dated 10.01.1991 and 30.11.1993 acknowledging his liability. As the defendant failed to clear the outstanding liability, the plaintiff bank instituted the suit seeking recovery of Rs.81,246.80 along with future interest and also prayed that the mortgaged and hypothecated property be sold in terms of the provisions of the Code of Civil Procedure.

4. The defendant contested the suit by filing a written statement. While admitting the fact that he had obtained the loan of Rs.68,000/- for purchase of a tractor, the defendant disputed the rate of interest claimed by the bank. It was pleaded that the loan was obtained for agricultural purposes and therefore the interest payable should not exceed 6% per annum. The plaintiff bank filed replication to the written statement wherein the averments made in the plaint were reiterated and those contained in the written statement were specifically denied. The plaintiff admitted that the defendant had deposited a sum of Rs.40,000/- on 20.06.1995 after the institution of the suit and clarified that the



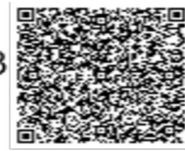
said amount had already been credited in the loan account of the defendant. The remaining pleas raised by the defendant were controverted and the stand taken in the plaint was reaffirmed.

5. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues for determination:

1. *Whether the plaintiff/bank is entitled to recover a sum of Rs.81,246.80 ps with costs and interest as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable in its form nor the plaintiff has locus standi to file the same? OPD*
3. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
4. *Relief.*

6. The parties thereafter led evidence in support of their respective pleadings. The plaintiff bank examined its officials and proved the loan documents including the mortgage deed, hypothecation agreement, statements of account and revival letters. The defendant examined himself and also produced a voucher showing deposit of Rs.40,000/- made after the filing of the suit.

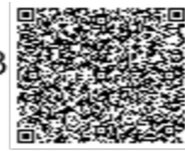
7. After hearing the learned counsel for the parties and appreciating the oral as well as documentary evidence on record, the learned Trial Court found that the loan had been obtained by the defendant for agricultural purposes and therefore concluded that the plaintiff bank would be entitled to interest at the rate of 6% per annum from the date of filing of the suit till realization of the decretal amount. Accordingly, the suit of the plaintiff bank was decreed for recovery of the decretal amount along with interest at the aforesaid rate.



8. Aggrieved against the judgment and decree the plaintiff-bank preferred an appeal before the learned District Judge, Gurgaon. The learned First Appellate Court examined the nature of the loan transaction as well as the evidence placed on record. It was noticed that the defendant had obtained a loan of Rs.68,000/- from the plaintiff bank for the purchase of a tractor and had executed the requisite loan documents in favour of the bank, including the mortgage deed whereby his agricultural land was mortgaged to secure repayment of the loan amount. The Court further observed that the loan agreement stipulated that the borrower would be liable to pay interest linked with the State Bank of India advance rate with a minimum rate of 12.5% per annum.

9. The learned First Appellate Court also considered the legal position governing award of interest in mortgage suits. It was observed that since the loan was secured by mortgage of immovable property, the matter was governed by the provisions of Order XXXIV Rule 11 of the Code of Civil Procedure. In this background, the learned First Appellate Court found that the learned Trial Court had restricted the rate of interest to 6% per annum without assigning any reasons for ignoring the agreed contractual rate of interest. The Court held that where the loan transaction is secured by mortgage and the agreement between the parties provides for payment of interest at a specified rate, the Court ought not to reduce the same arbitrarily in the absence of any valid justification.

10. Consequently, keeping in view the contractual terms of the loan agreement and the fact that the claim arose out of a mortgage transaction, the learned First Appellate Court concluded that the minimum agreed rate of interest of 12.5% per annum could legitimately be awarded on the decretal



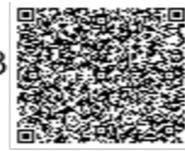
amount. Accordingly, the appeal filed by the plaintiff bank was allowed and the judgment and decree of the learned Trial Court were modified to the extent that the plaintiff bank was held entitled to recover the decretal amount along with interest at the rate of 12.5% per annum from the date of suit till realization. The defendant, being dissatisfied with the modification so made by the learned First Appellate Court, has preferred the present Regular Second Appeal.

PROCEEDINGS BEFORE THIS COURT

11. When the present appeal came up for consideration before this Court on 24.08.1998, notice of motion was issued limited only to the question regarding the rate of interest beyond 6 %. Consequently, the controversy before this Court stands confined to the limited issue as to whether the learned First Appellate Court was justified in granting interest at the contractual rate of 12.5% per annum instead of the rate of 6% per annum granted by the learned Trial Court.

