

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1835 OF 2016

State Bank of India ... Petitioner
Vs.
Shree Sajjan Mills Limited and others ... Respondents

Mr. Nitin Thakkar, Senior Advocate a/w. Mr. Ajinkya Kurdukar and Mr. Subhash Gupta i/b. Fatima Lakdawala for Petitioner.

Mr. Rushabh Sheth a/w. Mr. Kushan Kode and Mr. Tushar Agrawal i/b. Mulani and Co. for Respondent No.1.

Mr. Rishabh Shah a/w. Mr. Ramesh Gupta i/b. Mr. Pankaj Mehta for Respondent Nos.2(a), 2(b), 3(a), 3(b), 4(a) and 4(b).

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.**

Reserved on : **MARCH 05, 2026**

Pronounced on: **MAY 04, 2026**

JUDGEMENT : (*Per Justice Manish Pitale*)

1. The petitioner bank has challenged the orders passed by the Debts Recovery Tribunal-II, Mumbai (DRT) and Debts Recovery Appellate Tribunal (DRAT), being aggrieved by *pendente lite* interest not being granted, while partly allowing the application filed by the petitioner bank for recovery of amounts from respondent Nos.1 to 4.

2. The respondent No.1 company (presently in liquidation) was advanced various credit facilities by the petitioner bank. The respondent No.1 company was advanced 15 separate such credit and loan facilities in respect of which it had pledged / hypothecated goods and assets and also mortgaged immovable property. Such documents were executed between 1978 and 1987. In 1985, some unsecured creditors of respondent No.1 company filed Company Petition No.10 of 1985 before Madhya Pradesh High Court under Section 433 of the Companies Act,

1956, seeking winding up of the company and on 04.04.1986, Madhya Pradesh High Court appointed provisional liquidator.

3. Since the petitioner bank claimed recoveries from respondent No.1 company, the petitioner bank applied to Madhya Pradesh High Court seeking leave to file suit against the respondent No.1 company. On 27.03.1987, Madhya Pradesh High Court granted leave to the petitioner bank to file suit. On 31.03.1987, the petitioner bank filed Suit No.1142 of 1987 against the respondent No.1 company in this Court for recovery of an amount of Rs.8,27,21,045.01/-.

4. In the year 1987 itself, the petitioner bank also filed a recovery suit bearing RCS No.21-B of 1987 for recovery of Rs.1.94 crores plus interest to enforce guarantees given by Government of Madhya Pradesh in respect of respondent No.1 company. On 21.07.1989, Madhya Pradesh High Court passed an order in Company Petition No.10 of 1985, revoking the appointment of the provisional liquidator and on 06.10.1989, the Government of Madhya Pradesh took over the respondent No.1 company by executing an agreement. The respondent No.1 company, Government of Madhya Pradesh, Madhya Pradesh State Textile Corporation Limited (MPSTCL) and the petitioner bank were signatories to the said agreement. As per one of the clauses of the said agreement, suits filed against the company and guarantors were to continue.

5. In 1989, as the net worth of the respondent No.1 company turned negative, it filed a Reference before the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). On 21.05.1990, the respondent No.1 company was declared sick and the Industrial Development Bank of India (IDBI) was appointed as an operating agency. On 07.01.1994, the BIFR recommended winding up of

the respondent No.1 company. Aggrieved by the same, the respondent No.1 company filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). In the appellate proceedings, the respondent No.5-IDBI was directed to file a report, which resulted in the respondent No.5 submitting a proposal for revival of respondent No.1 company. The AAIFR approved the rehabilitation scheme. On 09.07.1996, the AAIFR directed the petitioner bank and the respondent No.5-IDBI to charge interest on delayed payments of amount due under the sanctioned rehabilitation scheme. But, on 18.05.1999, the AAIFR recorded that the sanctioned scheme had failed to revive the petitioner No.1 company and accordingly, on 01.07.1999, the AAIFR observed that the creditors were free to pursue their suits against the respondent No.1 company and the guarantors in the competent Courts. On 23.08.1999, the AAIFR directed that the respondent No.1 company be wound up and transferred one set of proceedings to Madhya Pradesh High Court for further action in accordance with law.

