2022 PLRonline 0594, Guru Nanak Engineering Works v. Reserve Bank of India

EDITORS NOTE: see Supreme Court Order

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sections 17 and 13(3) – Writ – Maintainability of – Alternative remedy under the SARFAESI Act, 2002 – Admittedly, no proceeding under Section 13(4) of the Act has been initiated by the Bank till date – Unless such measures are initiated, the petitioner cannot avail the remedy under Section 17 of the Act. [Para 48]

Banking – Interest – Charging of – Charging of interest by a Bank from a borrower must be in a transparent manner and when the same is challenged, the Bank cannot give a vague reply saying it acted according to it's internal norms and guidelines without placing them on record – It has to file a statement of account showing details and giving particulars of debit entries, and if debit entry relates to interest, it is obligated to set out also the rate of, and the period for which, the interest has been charged – If it does not choose to reveal the basis on which it was charging a particular rate of interest, and does not rebut the material placed on record by the petitioner/borrower, an adverse inference has to be drawn against it that it is acting arbitrarily and whimsically and in violation of Article 14 of the Constitution of India.. [Para 51, 52]

Banking Regulation Act, 1949 Sections 21 and 35A – Overcharging of interest by Bank – From 16.11.2017, on the direction of the Banking Ombudsman given on 09.11.2017, the interest rate was shifted to the MCLR system, and the effective rate of interest was made 11.05% – Bank informed the petitioner that the Base Rate was 10.75% as on 01.04.2016, but later, the Base Rate was shown as 9.6% on 01.04.2016, and the effective rate was increased to 12.1% for the period 01.04.2016 to 31.03.2017 – The petitioner alleged that a higher rate of interest was being charged, even though the Base Lending Rate remained constant at 10.75% – The Bank's denial of this allegation in its reply does not appear to be bonafide – The petitioner is a MSME Unit, and the Bank has not explained on what basis a higher rate of interest at 16% can be levied on it since it is an MSME – The Bank admitted in letter dt.16.11.2017 that it had converted the petitioner's CC limit to the MSME category – It had also reversed the penal interest charges and refunded 1,75,869.39 ps for the last 3 years, which amounts to an admission that it was charging interest not permissible for it to charge as per law. [Para 57 to 62]

Banking Regulation Act, 1949 Sections 21 and 35A – NPA – Non Performing Asset – As per the Master Circular dt. 01.07.2015 issued by the RBI dealing with the

Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, “an asset would become as NPA only if interest and/or installment of Principal remain overdue for a period of more than 90 days in respect of the term loan.” (Clause 2.1.2), and in regard to the CC Limit, “an account would be treated as ‘out of order’ if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power for 90 days.” (Clause 2.2.) – When the sanction to the petitioner of the CC limit was 30 Lakhs, and as per the statement, it was not overdrawn and remained below 30 Lakhs, respondent-Bank has not explained how in violation of the Master Circular it had classified the loan account of the petitioner as NPA. [Para 66 and 67]

Banking Regulation Act, 1949 Sections 21 and 35A – RBI circulars – Circulars of the RBI are binding on the Bank under Section 21 and 35A of the Banking Regulations Act, 1949. [Para 68]

Banking – NPA – Clause 4.2.5 of the RBI Master Circular dt.01.07.2015 states that “if arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non performing and may be classified as ‘standard’ accounts.” – Rs. 8 Lakhs was paid after the loan account of the petitioner is declared as NPA on 28.08.2019, and after the notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 16.09.2019. – When such substantial payment of 8 Lakhs was received by the Bank between 16.09.2019 and 05.08.2020, amounting to 8 Lakhs, how it can retain the loan account of the petitioner as NPA even thereafter, and even file an OA on 29.08.2020 – A further sum of 10 Lakhs before 21.12.2020 as per the directions given by this Court on 19.11.2020, and if this amount is added to 8 Lakhs already paid, it would indicate that more than substantial payments have been received by the Bank from the petitioner – The silence of bank on these aspects suggests that it has no answer to the contentions raised by the petitioner, and that it has acted malafide, and had wrongly classified the loan account of the petitioner as NPA on 28.08.2019, and commenced proceedings under the SARFAESI Act, 2002 by issuing notice under Section 13(2) on 16.09.2019, which action cannot be sustained – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. [Para 69 to 75]

