Bombay High Court Central Bank Of India vs Tarseema Compress Wood ... on 20 December, 1996 Equivalent citations: AIR 1997 Bom 225, 1997 (2) BomCR 267 Bench: R Vaidyanatha JUDGMENT 1. This is a suit filed by the plaintiff-bank. Defendants have contensted the suit by filing written statement. Issues have been framed. Plaintiff examined one witness and closed it's case. One witness has been examined on behalf of defendants. I have heard learned Counsel appearing for both the sides. 2. The plaintiff is Central bank of India and it has filed this suit on the following allegations: The first defendant is a partnership firm of which the defendants Nos. 2 to 4 are partners. It is stated that the first defendant-firm obtained two loans form the plaintiff-bank in 1970 which are cash credit (open loan) facility up to a limit of Rs. 15,000/- and cash credit (key loan) facility up to a limit of Rs. 15,000/- and executed a promissory note and other documents. Again in 1977 the first defendant availed the loan facility upto a limit of Rs. 60,000/- and executed a promissory note and other documents. Then it is stated that on 15th June 1978 the defendants availed cash credit facility upto a limit of Rs. 60,000/- and cash credit (key loan) facility up to a limit of Rs. 2,50,000/- and executed a promissory note and other documents. The defendants have not made payments. The defendants had pledged goods under one transaction and hypothecated goods for the other transaction. That as on the date of suit, the defendants were due in a sum of Rs. 4,19,766.98 P. in respect of both the transactions. Hence, the suit is filed for the recovery of the said amount. 3. Though all the defendants have entered appearance through their Advocate written statement is filed by defendants 1 and 2 only. The substance of the defence is as follows: It is stated that the suit is barred by the limitation; the suit as bad for misjoinder of causes of action; the 4th defendant was a minor at the time of taking loan facility and hence, the suit is not maintainable against him. The defendants do not admit the execution of the suit documents but say that there signatures were taken on blank forms, that the documents are not supported by consideration, the suit documents were not furnished to the defendants at any time. At one stage, it is pleaded that since the foods are pledged with the plaintiff, the suit is premature and it is also pleaded that though the plaintiff got a Receiver appointed, for sale of the pledged goods, the plaintiff did not take appropriate action well in time and as a result, the goods deteriorated in value and the defendants are put to great loss. The plaintiff has sold the goods for a low price and did not make efforts to get higher price. As a result of this, the defendants have suffered loss to the extent of Rs. 1.50 lacs and defendants are entitled to set off for this amount. That no amount is due to the plaintiff, hence, it is prayed that the suit be dismissed with costs. 4. On the above pleadings following issues are settled: Issues 1. Whether the plaintiff proves that defendants are due in a sum of Rs. 4,19,766.98 Ps. as claimed in the plaint? 2. Whether the suit is bad for misjoinder of causes of action? 3. Whether the suit is barred by limitation? 4. Whether the defendant No. 4 was a minor on the date of suit loan and hence the claim is not maintainable against him? 5. Whether the signatures of the defendants were taken on blank papers and printed forms as 7: alleged? 6. Whether the plaintiff has sold the goods at a low price and if so what is its effect? 7. What reliefs? 5. At the

time of the hearing it was stated by the learned Counsel for the defendants that defendant No. 4 was a major on the date of suit document and therefore, he does not press Issue No. 4. Accordingly, Issue No. 4 is deleted as not pressed. 6. I have taken up this Issue first since this will have a bearing on deciding Issue No. 1. If the defendants' theory that the signatures of true then the plaintiff will not get any relief in this suit. The only evidence produced by the defendant is the evidence of Kishan Kumar Gupta who is the second defendant in this suit. Though he denied signing promissory note of 1970, he has practically admitted signing the documents mentioned in the plaint particularly, the promissory note Exhibits A and H. He also admitted his signatures on another promissory note Exhibit P. He offered no explanation on the signing the other promissory notes and other documents produced by the plaintiff. He only stated about simply signing promissory notes in his evidence. As far as consideration is concerned, his evidence is that the firm might have received consideration but he does not know since his elder brother was looking after the management of the firm. In cross-examination he admitted that he and his elder brother were on cordial terms and he had full trust in his elder brother. There is neither allegation nor evidence that the elder brother had committed a fraud on second defendant by taking signatures on the blank papers or otherwise. Admittedly, the elder brother of second defendant died in 1978 though D. W. 1 gave the year of death as 1979. No doubt, the second defendant has stated in his evidence about signing blank documents. In this evidence, his only version appears to be that he signed the papers at the instance of his borther. Even though the plaintiff has examined the present Manager as P. W. 1, there is nothing brought out in his cross-examination, except one or two suggestions to show that the bank took the signature of second defendant on blank papers. Hence, in my view, there is no evidence on record to prove Issue No. 5. Hence, Issue No. 5 is answered in the negative. 