6. In the year 2000, the aforesaid Suit No.1143 of 1987 filed by the petitioner bank against the respondent No.1 company before this Court was transferred to DRT and numbered as O.A.No.2481 of 2000. In the same year, the petitioner bank filed O.A.No.376 of 2000 before DRT at Jabalpur against the State of Madhya Pradesh and the respondent No.1 company for recovery of outstanding amount of about Rs.2.95 crores. On 25.02.2002, DRT, Jabalpur passed an order / decree, declaring that the petitioner Bank was entitled to an amount of Rs.2,95,29,494.23/- along with 16.5% interest per annum with quarterly rests from 04.09.2000 till realization of the amount. On 26.03.2003, the respondent No.1 company filed its written statement in the said O.A.No.2481 of 2000, which was the proceeding transferred from this Court to DRT, Mumbai. The other respondents also filed their written statements. Thereafter, affidavits were filed by the rival parties. During the

pendency of the said proceedings in DRT, Mumbai, the petitioner bank settled its dues with the Government of Madhya Pradesh (guarantor) and in that context, it issued 'no dues certificate' dated 22.05.2006. The said certificate was issued in the backdrop of amount of Rs.1.91 crores being received. The said certificate specifically recorded that in that light, Government of Madhya Pradesh did not have any further liability towards the petitioner bank, but it was clarified that the certificate was issued without prejudice to the rights and interests of the petitioner bank in suits filed against the respondent No.1 company and / or other guarantors for enforcing security and realization of balance dues.

7. In the meanwhile, on 04.04.2006, DRT Mumbai passed impugned order in O.A.No.2481 of 2000, directing respondent No.1 company to pay to the petitioner bank an amount of Rs.88,97,576.01/-, taking into account amount of Rs.7,38,24,269/- received by the petitioner bank during the pendency of the said original application. It was directed that the said amount would be paid with interest @ 6% per annum from 01.01.2001. The DRT also directed respondent Nos.2 and 3 to pay amount of Rs.65,77,320.41/- and respondent No.4 to pay amount of Rs.17,57,751.46/- along with interest @ 6% per annum. It was directed that accordingly recovery certificate shall be issued.

8. Aggrieved by the said order, the petitioner bank filed Review Application No.27 of 2006, seeking review of the aforesaid order dated 04.04.2006 passed by the DRT in O.A.No.2481 of 2000. The petitioner bank raised a grievance that the DRT, while allowing its original application, failed to record any finding with regard to the interest *pendente lite* and future on the amount due.

9. It was stated that the DRT failed to appreciate the fact that the original application was a transferred proceeding from this Court as the suit was originally filed on 31.03.1987. The petitioner bank also raised

grievance about the error in recording the amount payable by the respondents, and that therefore, the order dated 04.04.2006 deserved to be reviewed and the mistake was required to be corrected. Since the review application suffered from delay of 72 days, it was accompanied by an application for condonation of delay.

10. On 02.09.2007, DRT, Mumbai passed its order rejecting the review application. The explanation for delay was not accepted and the prayer for condonation of delay was rejected. Yet, the DRT, Mumbai proceeded to consider the grounds for review raised on merits and rendered findings against the petitioner bank. Aggrieved by the same, the petitioner bank filed Appeal No.261 of 2009. This was accompanied with a miscellaneous application seeking condonation of delay. The delay was condoned and by the impugned order dated 18.12.2015. But, the DRAT dismissed the appeal filed by the petitioner bank, thereby confirming the impugned orders dated 04.04.2006 and 02.09.2007 passed by the DRT, Mumbai in the original application and the review application.

11. Aggrieved by the same, the petitioner bank filed the present writ petition. The respondents appeared before this Court and upon completion of pleadings, the petition was taken up for consideration.

12. Mr. Nitin Thakkar, learned senior counsel appearing for the petitioner bank submitted that the DRT and the DRAT committed grave error by refusing to grant *pendente lite* interest at the contractual rate from 01.04.1987, as the petitioner bank had filed its suit for recovery of the said amount from respondent Nos.1 to 4 on 31.03.1987. The said suit was transferred in the year 2000 to DRT, Mumbai. The aforesaid interest on the decreed amount ought to have been granted in favour of the petitioner bank. It was submitted that the DRT did not record any reasons while depriving the petitioner bank of *pendente lite* interest.

While rejecting the review application also, the DRT did not consider the contention of the petitioner bank in the proper perspective. The DRAT committed an error in confirming the orders of the DRT on the basis that the petitioner bank had entered into a one-time settlement (OTS) under which it had issued a substantial amount. This was a wholly irrelevant consideration on the question of granting *pendente lite* interest. It was further submitted that the contractual rate of interest was completely ignored on the erroneous reasoning that the respondent No.1 company was before the AAIFR. The DRAT failed to appreciate that the rehabilitation scheme had failed and accordingly, the petitioner bank was free to pursue its proceeding against the respondent No.1 company before the DRT.