2022 PLRonline 0594, **Guru Nanak Engineering Works v. Reserve Bank of India**

PUNJAB AND HARYANA HIGH COURT

(DB)

Before:- M.S. Ramachandra Rao and Harminder Singh Madaan, JJ.

Guru Nanak Engineering Works – Petitioner

Versus

Reserve Bank of India and ors. – Respondents

CWP No. 19472 of 2020 (O&M).

09.08.2022 .

Cases Referred :-

1.Central Bank of India v. Ravindra (2002) 1 SCC 367 at 403
2.Corporation Bank v. D.S. Gowda (1994) 5 SCC 213 at 236

For the Petitioner:- Mr. Chanchal K. Singla, Advocate.

For the Respondent Nos. 2, 3, 5 to 8:- Ms. Rajni Narula with Mr. Alankar Narula, Advocates.

For the UOI/Respondent No. 4:- Mr. Karan Kumar Jund, Central Government Counsel.

JUDGMENT

M.S. Ramachandra Rao, J. – Background facts

The petitioner is a MSME Unit registered with Ministry of MSME, Government of India vide Udyog Adhaar No. 825467027442 vide Registration Certificate dt.20.04.1999. It is a sole proprietary concern engaged in the business of manufacturing of agricultural equipments/ construction equipments/road sweeper machines.

2. Respondent No.3 Bank (for short 'the Bank') had extended facilities to the petitioner since 2006 in the form of Cash Credit/Agricultural Limit vide Annexure P-3 amounting to 30 Lakhs @ interest rate of Basic Prime Lending Rate (BPLR) plus Term Premia which was 11.25% at the time of sanction of the said Limit.

3. The said Limit was provided by the Bank against the primary security of hypothecation of the fixed assets of the petitioner amounting to 4.88 Lakhs at the time of sanction of the limit, and closing stock of machinery of 40 Lakhs. Two collateral securities of constructed factory land and building measuring 4 Kanals, and another measuring 2 Kanals, 15 Marlas, were also furnished by the petitioner.

4. It is the contention of the petitioner that the Bank was not providing documents relating to rate of interest it charged, and trusting the Bank, whatever demands were raised, the

petitioner was paying the same.

5. According to the petitioner, interest rate kept varying from 11.25% to 16%, and the Bank was not providing any information to the petitioner on what basis such interest was being levied, and so it stopped dealing with the Bank for some time.

6. The petitioner was served with a demand notice dt.29.04.2015 (Annexure P-4) issued under Section 13(2) of the SARFAESI Act, 2002 demanding 46,93,061/- in which it was informed that it's account was classified as Non Performing Asset (NPA) on 31.03.2015.

7. Vide Annexure P-5 application dt.04.05.2015 filed under Right to Information Act, 2005, the petitioner asked the Bank for relevant documents showing how the interest is overdue against it. It also sought copies of the sanction letter and all loan documents which had been got executed by its proprietor, the rate of interest charged from the petitioner, the account statement from the year 2006 to 31.03.2015, details of OTS Scheme, rate of interest applicable to agricultural loans, and rests applicable to such loans.

8. On 11.05.2015, the petitioner also replied to the notice dt.29.04.2015 issued to him under Section 13(2) of the Act stating that for the previous 9 years, high rate of interest was being charged by the Bank. It demanded reversal of the excess interest charged and it wanted to regularize the account after settlement of the dues.

