Sri Jaya (Sdn) Bhd v RHB Bank Bhd
[2001] SGHC 273

Case Number : OS 600160/2001
Decision Date : 19 September 2001
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Denis Tan (Toh Tan & Pnrs) for the applicants/plaintiffs; Tan Bar Tien (BT Tan & Co) for the respondents/defendants
Parties : Sri Jaya (Sdn) Bhd — RHB Bank Bhd

Interest under a Judgment dated 2nd of October 1991 in Suit No. 5904 of 1983.

And

In the matter of Section 9 of the Civil Law Act (Ch 43), 1994 Edition

Between

SRI JAYA (SDN) BHD (RCB No. F196800618D) ... Plaintiffs

And

RHB BANK BHD (RCB No. F05710R) successor in title of SIME BANK BHD (formerly known as United Malayan Banking Corpn Bhd) (A company incorporated in Malaysia and registered in Singapore under RCB No. F1427R) ... Defendants

Citation: OS No 600160 of 2001
Jurisdiction: Singapore
Date: 2001:09:19
2001:07:12
Court: High Court
Coram: S. Rajendran, J
Counsel: Denis Tan *(Toh Tan & Pnrs)* for the applicants/plaintiffs.
Tan Bar Tien *(BT Tan & Co.)* for the respondents/defendants.

Judgment:

1. In the late seventies, Sri Jaya (Sdn) Bhd ("Sri Jaya") borrowed considerable sums of money from RHB Bank Bhd ("RHB") at that time known as "United Malayan Banking Corpn Bhd" to purchase and develop two blocks of flats on a piece of land at Paya Lebar ("the said property"). As Sri Jaya was unable to repay these loans in full, RHB - in Suit No. 5904 of 1983 - commenced legal proceedings against Sri Jaya. This suit was concluded on 2 October 1991 when a consent judgment was entered against Sri Jaya. By that judgment ("the 1991 judgment") the court ordered the sale of the said property was obtained and the judgment went on to state:

> "AND BY CONSENT IT IS THIS DAY ADJUDGED that judgment be entered for the Plaintiffs against the 1st Defendants as follows:-

(1) The sum of $2,838,508.36 and interest thereon at 11.25% per annum on the first $1,400,000.00 and 12.50% per annum on the excess over $1,400,000.00 from the 18th November 1983 to judgment and under paragraph 2 of the Statement of Claim less all proceeds received from the sale of the said properties if and when sold."

RHB thereafter sold the said property for $6.5 million. The sale was completed on 31 August 1994.

2. After the sale, RHB on 18 January 1995 sent a letter to Sri Jaya informing Sri Jaya that after taking into account the sale proceeds there was, as at 5 January 1995, still a shortfall of $795,087.19 on which interest would run at $170.63 per day from 6 January 1995.

3. Sri Jaya in Suit No. 253/99 commenced proceedings against RHB for negligence in handling the sale of the said property and, on 29 December 2000, obtained judgment in its favour. The effect of the judgment was that:

(1) RHB had to pay Sri Jaya an additional $3.19 million over and above the $6.5 million that the said property was sold for;

(2) RHB was entitled to deduct the outstanding amount still due to RHB under the 1991 judgment from the $3.19 million; and

(3) RHB was to pay Sri Jaya interest on the balance due to Sri Jaya at the rate of 3% per annum from the date of the writ.

RHB was also ordered to pay the costs of Sri Jaya.

4. In the course of the trial in Suit No. 253/99, the letter from RHB to Sri Jaya dated 18 January 1995 referred to above was produced but as the issue in Suit No. 253/99 related solely to the negligence or otherwise of RHB in the conduct of the sale, the question of whether that letter reflected the true entitlement of RHB was not gone into.

5. After obtaining the judgment in Suit No. 253/99, when the parties addressed themselves to the issue of what the outstanding balance due under the 1991 judgment was, differences of opinion arose as to (a) whether the pre-judgment interest payable under that 1991 judgment was to be on a compound or simple interest basis; and (b) whether the post-judgment interest payable on the 1991 judgment was to be calculated on the principal sum alone or the principal sum plus interest payable up to the date of the 1991 judgment. To resolve these differences, Sri Jaya commenced this originating summons.

6. I ruled that under the 1991 judgment, pre-judgment interest was to be calculated on a simple interest basis and post-judgment interest should be calculated on the composite sum of principal plus interest up to the date of the judgment. RHB was dissatisfied with my decision and has appealed. I now give my grounds.

Simple interest or compound interest.