13. It was further submitted that DRT, Jabalpur in its order dated 25.02.2002, while allowing the application filed by the petitioner bank, had granted interest @16.5% per annum, with quarterly rests from 04.09.2000 till realization of the amount, on the amount found recoverable from the respondents therein, including the respondent No.1 company. It was submitted that the DRT, Mumbai should have at least granted interest at the same rate as granted by the DRT at Jabalpur.

14. It was further submitted that the DRT as well as the DRAT failed to appreciate that the amounts received during the pendency of the suit, which was transferred to the DRT, Mumbai, were required to be first appropriated towards interest and thereafter towards the principal amount. In this context, reliance was placed on judgement of the Supreme Court in the case of *Industrial Credit & Development Syndicate Vs. Smithaben H. Patel and others*, (1999) 3 SCC 80 and the judgement of Gujarat High Court in the case of *Central Bank of India Vs. P. R. Garments Industries P. Ltd. and others*, AIR 1986 Guj 113.

15. It was further submitted that the DRT and the DRAT failed to

appreciate that the petitioner had correctly appropriated the amount towards the debt due as per the worksheet annexed to the writ petition. The DRT and the DRAT committed an error in directing that the amounts received, were to be appropriated towards the principal sum due. Reliance was placed on judgement of the Supreme Court in the case of *Central Bank of India Vs. Ravindra and others*, **(2002) 1 SCC 367** and judgment of Jharkhand High Court in the case of *State Bank of India Vs. Bihar Central Trading Company (Industrial Division), Singhbhum and others*, **(2004) SCC OnLine Jhar 451**.

16. Mr. Rushabh Sheth, learned counsel appearing for respondent No.1 submitted that the DRT and the DRAT had concurrently taken a view, which does not warrant any interference by this Court while exercising writ jurisdiction. It was submitted that the writ of *certiorari* and the jurisdiction exercised by this Court under Article 227 of the Constitution of India are held to be overlapping in judgments of the Supreme Court, including in the case of *Surya Dev Rai Vs. Ram Chander Rai*, **(2003) 6 SCC 675**. On this basis, it was submitted that this Court, exercising such jurisdiction, ought not to substitute its view while considering the correctness or otherwise of the impugned orders. It was submitted that the petitioner bank was asking this Court to exercise jurisdiction contrary to the said settled position of law, and therefore, on this short ground, the writ petition deserves to be dismissed.

17. It was submitted that the petitioner bank had accepted part amounts under the AAIFR scheme and also agreed to accept reduced interest liability and in such a situation, the petitioner bank cannot be permitted to turn around to claim higher percentage of interest, on the ground that contractual interest ought to prevail. It was submitted that the fact that a scheme was propounded when the proceedings were pending before the AAIFR, is a factor that cannot be ignored and for the

period between 1989 and 2007 when the provisions of the SICA were operating, the petitioner could certainly not claim interest under the garb of interest *pendente lite*. In support of the said contention, the learned counsel for respondent No.1 placed reliance on the judgement of the Supreme Court in the case of *Fertilizer Corporation of India Limited and others Vs. Coromandal Sacks Private Limited*, (2024) 8 SCC 172.

18. It was further submitted that the Government of Madhya Pradesh had paid certain dues to the petitioner bank under an OTS and this factor can also not be disregarded while considering the validity of the impugned orders passed by the DRT and the DRAT. On this basis, it was submitted that the writ petition deserves to be dismissed.

19. Mr. Rishabh Shah, learned counsel appearing for respondent Nos.2(a), 2(b), 3(a), 3(b), 4(a) and 4(b) submitted that none of the said respondents had given any personal guarantees and that they are merely heirs of the original guarantors. Since the respondents had not inherited any substantial properties or monetary benefits from the estates of the original guarantors, the whole action sought to be executed against the said respondents is not maintainable.

20. It was further submitted that the petitioner bank is trying to ask this Court to virtually re-assess the material on record, which was properly appreciated by the DRT as well as the DRAT. Such an exercise cannot be undertaken under writ jurisdiction and on this short ground, the writ petition deserves to be dismissed.