9. The Bank replied on 14.05.2015 and contended that the loan was sanctioned under SSI Category and not as Special Agricultural Loan as claimed by the petitioner, that the rate of interest applicable at the time of sanction of the facility was 11.25% subject to change from time to time with the RBI guidelines, and the petitioner had never complained of the same in the past and is raising this issue only now.

10. Petitioner replied on 15.05.2015 reiterating its complaint about charging of excessive interest, and expressing its willingness to regularize the account, and asked the Bank to reverse the excess interest claimed and disclose the exact overdue amount to the petitioner so that it can deposit the same.

11. On 16.05.2015, the Bank wrote to the petitioner that the OTS amount of 33 Lakhs offered by the petitioner is on lower side, and the petitioner should improve the same so that it can be considered by the competent authority.

12. The petitioner then sought a meeting with the Circle Head or AGM of the Bank through a letter dt.26.05.2015, and in that meeting petitioner alleges that it was asked to deposit 8-10 Lakhs in the Bank, and the Bank would then regularize the account and would consider refunding the excess compound interest in penal charges levied upon the petitioner.

13. The petitioner then deposited 4 Lakhs on 02.06.2015 and 5 Lakhs on 09.06.2015.

14. The petitioner addressed another letter on 22.06.2015, undertaking to deposit further amount of 2,50,000/- in July-2015, 3 Lakhs in August-2015 and another sum of 3 Lakhs in September-2015.

15. The Bank then wrote a letter on 29.06.2015 assuring to upgrade the accounts of the petitioner before September-2015, and threatening to proceed under the SARFAESI Act, 2002 if petitioner does not make the promised payments.

16. The Bank also wrote a letter dt.07.09.2015 (Annexure P-19) informing petitioner that current interest rate charged on the account of the petitioner was 16% due to non-financial irregularity, that petitioner's account was charged with rate of interest between 12.50% to 14% as per SME Score, and correction will be carried out in the account w.e.f. 01.04.2014 till date.

17. According to the petitioner, the Bank was charging 16% rate of interest, and in addition thereto, a further 2% penal interest up to 22.04.2014 though the Base Lending Rate remained the same (i.e. 10.75%) and it was the same rate as was on the date of the sanction of the CC Limit.

18. The petitioner contends that the interest could not have been charged more than the Base Lending Rate because though it was variable, it had not changed in the period upto 2014 and was constant.

19. The petitioner then made a complaint to the Banking Ombudsman, Chandigarh on 26.09.2015, but the latter closed the complaint giving petitioner the liberty to proceed before any Forum in regard to the allegation of charging of higher rate of interest by the Bank. He also opined that the interest was charged by the Bank as per the internal guidelines of the Bank but did not give any reasons for this conclusion.

20. Thereafter, a certificate dt.04.11.2016 (Annexure P-23) was given by the Bank to the petitioner stating that the loan account of the petitioner was working satisfactorily, that it was an Agricultural Cash Credit Limit given for the purpose of manufacturing agriculture equipments, and the present rate of interest charged by the Bank is 12.50% (simple interest)

21. In spite of exchange of further correspondences, since the Bank was not giving any information about the basis on which the interest at higher rate was being charged from the petitioner, the petitioner filed another application under the RTI Act, 2005 again on 31.05.2017 (Annexure P-29).

22. The Bank vide letter dt.08.06.2017 then supplied a copy of the sanction letter reiterating that rate of interest charged on the account is on monthly basis, and stating that penal interest charged in the CC account is 2% over and above the applied rate of interest of 11.25%, and the CC Limit was financed under the SSI category. No calculation was furnished to the petitioner as to how much interest was overcharged.

23. The petitioner again approached the Banking Ombudsman on 21.08.2017 regarding the overcharging of interest.

24. Thereafter, on the advice of the Ombudsman, penal interest of 1,75,869.39 ps. for three years from 01.04.2014 to 31.03.2017 was refunded to the petitioner by the Bank.