7. To prove this Issue No. 1 apart form producing number of documents, the bank has examined P. W. 1 N. R. Koramne, who is the present Manager in the concerned Branch of the plaintiff-bank. He has given evidence on the basis of documents. In particular, he has told the Court that the first defendant and its is partners have executed and signed many documents and letters which are marked as Exhibits A to Z-2. He has also stated that the parties sign the papers only after all the columns are filled up. He has also stated that after executing the documents, the defendant has fully utilised the sanctioned loan up to the sanctioned limit, that the bank has maintained regular account. He has sworn that as on the date of suit, the defendants were due in a sum of Rs. 4,19766.98 P. His evidence on this point is corroborated by the two ledger extracts Exhibits BB and CC. In his cross-examination it is elicited that the witness has no power of attorney or written authorisation to give evidence in the Court. The learned Counsel for the defendants contended at the time of arguments that P. W. 1 has no right to give evidence on behalf of the bank without power of attorney or written authorisation. In my view, this arguments, has no merit. Anybody can come and give evidence in Court provided that he is acquainted with the facts of that case. No power of attorney or authorisation is necessary for any witness to give evidence in Court. It may

be for filing the plaint, or signing the plaint or signing a written statement an authorition may be necessary, but to give evidence on oath, anybody, who is acquainted with the facts can give evidence. 8. It is further elicited in the cross-examination of P. W. 1 that the loan amount was not given to the defendants by issuing cheque or otherwise. The witness has stated that the procedure is that the party draw money form his account by issuing cheque up to the sanctioned limit. Then as far as the lates two promissory notes are concerned viz., Exhibits V and Z which are two promissory notes dated 15-6-1978, the witness admitted that no consideration amount was paid on the date of the two promissory notes or subsequent to the date of the two promissory notes. It was, therefore, argued on behalf of the defendants that these two promissory notes are not supported by consideration since admittedly, no amount was paid either on 15-6-1978 or any time thereafter. But the witness has clearly explained that these two promissory notes were taken for past consideration. It is well settled that consideration can be either past or present or even future. In view of the earlier documents and the entries in the account extracts and the evidence of P. W. 1, we can easily say that both the latest promissory notes Exhibits V and Z are supported by the past consideration. 9. When once, the execution of Exhibits V and Z are either admitted or proved then the presumption arises a under the Negotiable Instruments Act the promissory notes are supported by consideration, the burden shifts on to the defendants to prove that the promissory notes are not supported by the consideration. The only evidence we have to rebut this presumption is the evidence of the second defendant whose only statement is that the firm might have received the consideration amount but he is not aware since his eldest brother was managing the firm. This is no evidence at all to rebut the presumption available to the plaintiff under Section 118 of the Negotiable Instruments Act. At the time of arguments, the learned Counsel for the defendants fairly submitted that he is not disputing the execution of documents. 10. Admittedly, the fourth defendant was taken as a partner in 1978. The latest promissory notes came into existence after the fourth defendant became a partner. Since admittedly no consideration was paid, either on the date of the two promissory notes Exhibits V and Z or thereafter, the argument that fourth defendant has not received consideration appears to have some force. However, in the case this type, we have to find out the legal implication of fourth defendant becoming the partner and his agreement to pay the amount due by the old firm. In particular, we may make a reference to defendants' letter dated 15-6-1978 which is marked as Exhibit X. This letter is written on the same day when the two promissory notes Exhibits V and Z came into existence. This promissory note is signed by all the defendants including the fourth defendant. In this letter, it is admitted that the first defendant firm has been having transaction with the plaintiff-bank and then statement is made as follows:– "We are jointly and severally responsible to the bank for the liabilities of the firm with the bank. The bank may recover its claim and dues from any or all of the partners of the firm and the assets of any deceased partner". It may be in the absence of a contract to the contrary, new partner who is inducted into partnership may not be liable for the past debts of the partnership firm as

