

GAHC010240972022



2026:GAU-AS:4324-DB

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Review.Pet./14/2023**

SURAJIT BARMAN AND 2 ORS.

S/O- DHARMESWAR BARMAN, R/O- H NO. 211, R G BARUAH, NEAR AIDC,  
GUWAHATI, KAMRUP(M), ASSAM, PIN- 781024.

2: DEEPIKA DEKA  
W/O DILIP KUMAR KALITA

R/O FLAT NO. 5D  
SUBHAM CLASSIC  
AMBIKAGIRI NAGAR

P.O.- ZOO ROAD  
GUWAHATI  
KAMRUP (M)  
PIN- 781024  
ASSAM.

3: BHABATOSH KR ROY  
S/O NISHI KANTA ROY

R/O AMAR PATH GITANAGAR  
HOUSE NO. 16  
GUWAHATI  
KAMRUP (M)  
ASSAM- 781024

VERSUS

PUNJAB NATIONAL BANK AND 2 ORS.  
A BODY CORPORATE HAVING ITS PRINCIPAL REGD AND HEAD OFFICE AT  
PLOT NO. 4 SECTOR 10, DWARKA, NEW DELHI- 110075.

2: THE AUTHORISED OFFICER  
PUNJAB NATIONAL BANK

CIRCLE OFFICE  
1ST FLOOR  
NILGIRI MANSION  
G S ROAD  
BHANGAGARH  
GUWAHATI- 781005.

3:THE CHIEF MANAGER  
PUNJAB NATIONAL BANK  
CIRCLE OFFICE  
1ST FLOOR  
NILGIRI MANSION  
G S ROAD  
BHANGAGARH  
GUWAHATI- 781005

**Advocate for the Petitioner** : MR. S P ROY, MS. S KUMARI,JYOTISH DAS

**Advocate for the Respondent** : MR SISHIR DUTTA, MR. S DUTTA,MS S MOCHAHARI

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

For the petitioners : Mr. S.P. Roy, Advocate

For the respondents : Mr. S. Dutta, Senior Advocate  
: Ms. S. Mochahari, Advocate

**Date on which judgment is reserved** : **26.02.2026**

**Date of pronouncement of judgment** : **26.03.2026**

**Whether the pronouncement is of the operative part of the judgment?** : **No**

**Whether the full judgment has been Pronounced?** : **Yes**

**JUDGMENT AND ORDER**

**(CAV)**

(K.R. Surana, J)

Heard Mr. S.P. Roy, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned senior counsel, assisted by Ms. S. Mochahari, learned counsel for the respondents.

2) This petition for review is in respect of order dated 03.11.2022, passed by the Division Bench in W.A. No. 229/2022, by which the direction contained in judgment and order dated 23.02.2022, passed by the learned Single Judge in W.P.(C) No. 4423/ 2018, by which 18% interest was granted to the petitioners against the respondents on further delay on part of the appellants to refund a sum of Rs.1,80,10,000/- (Rupees One Crore eighty lakh ten thousand only), within 45 (forty five) days from the date of the order.

3) In brief, the case of the petitioners is that pursuant to an advertisement for auction sale of a security asset taken over under the SARFAESI Act, they were successful joint bidders for purchasing such property. On 20.06.2016, the petitioners had deposited their bid of Rs.1,80,10,000/- (Rupees One Crore eighty lakh ten thousand only). However, the respondents could not hand over the said property to the petitioners and as such, the petitioners demanded refund of the bid amount. Therefore, the petitioners had approached this Court by filing a writ petition, which was registered and numbered as W.P.(C) No. 4423/2018. The learned Single Judge, by order dated 23.02.2022, directed the respondents to refund the deposited bid amount within 45 (forty five) days from the date of the order along with interest at the prevailing banking rate, by further directing that on further delay on part of the

appellants to refund the amount within the period stipulated, interest would be 18% interest per annum on the actual amount. The relevant paragraphs of the said order are quoted below:-

*“This Court is also of the considered opinion that the prayer made by the petitioners is only for the refund of the amount with banking rate of interest which appears to be a reasonable one as no citizen would be left with such a situation wherein, a huge amount is lying to the respondent bank without the property in question being handed over to them.*

*In view of the above, the present writ petition is disposed of by directing the respondent bank to refund the amount in question being Rs. 1,80,10,000/- (Rupees One Crore Eighty Lakhs and Ten Thousand) to the petitioners along with interest at the prevailing banking rate from 04.10.2016 within a period of 45 days from today. It is however directed that in case of further delay from the period stipulated, the interest would be @ 18% p.a. on the actual amount.*

*Writ petition stands accordingly disposed of.”*

4) The respondents preferred an intra-court appeal, which was registered and numbered as W.A. No. 229/2022, challenging only that part of the order, where interest was awarded on the refund amount. This Court, by order dated 20.07.2022, issued notice only for the purpose of considering 18% interest provided in the impugned judgment and order, passed by the learned Single Judge. However, while formulating the question which fell for consideration of the Court, had considered as to whether the respondents are entitled to interest at the rate of 18% per annum, as ordered by the learned Single Judge, is sustainable. Accordingly, by the order that is impugned in this review petition, the Division Bench of this Court had held that there was no contractual rate of interest agreed upon which should match the rate of rate of interest of nationalized banks in relation to the commercial transactions as provided under Section 34(1) of the Civil Procedure Code (CPC for short), it was deemed fit to restrict the rate of interest at the rate of 6% (six percent) from 04.10.2016. Moreover, the respondents were ordered to pay a cost of

Rs.25,000/- (Rupees Twenty five thousand only).