25. Vide Annexure P32 dt.16.11.2017, the Bank informed the petitioner that the Bank had converted the CC limit into MSME category and further interest in the account will be charged on monthly basis as per the Bank's guidelines for MSME Advances; that this requires charging and recovering interest from 1.4.2017 to 31.10.2017 which comes to 2,38,447/-; and the interest rate has been shifted to MCLR system (Marginal Cost of Lending Rate System) rather than BPLR (Basic Prime Lending Rate System). It was also informed that the current MCLR effective rate of interest was 11.05%.

26. The petitioner wrote to the Assistant Secretary, Reserve Bank of India, Office of the Banking Ombudsman, Chandigarh, stating that the amount refunded was low, and that actual overcharged amount was higher.

27. In the meantime, the Bank also refused to renew the CC Limit of the petitioner vide letter dt.31.08.2018 (Annexure P-46) on the ground that the petitioner and his brothers had a partition through a decree dt. 2.05.2015 passed by the Civil Court in Civil Suit No.85 of 2013 without obtaining permission from the Bank. The Bank contended that the secured assets have been jointly given as security not only as loan to the petitioner, but also to his two brothers, and the petitioner and his brothers should first adjust all the three accounts, and then apply for the sanction of fresh facilities separately by offering separate securities, and the same would be considered on merits; and since the petitioner did not do so, it's working capital facilities will not be renewed.

28. The petitioner got issued a legal notice dt.29.09.2018 (Annexure P-47), but the Bank did not give reply to the said legal notice.

29. Thereafter, the Bank got issued a legal notice dt.08.04.2019 to the petitioner demanding 29,12,702.08 ps. as pending dues against the account of the petitioner.

30. The petitioner replied to the same, and reiterated its charge of the Bank overcharging interest.

31. According to the petitioner, when he visited the Branch of the Bank on 09.05.2019 to get the "Bankers Credit Report" requested vide letter dt.04.05.2019, the Branch Manager of the said Branch at Ludhiana asked the petitioner allegedly to sign a document saying that he was satisfied regarding issue of charging of interest rate, but the petitioner did not do so, and the Branch Manager then abused and manhandled him and so the petitioner also filed a complaint on 10.05.2019 (Annexure P-55) against the said Branch Manager to the Police Commissioner, Ludhiana.

32. The Bank then issued a letter dt.11.07.2019 demanding 28,83,124.08 ps. from the petitioner, and sent a fresh notice dt.16.09.2019 under Section 13(2) of the SARFAESI Act, 2002 alleging that the petitioner's CC account was classified as an NPA on 28.08.2019. The petitioner filed objections thereto on 06.11.2019, but the same was rejected by the Bank on 27.11.2019.

33. According to the petitioner, it had deposited, even after issuance of notice under Section 13(2) of the SARFAESI Act, 2002 dt.16.09.2019, substantial amounts, and by

09.09.2020, outstanding amount was reduced to Rs. 20,15,865.08 ps.

34. The petitioner alleges that this amount is less than the amount overcharged by the Bank from the petitioner which comes to 20,70,941.85 ps. as per the certificate issued by the Chartered Accountants employed by the petitioner who had calculated the excess amount of the interest charged as 20,70,941.85 ps.

Prayer in the W.P.

35. The petitioner, therefore, seeks for quashing of the notice dt.16.09.2019 (Annexure P-57) issued to it under Section 13(2) of the SARFAESI Act, 2002, and seeks issuance of a Writ in the nature of Mandamus directing the respondents No.2 and 3 to refund 20,70,941.85 ps. on account of extra interest charged by respondents No.2 and 3. It also seeks a direction to classify the account of the petitioner as “Standard” and inform the same to the CIBIL regarding the genuineness of account of the petitioner and to enable the petitioner to get credit report corrected. It also seeks damages of 1 Crore for fraud, harassment and business malpractices.