provided in S. 31(2) of the Partnership Act. But, however, it is always open to a new partner to admit liability and agree to pay liability of the firm which were in existence when he became the partner. In view of the letter and the promissory notes Exhibits V and Z executed by the fourth defendant agreeing to pay the amount to the bank, he will also be liable jointly and severally along with other defendants to make payment to discharge the loan. 11. Exhibit BB is the account extract regarding the first loan right from 1970 till the date of the suit. Then Exhibit CC is the account extract of the second transaction right from 1970 till the date of suit. The learned counsel of the defendants contended that if Rs. 50,000/- had been sanctioned in 1970 how that amount can become Rs. 2.50 lacs in 1972 is not explained in the plaint and by no stretch of imagination, the amount of Rs. 50,000/- can became Rs. 2.50 lacs in two years. As rightly pointed out by the learned counsel for the plaintiff that Rs. 50,000/- has not become Rs. 2.50 lacs by addition of interest or any other charges. This amount of Rs. 2.50 lacs is only the sanction limit. It is not as if Rs. 50,000/- had become Rs. 2.50 lacs in 1972. The allegation in the plaint and the recitals in the documents show that the limit was Rs. 50,000/- in 1970 and the limit was enhanced to Rs. 2.50 lacs in 1972. In 1972 it is not a case of Rs. 50,000/- becoming Rs. 2.50 lacs by addition of interest. 12. The only other contention by of the learned counsel for the defendant regarding Issue No. 1 is that the amount consists of both principal and compound interest. It was argued that the bank cannot claim compound interest and that plaintiff is entitled to get only simple interest. In the case of compound interest particularly with quarterly rests, the plaintiff will have the advantage of adding overdue interest to the principal. But according to the learned counsel for the defendant, this is not permissible in law. He invited my attention to a decision of a Full Bench of this Court Union Bank of Inda v. Dalpat Gaurishankar Upadyay (FB). I have carefully gone through the entire decision. In my view this decision has no bearing on the point under consideration. The said decision was concerned only for granting current interest under S. 34 of the Code of Civil Procedure from the date of suit till the date of payment. The Full Bench was only concerned about the question as to what is the principal sum for the purposes of S. 34 of the Code of the Civil Procedure. In that context, the Full Bench has held that even though the interest had had been calculated on the principal by quarterly rests or otherwise, for the purpose of S. 34 of the Code of Civil Procedure, the Court can grant current interest. Only on the original principal sum advanced and not on compounded principal. Hence, this decision has no bearing on the question whether the bank is entitled to interest at quarterly rests or not. 13. It is well known banking practice that the overdue interest is charged on the principal periodically, either quarterly or half-yearly or yearly, as per the contract between the parties and subject to the directions or circulars of the Reserve Bank of India. This position has been explained by the Apex Court in a recent in judgment Corporation Bank v. D. S. Gowda. The Apex Court has made it clear that the bank can charge compound interest with periodical rest. But as far as agricultural loans are concerned, it is not permissible though the bank may claim yearly rests. The reason is that they may get income once a year

and therefore, asking them to pay the interest quarterly or half years may not be a sound principal. Even in the case of agricultural loans interest may be charged with yearly rest and may be compounded if the loan becomes overdue. As observed in page 235 and again at page 236, the Apex Court has observed that the Bank can add interest outstanding to the principal and compound the interest when the loan becomes overdue. Therefore, even in case of agricultural loans, the bank can compound the interest with yearly rests. As far as commercial loans the are concerned, there can be no dispute about the bank claiming interest at quarterly rests or half yearly rests or yearly rests as per agreement between the parties. 14. In Exhibit V, the suit promissory note date 15-6-1978, there is a clause which clearly says that the interest is 15% per annum with quarterly rests. We find same clause in the other promissory note but the interest being at 15.5% per annum. That means in both the suit documents the parties have agreed that the interest should be calculated with quarterly rests. In view of this agreement, the defendant cannot escape liability to pay interest at quarterly rest. In view of the evidence of P. W. 1 and the suit documents and the two account extracts Exhibits BB and CC, we can safely hold that amount due to the plaintiff-bank as on the date of suit was Rs. 4,19,766.98 P. Issue No. 1 is answered in the affirmative. 15. No arguments were addressed on this issue. It is not shown as to how the suit is bad for misjoinder of causes of action. Hence Issue No. 2 is answered in the negative. 16. The learned counsel for the defendant contended that the suit is barred by limitation since no amount was paid in 1978 when the two promissory notes were taken and the payments were admittedly made prior to the suit promissory notes. On the other hand, the learned counsel for the plaintiff submitted that even though no payments are made, under the promissory notes of 1978, they were taken for the outstanding dues by the firm and hence, the suit is within time since a contract for a past consideration is a valid contract. 