7. RHBs claim that they were entitled to compound interest under the 1991 judgment was based on the fact that the mortgage documents pursuant to which the loans were extended to Sri Jaya stipulated compound interest. Relying on the case of *Diversey (Far East) Pte Ltd v Chai Chung Ching*

Chester & Ors [1993] 1 SLR 535, Mr Tan Bar Tien (acting for RHB) submitted that the court, in construing the meaning to be given to the words in a judgment, can look into the documents underlying the judgment. He also submitted that it was normal practice for bankers to charge compound interest and the courts should give effect to this practice.

8. Mr Denis Tan (who appeared for Sri Jaya) submitted that if RHB had wanted Sri Jaya to pay the contractual interest stipulated in the mortgage document, RHB should have, in its pleadings, specifically asked for that contractual interest. He pointed out that in this case not only had RHB failed to raise the claim for compound interest in its pleadings, it had also obtained a consent judgment that did not contain that stipulation. Mr Denis Tan submitted that as the 1991 judgment did not mandate compound interest, only simple interest was payable.

9 . Where a party seeks interest at a contractual rate it is incumbent on that party to raise that claim in its pleadings. I accepted Mr Denis Tans submission that in the absence of such a claim, there was no basis for the court to grant contractual interest. There was another feature in this case that negated RHBs position. The 1991 judgment was a consent judgment. In other words, the parties had mutually agreed to settle their disputes on the terms contained in the consent judgment. In those mutually agreed terms, whilst there was reference to interest being payable, there was no reference to interest being paid on a compounded basis. The only reasonable conclusion that one could draw from the fact that the terms do not specify compound interest is that it was not the intention of the parties, in asking for the consent order, that compound interest would be payable. For the court to rule otherwise would mean that the court is re-writing the agreement reached between the parties. I therefore rejected RHBs claim that the interest under the 1991 judgment should be on a compound interest basis and ruled that the 1991 judgment mandated interest only on a simple interest basis.

10. The case of *Diversey* relied on by RHB can be distinguished on the facts. In that case, the parties had entered into a formal settlement agreement and the consent judgment subsequently obtained specifically referred to that settlement agreement. In those circumstances, the court held that the judgment order and the settlement agreement should be read together. In the present case, the consent judgment itself was the settlement agreement. The consent judgment did not refer to any other document. There was therefore no justification for the court to look at any other document to ascertain or clarify the terms of the consent judgment.

Post-judgment interest.

11. RHB did not, for the post-judgment period in respect of the 1991 judgment, seek interest on a compounded basis. Mr Tan Bar Tien accepted that for this period Sri Jaya should pay the (simple) interest prescribed under Order 42 rule 12. The parties were agreed that the prescribed rate at the relevant time was 8% per annum. The only issue raised with regard to post-judgment interest was whether interest should be calculated on the basis of the principal sum alone or whether it should be calculated on the principal sum together with the interest payable thereon up to the date of judgment ("the composite sum").

12. Mr Denis Tan, relying on s 9 of the Civil Law Act (Ch 43, 1994 Ed) ("the Act"), submitted that post-judgment interest should be payable only in respect of the principal sum. Section 9 of the Act (now s 12) provided as follows:

> 9. - In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for

the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

Provided that nothing in this section

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) (not relevant).

Mr Denis Tan submitted that the award of interest, under Order 42 rule 12, on the composite sum would amount to giving interest upon interest and be a breach of s 9(2) of the Act.

13. I could not accept that submission. To begin with, s 9(1) of the Act related to the payment of interest for the period "between the date when the cause of action arose and the date of the judgment". That section therefore concerned itself only with interest in respect of the pre-judgment period and not the post-judgment period. Mr Denis Tans submission on s 9(1) of the Act would therefore be germane to the award of pre-judgment interest (considered above). It is relevant to note, in that context, that sub-section (2)(b) of s 9 preserves, in respect of the pre-judgment period, any contractual rights to interest that the parties may have agreed on.

14. The applicable provision, insofar as post-judgment interest is concerned, was Order 42 rule 12 of the Rules of Court. Under those provisions, every judgment debt (unless otherwise agreed by the parties) carried interest at the prescribed rate from the date of judgment until the judgment is satisfied. The question to ask therefore is: what was the judgment debt? Once the judgment debt is established, interest is payable on that judgment debt in accordance with Order 42 rule 12. As at the date of the 1991 judgment, the judgment debt was the principal sum plus the interest payable thereon under the judgment, ie the composite sum. I therefore held that the post-judgment interest payable in this case under Order 42 rule 12 was 8% per annum on the composite sum.

Sgd:

S. RAJENDRAN

Judge

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