Reply Filed by the Respondent-Bank

36. The reply is filed on behalf of respondents No.2, 3, 5 to 8 contending that the petitioner has an efficacious alternate remedy under Section 17 of the SARFAESI Act, 2002 and so, this Writ Petition is not maintainable.

37. It is contended that the petitioner is unnecessarily raising the issue of alleged charging of excessive rate of interest, and wants to delay the recovery proceedings initiated by the Bank.

38. While admitting that the CC Limit was sanctioned to the petitioner on 10.03.2006 vide (Annexure P-3) for 30 Lakhs, it is stated that property jointly owned by the proprietor of petitioner and his two brothers and their wives it was given as security by deposit of title deeds.

39. It is also contended that the properties mortgaged with respondent-Bank was by way of extension as the same was already lying mortgaged by the co-owners who availed loans in 2004 in the names of M/s Sokhi Engineering Works and M/s Pyara Singh and Sons. (entities owned and run by brothers of petitioner’s proprietor).

40. It claimed that the loan account of the petitioner initially became irregular in 2009, and had been declared as NPA at least 5 times i.e. 04.10.2010, 27.04.2015, 08.04.2016, 14.07.2016 and 28.08.2019 and recall notices as well as notices under Section 13(2) of the SARFAESI Act, 2002 were issued on 29.04.2015 and 16.09.2019.

41. It is contended that the petitioner was in habit of leveling false allegations of charging of excessive rate of interest though the Bank had charged the interest strictly as per guidelines issued by the Reserve Bank of India/Head Office from time to time.

42. According to the Bank, the rate of interest was subject to change from time to time as per the terms and conditions of the sanction letter.

43. It is also contended that it had filed OA No.76 of 2021 before the DRT-III, Chandigarh on 30.08.2020 seeking recovery of 29,93,753/- outstanding as on 24.08.2020 and the same is pending.

44. It is contended that despite mortgaging the properties, the petitioner connived with its co-owners/other mortgagors and got them partitioned by obtaining a decree dt.02.05.2015 (Annexure P-43) from the Civil Court, Samrala. According to Bank, the petitioner had concealed the factum of creation of equitable mortgage in favour of the Bank in the civil suit and the Bank was also not impleaded in the said suit. According to the Bank, this was done to create the legal hurdles.

45. It is also contended that the one guarantor, by name Sukhdev Kaur died in the year 2010, but this was disclosed to it only on 22.04.2019. It contended that the petitioner was under legal obligation to execute fresh documents along with guarantee deed immediately after the death of Sukhdev Kaur, but the petitioner did not even inform the Bank with ulterior motive.

46. It contended that the petitioner raised the issue of the Bank charging excessive interest before the Banking Ombudsman several times, but the latter did not interfere with the same, and stated that interest was charged as per internal guidelines. It contended that the petitioner cannot dictate to the Bank as per his own calculations qua interest based upon the calculations made by his private Chartered Accounts, which is not permissible.

47. Counsel for the respective parties reiterated their respective contentions.

Consideration by the Court

48. Firstly, as regards the contention of the Bank that the petitioner should avail alternative remedy under the SARFAESI Act, 2002 is concerned, admittedly, no proceeding under Section 13(4) of the Act has been initiated by the Bank till date. Unless such measures are initiated, the petitioner cannot avail the remedy under Section 17 of the Act. Therefore, there is no substance in the said contention raised by the Bank.

49. The Supreme Court in ***Corporation Bank v. D.S. Gowda (1994) 5 SCC 213, at page 236***, held that if, in any case, it is proved that the interest charged by Banks on loans advanced is not in conformity with the rate prescribed by the Reserve Bank, then the Court could disallow such excess interest and give relief to the party notwithstanding the provisions of Section 21-A of the Banking Regulation Act,1949. It also held that Banks are bound to follow the directives or circulars issued by the Reserve Bank prescribing the structure of interest to be charged on loans and any interest charged by banks in excess of the prescribed limit would be illegal and void.