17. No doubt, P. W. 1 has admitted that as on the date of two promissory notes Exhibits V and Z no amount was paid either on that day or thereafter. He has also admitted that as per the account extract, the last payment to the defendant in the first account was on 27th March 1972 and the last payment in the second account was on 12th August 1975. It is on this basis an argument about the limitation was pressed into service by the learned counsel for the defendants. Even though the last payment was in 1972 in one case and 1975 in the other case, admittedly, the defendants have confirmed the balance amount due by writing letter Exhibit D, E, F and G on various dates in 1974. Then the defendants have executed one promissory note Exhibit H for Rs. 2.50 lacs on 27-3-1975. Then there are two letters of confirmation of balance in respect of the two accounts dated 17-7-1976 which are Exhibits N and O. Then there is one more promissory note Exhibit P on 22-10-1977. Then there are two more letters of confirmation of balance in respect of the two accounts dated 1-1-1978 as per Exhibits T and U. Then, we have the two latest promissory notes Exhibits V and Z dated 15-6-1978. Therefore, we find that right from 1970 except 1973, we have documents in 1974, 1975, 1976, 1977 and 1978. The defendants have throughout either admitted the loan transaction or executed fresh promissory notes. The last of the documents was in 1978. The

suit is filed in 1979. Hence, by any stretch of imagination it cannot be said that the suit is barred by limitation. 18. The argument that the last two promissory notes cannot be taken into consideration since they are not supported by consideration has no merit. Section 25 of the Contract Act clearly provides that past consideration is good consideration for a valid contract. The evidence of P. W. 1 is very clear that Exhibits V and Z were taken for past consideration viz., the amount due by the defendants on the previous promissory notes. Hence, in my view, the argument about the limitation has no merit and liable to be rejected. Accordingly, Issue No. 3 is answered in the negative. 19. The plea is taken in the written statement that the pledged goods came to be sold after a long lapse of time due to bank's negligence and due to this, there was deterioration in the value of goods and defendants have suffered loss to the extent of Rs. 1.50 lacs. It is true that the suit was filed in 1979 but the goods came to be sold in 1987 but there is nothing on material to show that there was delay on the part of the plaintiff as such. In the plaint itself, the plaintiff has prayed for appointment of Receiver not only regarding pledged goods but also regarding hypothecated goods. Then plaintiff preferred a Notice of Motion along with the plaint in Notice of Motion No. 1171 of 1979 seeking appointment of Receiver. The defendants now say that there was delay on the part of the plaintiff-bank in their goods being sold, filed their reply opposing the Notice of Motion. As far as hypothecated goods are concerned, it was stated that they are not in existence and hence no Receiver can be appointed. As far as the pledged goods are concerned, it was stated that no case is made out by the plaintiff for appointment of Receiver and a Receiver should not be appointed. Having taken such a stand it does not lie in the mouth of the defendants to contend in the written statement that due to bank's negligence there was delay in getting the goods sold. It is possible that delay might have caused because the Receiver was not getting the proper tender for purchase of goods. The second defendant who is examined as D. W. 1 does not utter a word on this point. 20 Even granting for a moment that there was some delay of laches on the part of the plaintiff-bank, the further question is as to what was the value of the goods on the date of the suit and how much was deterioration in value or whether the deterioration was so much to the extent of Rs. 1.50 lacs as alleged in the written statement. There is absolutely no evidence adduced by the defendants to prove the value of the goods on the date of suit or on the date of transaction or in 1987 when the goods came to be sold; in the absence of such evidence, the plaintiff-bank cannot get any advantage even if there was any delay in getting the goods sold. Even P.W.1 was not questioned about the valuation of the goods on the respective dates. It has come in evidence of P. W. 1 that the goods were sold by the Receiver in 1987 and the amount of Rs. 35,899/- was realized. Then it was invested in Fixed Deposit. Then as per the order dated 7-4-1994 the sale proceeds with accrued interest viz., Rs. 47,519/-, was paid to the plaintiff-bank. The plaintiff-bank will have to give deduction to this amount out of the suit claim. The defendants have not proved about any loss as a result of delay in getting the gods sold. Issue No. 6 is answered accordingly. 21. At the time of arguments, the learned counsel for the defendants while placing reliance on

the judgment of the Full Bench of this Court Union Bank of India v. Dalpat Gaurishankar Upadyay FB and prays for grant of interest only on the principal amount. The learned counsel for the plaintiff submitted that the Full Bench decision is under appeal before the Supreme Court and this question has been referred to a Constitutional Bench and therefore, the judgment has not become final. Even otherwise, it was argued on behalf of the plaintiff, that the decision of the Full Bench may not be good law in view of the subsequent decision of the Apex Court in the case of Corporation Bank v. D. S. Gowda, . The Supreme Court has passed a common judgment in respect of the two appeals. We are only concerned with the appeal in Gowda's case since the other case pertains to agricultural loans with which we are not concerned. 