21. Having heard the learned counsel for the rival parties, we find that the only point on which the petitioner bank has chosen to challenge the impugned orders pertaining to the question of interest *pendente lite*, has not been dealt with in detail in the impugned orders. A perusal of the impugned order dated 04.04.2006 passed by the DRT in O.A.No.2481 of

2000 (originally Suit No.1142 of 1987 filed in this Court) shows that the DRT granted interest @6% per annum on the basis of discussion found only in paragraph 17 of the said impugned order. It is to be noted that in the suit originally filed by the petitioner bank in this Court and later transferred to the DRT, the petitioner had prayed for grant of interest from the date of filing of the suit and that too, at the contractual rate of 17.5% per annum and 18.5% per annum till actual payment. This aspect does not find mention in the aforesaid paragraph 17 of the impugned order dated 04.04.2006 passed by the DRT. The only discussion is about the amount received by the petitioner bank during the pendency of the proceedings and the manner in which it was to be deducted from the amount claimed. The DRT then abruptly reached the conclusion that interest @6% per annum was payable.

22. In the impugned order dated 02.09.2007 passed by the DRT, dismissing the review application on the ground of limitation, not only is there discussion on the aspect of limitation, but having held against the petitioner on that count, the DRT proceeded in the said impugned order to even discuss the merits of the review application.

23. While doing so, the DRT reiterated that the amounts received during pendency of the proceedings had to be taken into account, and therefore, the prayer for interest *pendente lite* claimed by the petitioner was not admissible. There is no discussion on the specific grounds raised in the review application on behalf of the petitioner bank.

24. In the impugned order dated 18.12.2015 passed by the DRAT dismissing the appeal filed by the petitioner, the discussion concerns 'substantial amount' received by the petitioner as per OTS and emphasis was placed on the deduction of the amount received by the petitioner during the pendency of the proceedings. Here again, there is no reference to the contractual rate of interest and the reason why the same

was ignored. There was also no discussion on the specific prayer for grant of interest *pendente lite* and the reason for rejecting the same. The DRAT concluded that excess amount was paid to the petitioner, without discussing as to why interest *pendente lite* ought not to be granted in the facts and circumstances of the case.

25. It is relevant to note that in a similar proceeding initiated by the petitioner bank before the DRT at Jabalpur in O.A.No.367 of 2000, in the judgement and order dated 25.02.2002, the DRT at Jabalpur specifically held that the petitioner was entitled to recover interest @16.5% per annum with quarterly rests from the date of filing of the said application till realization of the outstanding dues. In other words, the DRT at Jabalpur was conscious of and applied the contractual interest and indeed granted interest *pendente lite*. This aspect was ignored by the DRT and the DRAT in the proceedings leading to filing of the present writ petition.

26. It is also a matter of record that an OTS was executed and the matter was settled with the Government of Madhya Pradesh and others. In the No Due Certificate issued by the petitioner, it was specifically recorded that such certificate did not preclude the right of the petitioner in respect of liability or any other amount or transaction or dealing with the bank. In the No Due Certificate issued by the petitioner, it was specifically mentioned that the same was issued without prejudice the rights and interests of the petitioner in suits filed against respondent No.1 and in continuing such proceedings for enforcing its right and for realization of its dues. Thus, the DRAT fell in error in emphasizing upon the OTS and amounts received in that context so as to reject consideration of the prayer for grant of interest *pendente lite* claimed by the petitioner.

27. We also find substance in the contention raised on behalf of the

petitioner that the amounts paid during the pendency of the proceedings at various points in time, in terms of law recognized in various judgements, ought to be first adjusted towards the interest amount and thereafter, towards the principal. In the case of **Industrial Credit & Development Syndicate Vs. Smithaben H. Patel and others** (*supra*), the Supreme Court referred to the aforesaid principle of English Law, going as far back as 1702 in the case of *Chase VS. Box*, **(1702) 2 Freeman 261**, wherein it was laid down that if a person is indebted to another for principal and interest and repays the money, generally it has to be applied in the first place to sink the interest before any part of the principal should be sunk. Having taken note of the said principle, in the said judgement, the Supreme Court held as follows:-

“14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e., that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.”

28. The exception to the said principle, noted in the above-quoted paragraph, does not apply to the facts of the present case, and therefore, we find substance in the said contention raised on behalf of the petitioner.