50. This decision was approved in ***Central Bank of India v. Ravindra (2002) 1 SCC 367, at page 403*** and it was directed as under:,

“56. In view of the law having been settled with this judgment, it is expected henceforth from the banks, bound by the directives of the Reserve Bank of India, to make an averment in the plaint that interest/compound interest has been charged at such rates, and capitalised at such periodical rests, as are permitted by, and do not run counter to, the directives of the Reserve Bank of India. A statement of account shall be filed in the court showing details and giving particulars of debit entries, and if debit entry relates to interest then setting out also the rate of, and the period for which, the interest has been charged. On the court being prima facie satisfied, if a dispute is raised in that regard, of the permissibility of debits, the onus would be on the borrower to show why the amount of debit balance appearing at the foot of the account and claimed as principal sum cannot be so accepted and adjudged. This practice would narrow down the scope of controversy in suits filed by banking institutions and enable an expeditious disposal of the suits, the issues wherein are by and large capable of being determined by documentary evidence. RBI directives have not only statutory flavour, any contravention thereof or any default in compliance therewith is punishable under sub-section (4) of section 46 of Banking Regulation Act, 1949. The court can act on an assumption that transactions or dealings have taken place and accounts maintained by banks in conformity with RBI directives.”

(Emphasis Supplied)

51. Thus charging of interest by a Bank from a borrower must be in a transparent manner and when the same is challenged, the Bank cannot give a vague reply saying it acted according to it’s internal norms and guidelines without placing them on record. It has to file a statement of account showing details and giving particulars of debit entries, and if debit entry relates to interest, it is obligated to set out also the rate of, and the period for which, the interest has been charged.

52. If it does not choose to reveal the basis on which it was charging a particular rate of interest, and does not rebut the material placed on record by the petitioner/borrower, an adverse inference has to be drawn against it that it is acting arbitrarily and whimsically and in violation of Article 14 of the Constitution of India.

53. Sadly, in the instant case the Bank has not complied with the directive of the Supreme Court issued in Central Bank Of India case (2 supra) referred to above. It merely filed a short reply and has tried to get away by making a bald statement that it was levying interest as per RBI circulars/it’s norms.

54. From the sanction letter (Annexure P-3) issued to the petitioner on 10.03.2006 the rate of interest is mentioned as “BPLR + Term Premia (Presently 11.25%) as per the L&A Cir. No.126/03, Subject to change from time to time as per RBI/HO Guidelines.”

55. It is not disputed that the Benchmark Prime Lending Rate is a variable factor, and the term “Premia” is premium obtained over and above the lending rate on account of the long term locking of capital and it remains more or less constant. Thus, BPLR is a determining factor in calculation of the effective rate of interest. This was replaced with the Base Lending Rate system in 2010.

56. The petitioner has placed on record Annexure P-62, “Interest Detail Enquiry Rates” issued to it by the Bank for the period w.e.f.10.03.2006 to 01.09.2016 on the direction of the Banking Ombudsman. This clearly reveals that the Base Rate remained at 10.75% from 2006 to 2016, but the interest charged for petitioner’s CC limit was increased to 11.25% on 10.03.2006; 12% on 01.08.2006; 12.25% on 01.01.2007; 12.75% on 15.02.2007; 14.25% on 01.04.2007; 15% on 16.04.2007; 16% on 1.08.2008. It is for the respondent-Bank to satisfy this Court on what basis such interest was charged when there is no change in the benchmark Prime Lending Rate or in the Base Lending Rate. It has chosen not to do so.

57. Only from 16.11.2017, on the direction of the Banking Ombudsman given on 09.11.2017, interest rate was shifted to the MCLR system, and the effective rate of interest was made 11.05%.

58. In Annexure P-62 the “Interest Details Enquiry Rates” statement, the Bank had informed the petitioner that the Base Rate was 10.75% as on 01.04.2016, but in Annexure P-63 statement for the period 01.04.2016 to 31.03.2017, the Base Rate was shown as 9.6% on 01.04.2016, but the effective rate was increased to 12.1%.