22-23. In D. S. Gowda's case we get the facts in para 5 of the reported judgment. There also plaintiff-bank had claimed the principal amount of Rs. 5 lacs with interest at quarterly rests. The total amount accrued with interest comes to Rs. 7 lacs and odd. The Supreme Court approved a passage from Halsbury's Laws of England in para 14 of the judgment where it has been mentioned that it is the bankers practice where the interest is charged on half yearly basis and then interest is added to the principal in which case it loses its quality of interest and becomes capital. In fact, the trial Court rejected the entire defence and decreed the suit as follows: "Future interest was allowed under S. 34 of the Code of Civil Procedure at 16.5% on the sum decreed, i.e., Rs. 7,56,934.17." was the last sentence in para 15 of the judgment. The Division Bench of the Karnataka High Court as aside the decree of the trial Court and remanded the suit with certain directions. The Bank carried the matter in appeal before the Apex Court. The Apex Court held that in commercial transactions, the Bank has a right to charge interest at quarterly rests, half yearly rests or yearly rests following the Reserve Bank of India's guidelines. We are not concerned with the observations of the Apex Court regarding agricultural loans since it is not relevant for our present purpose. Then ultimately, the appeal filed by the Corporation Bank was allowed and the decision of the High Court was set aside and the decree passed by the trail Court was restored but the rate of current interest was reduced to 12.5% per annum. We have already seen that the trial Court in it's decree had granted 16.5% interest on the entire amount decreed which included the principal and interest. The Supreme Court confirmed the same but only reduced the rate of current interest. In other words the Apex Court has approved that the bankers can charge current interest on the entire decreed amount without making any difference between the principal and the accrued interest. That is because the Apex Court has treated the accrued interest having merged in the principal amount from time to time, in the light of the Apex Court decision the plaintiff is entitled to current interest on the entire amount claimed in the plaint. I have also come across another unreported judgment of the Apex Court dated 21st September 1994 in Civil Appeal No. 2785 of 1987 in the case of Bank of Baroda v. M/s. Jagannath Pigment and Chemical. It is interesting to note that this appeal arises out of the decision of the Bombay High Court and further Full Bench of this Court relied on the earlier decision of the Bombay High Court in M/s. Jagannath Pigment and Chemical's case. But the decision in M/s. Jagan-

nath Pigment's case has been overruled by Apex Court in the said unreported judgment by relying on the earlier decision judgment by Court in D. S. Gowda's case which I have referred to earlier. The Bombay High Court had taken a view that current interest has to be allowed only on the original principal amount and not on compounded principal. That is the view of the Full Bench also. However, the Apex Court in the said unreported judgment has reversed the view of the Bombay High Court and thereby upheld the Bank's claim for interest on the compounded principal as on the date of suit and not on the original principal amount lent. This decision also fortifies the view taken by me that the current interest should be granted on the compounded principal claimed in the plaint and not on the original principal sum lent. 24. Now remains the question as to what is the rate of current interest which should be granted under S. 34 of the Code of Civil Procedure. Normally, the plaintiff is entitled to current interest not exceeding 6%. However, in case of commercial transactions, the Court has a discretion to grant current interest in excess of 6%. In the present case, the plaintiff-bank has claimed current interest at 15% per annum on the amount claimed in the plaint. It is in evidence that the original managing partner who is the brother of the second defendant has died. The business has been closed. In the circumstances, I feel that the defendant should be given some relief in the rate of current interest. Having regard to the facts and circumstances of the case and the long duration form the date of loan till now and the closure of business of the defendant, I feel that current interest at 12% would be just and reasonable. 25. At this stage, the learned counsel for defendants makes a request that defendants can be granted 36 equal monthly instalments for paying the decree amount. The learned counsel for the plaintiff seriously opposed granting of any instalments to the defendants. After hearing both the sides, I feel that the defendants should be given some reasonable instalments and the interest of the plaintiff can be safeguarded by providing for default clause so that if there are defaults, the plaintiff can immediately execute the decree for the entire decree amount. 26. In the result, the suit is decreed with costs as prayed for in prayer clauses (a) to (d) and (k) except regarding the rate of current interest. Current interest is allowed on the decreed amount at the rate of 12% from the date of suit till the date of payment. The plaintiff shall give deduction to Rs. 47,519/- which is realised from the sale of pledged goods. The entire amount with current interest as on today shall be payable by the defendants with 24 equal monthly instalments with the double default clause. The first instalment shall be paid on or before 10th February 1997. Subsequent instalments shall be paid on or before 10th of each month. In case of two defaults, the entire balance amount shall become due at once and the plaintiff is entitled to execute the decree to recover the same. Certified copy of this judgment be issued expeditiously. Suit decreed.