CONTENTIONS

12. Learned counsel appearing for the appellant contended that the loan in question had been advanced for agricultural purposes, as the same was obtained for purchase of a tractor and the passbook issued by the bank itself records the loan as an agricultural loan. It is submitted that merely because the land of the appellant had been mortgaged with the bank as security, the nature of the transaction could not be treated as a commercial transaction. According to the learned counsel, the learned First Appellate Court erred in concluding that the loan was for commercial purposes and in awarding interest at the rate of 12.5 % per annum. It is further argued that in the case of agricultural loans forming part of the primary sector lending, the rate of interest cannot exceed 6% per annum and the learned Trial Court had rightly restricted the interest to that rate.



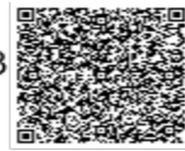
Learned counsel also submitted that the learned First Appellate Court fell in error in holding that the provisions of Order XXXIV of the Code of Civil Procedure would automatically apply merely because the land had been mortgaged with the bank.

13. Per contra, learned counsel appearing for the respondent–bank submitted that the loan transaction between the parties was governed by the contractual terms contained in the loan agreement. It is argued that the defendant had voluntarily agreed to pay interest at the rate linked with the State Bank of India advance rate with a minimum of 12.5% per annum. It is further contended that the loan was secured by mortgage of immovable property and therefore the provisions of Order XXXIV Rule 11 of the Code of Civil Procedure (CPC) would govern the award of interest and Section 34 of the CPC would not be applicable. Consequently, the bank was entitled to claim interest in accordance with the contractual terms agreed between the parties.

OBSERVATIONS AND FINDINGS

14. I have heard learned counsel for the parties and carefully examined the record of the case.

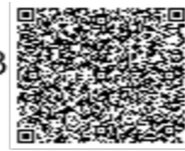
15. Once it is established that the loan was secured by way of mortgage of immovable property and that the suit was instituted for recovery of the loan amount with a prayer for sale of the mortgaged property, the provisions governing mortgage suits contained in Order XXXIV Rule 11 CPC become applicable. The said provision empowers the Court to award interest at such rate as it “deems reasonable”, having regard to the contractual terms between the parties and the circumstances of the case. In the present case, the agreement executed between the parties stipulated that the loan would carry interest linked



with the advance rate of the bank subject to a minimum rate of 12.5% per annum. The defendant had voluntarily accepted these terms while availing the loan facility. The learned Trial Court, while decreeing the suit, restricted the rate of interest to 6% per annum primarily on the ground that the loan was obtained for agricultural purposes. However, no cogent reason was recorded by the learned Trial Court for ignoring the agreed terms governing the rate of interest while exercising the discretion available under the aforesaid provision.

16. The legal position in this regard stands clarified by this Court in ***Gurnam Singh v. UCO Bank 1996(3) R.C.R (Civil) 665***. In the said judgment it was held that where the loan transaction is secured by mortgage of land, the question of award of interest is governed by the provisions of Order XXXIV Rule 11 CPC and not by Section 34 of CPC. It was further observed that the mere fact that the loan had been obtained for agricultural purposes would not justify restricting the rate of interest to 6% per annum once the loan was secured by mortgage of immovable property. At the same time, the Court clarified that the decree-holder bank would be entitled only to the rate of interest agreed between the parties under the loan agreement and not to any higher rate. The aforesaid principle makes it clear that in mortgage suits the Court, while exercising discretion under Order XXXIV Rule 11 CPC, may take into consideration the contractual stipulation between the parties in determining the rate of interest which it considers reasonable.

17. Applying the aforesaid principle to the facts of the present case, this Court is of the considered view that the learned First Appellate Court rightly modified the decree of the learned Trial Court. The mere fact that the loan was utilised for purchase of a tractor for use in agriculture would not entitle the



defendant to claim reduction of the rate of interest once the loan transaction stood secured by mortgage of land and the parties had agreed upon a minimum rate of interest of 12.5% per annum. The learned First Appellate Court, while modifying the decree of the Trial Court, has taken the minimum contractual rate as a reasonable basis for awarding interest on the decretal amount. No illegality or perversity has been pointed out in the reasoning adopted by the learned First Appellate Court while modifying the decree.

18. In view of the aforesaid discussion, this Court finds no merit in the contention raised on behalf of the appellant seeking reduction of the rate of interest.

19. Consequently, the present Regular Second Appeal being devoid of merit is hereby dismissed. The judgment and decree dated 30.04.1998 passed by the learned District Judge, Gurgaon are affirmed.

20. Since the main appeals stands decided, pending application(s), if any, also stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

13.03.2026
Saurav Pathania

- (i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No