5) The learned counsel for the petitioner, by referring to the order dated 20.07.2022, passed by the learned Division Bench, had submitted that by the said order, a limited issued notice only for the purpose of considering 18% interest provided in the impugned judgment and order, passed by the learned Single Judge. Accordingly, it was submitted that the learned Division Bench, having not issued notice in respect of "prevailing interest" provided in the judgment and order, passed by the learned Single Judge, could not have restricted interest to only 6% from 04.10.2016. In support of his submissions, the learned counsel for the petitioner had referred to the second proviso to Section 34 of the CPC.

6) It was submitted that the respondents had taken over the possession of the security asset and therefore, after conducting auction sale and accepting the entire bid amount, the respondent no. 1 bank could not have withheld the large amount of Rs.1,80,10,000/- on the pretext of land demarcation, etc., without handing over the property from 04.10.2016. It was submitted that as per his instructions, the money was refunded only in or about the middle of the year 2023 and as such, the respondents have enjoyed the said amount for about 7 (seven) years, and in the meantime the bank has earned commercial rate of interest by lending out the money received from the review petitioners to others. No other submissions were made.

7) Per contra, the learned senior counsel for the petitioner had submitted that the impugned order is not vitiated with any error apparent on the face of the record and none of the ingredients of Section 114 read with Order XLVII, Rule 1 of the CPC was attracted in this case. No other submissions were made.

8) The following questions fall for determination in this review petition:

- i. *Whether the deposit of the entire bid amount amounted to a commercial transaction?*
- ii. *Whether the order dated 20.07.2022, passed in W.A. No. 229/2022, calls for any interference?*

9) Carefully examined all the materials available on record. Also considered the submissions made by both sides.

10) Admittedly, there is no commercial agreement or a commercial contract between the petitioners and the respondent for the entire transaction and/or specifically for payment of interest on deposit. Under the circumstances, the award of future interest under Section 34 of the CPC is entirely within the discretion of the Courts. If one needs an authority on the point, the case of *State of M.P. v. Nathabhai, AIR 1972 SC 1545*, and *Mahabir Prasad Rungta v. Durga Datta, AIR 1961 SC 990*, may be referred to.

11) It may also be stated that in the case of *Mahabir Prasad Rungta*, the Supreme Court of India had referred to the case of *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji, AIR 1938 PC 67*, where the Privy Council had held that interest can be awarded by courts of equity in some case, yet, taking note of the fact that as there was no agreement for interest, it was held that the said case did not fall within those cases in which courts of equity grants interest.

12) The petitioners' side has not been able to show that there was any agreement for payment of interest. Therefore, the point of determination no. (i) is answered in the negative and against the petitioners by holding that though the petitioners had deposited a huge sum of Rs.1,80,10,000/- to the

respondents on 04.10.2016, yet, in the absence of any agreement to that effect, under the facts of this case, this was not a commercial transaction so as to attract the proviso to Section 34 read with Explanation-II to Section 34 of the CPC.

13) As regards the second point of determination, the court has recorded the submissions made by the learned counsel for the petitioner in paragraph 5 above to the effect that by order dated 20.07.2022, this Court had issued a limited issued notice only for the purpose of considering 18% interest provided in the impugned judgment and order, passed by the learned Single Judge. In the light of the point of determination no. (i) answered hereinbefore, the question would also arise whether or not 18% interest court be awarded. In the considered opinion of the Court, as the transaction in this case in hand was not a commercial transaction, the petitioners would not be entitled to interest either in prevailing rate of interest or 18% interest. Yet, the courts have jurisdiction to award interest under Section 34 of the CPC, which is not exceeding 6% (six percent), which has been awarded in the instant case. Hence, the second point of determination is also decided against the petitioners by holding that the order impugned in this review petition warrants no interference.

14) In the case of *Surendra Kumar Vakil & Ors. v. Chief Executive Officer, M.P. & Ors.*, (2004) 10 SCC 126, the Supreme Court of India had held to the effect that a point that has been heard and decided cannot form a ground for review even assuming that the view taken in the judgment under review is erroneous. Moreover, in the case of *Sasi (Dead) through LRs. v. Aravindakshan Nair & Ors.*, (2017) 4 SCC 692, the Supreme Court of India has held that a mere erroneous decision is distinguished from decision which could be characterized

as vitiated by error apparent. Thus, in the present case in hand, the Court, having exercised its discretionary power to grant 6% interest from 04.10.2016 till the date of payment, it cannot be held that the said decision was vitiated by an error apparent on the face of record or on any other provisions of Section 114 read with Order XLVII, Rule 1 of the CPC.

15) Therefore, this review petition fails and is hereby dismissed. There shall be no order as to cost.

**JUDGE**

**JUDGE**

**Comparing Assistant**

**Private Secretary**