29. As regards the contention raised on behalf of the respondent No.1 that the rehabilitation scheme approved by the AAIFR operated and that the effect of the provisions of SICA ought to be taken into consideration,

we find that even if the judgement of the Supreme Court in the case of **Fertilizer Corporation of India Limited and others Vs. Coromandal Sacks Private Limited** (*supra*) is taken into consideration, the claim made by the petitioner for interest *pendente lite* cannot be adversely affected. The observation of the Supreme Court in the said judgement that, applying exorbitant interest on a decree put to execution after the end of the BIFR proceedings would be counter-productive, has to be appreciated in the light of the fact that in the present case, the AAIFR itself recorded in May 1999 that the rehabilitation scheme, approved by it, had failed to revive the respondent No.1 company. Accordingly, the AAIFR categorically observed that the creditors were free to pursue their suits against the respondent No.1 company and the guarantors. Even in the said case of **Fertilizer Corporation of India Limited and others Vs. Coromandal Sacks Private Limited** (*supra*), the Supreme Court found that the High Court had not committed an error in awarding 24% interest to the original plaintiff on its dues. However, the period, when the company was a sick company, was excluded for the purposes of calculation of interest. Hence, even applying the judgements upon which the respondent No.1 has placed reliance, it cannot be said that the claim of interest *pendente lite* could have been ignored by the DRT and the DRAT.

30. We are unable to agree with the learned counsel appearing for respondent No.1 that in terms of the law laid down by the Supreme Court in the cases of *Radhey Shyam and another Vs. Chhabi Nath and others*, (2015) 5 SCC 423 and **Surya Dev Rai Vs. Ram Chander Rai** (*supra*), this Court, while considering the present petition, cannot grant relief of interest *pendente lite* as it would amount to substituting its view in place of the view adopted by the DRT and the DRAT. A bare perusal of the documents on record shows that in the suit filed in this Court in the year 1987, which was transferred to the DRT in the year 2000, the

petitioner had claimed interest *pendente lite* and it also had referred to the contractual interest. Despite the petitioner pursuing the said prayers, the DRT, in the impugned order dated 04.04.2006, completely ignored the same and in paragraph 17 of the said order, there was no discussion regarding the same. The DRT reached a conclusion that interest @6% per annum was payable. In the review application and in the appeal, the petitioner had raised specific grounds, but the DRT and the DRAT did not discuss the same. Much emphasis was placed on the amounts received by the petitioner during the pendency of the proceedings and the fact that the OTS had been executed with the Government of Madhya Pradesh during the pendency of the proceedings in DRT, Mumbai. These were irrelevant factors for considering the prayer for grant of interest *pendente lite*.

31. As regards the contention raised on behalf of the legal heirs of the original guarantors, suffice it say that their liability would obviously be limited to the extent of estate of their predecessor that they have inherited. Even if relief is granted in the present writ petition, the execution of the same as against the said respondents would be strictly in accordance with law.

32. Although the petitioner bank has placed much reliance on the judgements in the cases of **Central Bank of India Vs. P. R. Garments Industries P. Ltd. and others** (*supra*), **State Bank of India Vs. Bihar Central Trading Company (Industrial Division), Singhbhum and others** (*supra*) as also *Syndicate Bank Vs. West Bengal Cements Limited and others*, **1988 SCC OnLine Del 254**, wherein it is laid down that when in a commercial transaction rate of interest is agreed between the parties, the Court ought to allow the same rate of interest, we are of the opinion that it would be in furtherance of justice that interest *pendente lite* is granted at the same rate at which the DRT at Jabalpur had granted

to the petitioner. We are conscious of the fact that the petitioner in its suit had claimed interest at the contractual rate from the date of filing of the suit, but considering the intervening circumstances, including an attempt at rehabilitation by the AAIFR and in order to maintain uniformity with regard to the grant of interest in a parallel proceeding in DRT, Jabalpur, in the present case also, the petition can be partly allowed by modifying the impugned orders. This would not amount to substituting the opinion of this Court, simply for the reason that specific prayers for grant of interest *pendente lite* from the date of filing of the suit were made on behalf of the petitioner in the original proceeding itself. It is to be noted that the petitioner, at the stage of hearing of the writ petition, also alternatively prayed for grant of rate of interest *pendente lite*, as was granted by DRT, Jabalpur.

33. In view of the above, the writ petition is partly allowed and the impugned orders are modified by directing that the amounts payable by the respondents under the impugned orders shall be payable with interest *pendente lite* @16.5% per annum with quarterly rests from the date of filing of the suit filed before this Court i.e. Suit No.1422 of 1987, which was later transferred to DRT, Mumbai as O.A.No.2481 of 2000, till actual payment of the amounts.

34. Writ petition is disposed of in above terms. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)