59. When a specific allegation was made by the petitioner in Para 17 that higher rate of interest was being charged though the Base Lending Rate remained constant at 10.75%, there is only a bare denial by the Bank in Para 5 of its reply, and the said denial does not appear to be bonafide having regard to the Annexures P-62 and P-63 referred to above.

60. The petitioner is a MSME Unit, and petitioner has filed its registration as MSME as Annexure P-1, and its registration under GST Act as Annexure P-66. Whether such higher rate of interest at 16% can be levied on it since it is an MSME and if so on what basis, is also not explained by the Bank.

61. Vide Annexure P-32 letter dt.16.11.2017, the Bank itself admitted that it had converted the petitioner’s CC limit to MSME category. It had also reversed the penal interest charges and refunded 1,75,869.39 ps for the last 3 years and mentioned this fact also in the same letter.

62. This conduct amounts to an admission by it that it was charging interest not permissible for it to charge as per law.

The aspect of malafides

63. The petitioner had admittedly given Annexure P-55 complaint on 10.05.2019 against the Branch Manager of the respondent-Bank at Ludhiana alleging that he was being fraudulently made to sign certain documents saying that he had no complaint about excessive charging of interest, and when he refused to do so, he was abused and insulted by the said Branch Manager.

64. According to the petitioner, shortly thereafter, the loan account of the petitioner was recalled vide annexure P-56 dt.11.07.2019, and the petitioner was asked to deposit a sum of 28,83,124.08 with interest upto 30.06.2019, and on petitioners not complying with the

same, the loan account of the petitioner was declared as NPA on 28.08.2019 and notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 16.09.2019.

65. Annexure P-60 statement of account filed by the petitioner shows that the petitioner had made deposits of 35,000/- on 02.05.2019, 45,000/- on 29.05.2019, 10,000/- on 29.06.2019 and 35,000/- on 31.07.2019 in the period of 90 days preceding the date of declaration of the petitioner's loan account as NPA on 28.08.2019.

66. As per the Master Circular dt. 01.07.2015 issued by the RBI dealing with the Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, "an asset would become as NPA only if interest and/or installment of Principal remain overdue for a period of more than 90 days in respect of the term loan." (Clause 2.1.2), and in regard to the CC Limit, "an account would be treated as 'out of order' if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power for 90 days." (Clause 2.2.).

67. When the sanction to the petitioner of the CC limit was 30 Lakhs, and as per the Annexure P-60 statement, it was not overdrawn and remained below 30 Lakhs, respondent-Bank has not explained how in violation of the Master Circular it had classified the loan account of the petitioner as NPA.

68. Admittedly, such circulars of the RBI are binding on the Bank under Section 21 and 35A of the Banking Regulations Act, 1949, as declared in the decision of the Supreme Court in Central Bank of India (2 supra), but no such explanation is given in the reply on these aspects.

69. The petitioner had even claimed in Para 51 that about 8 Lakhs was paid after the loan account of the petitioner is declared as NPA on 28.08.2019, and after the notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 16.09.2019.

70. There is no denial to the same in the reply also.

71. Clause 4.2.5 of the RBI Master Circular dt.01.07.2015 states that "if arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non performing and may be classified as 'standard' accounts."

72. When such substantial payment of 8 Lakhs was received by the Bank between 16.09.2019 and 05.08.2020, amounting to 8 Lakhs, how it can retain the loan account of the petitioner as NPA even thereafter, and even file an OA No.76 of 2021 on 29.08.2020, insisting that CC Limit sanction to the petitioner as NPA, is wholly inexplicable.

73. We may also state that after this Writ Petition was filed, the petitioner had deposited a further sum of 10 Lakhs before 21.12.2020 as per the directions given by this Court on 19.11.2020, and if this amount is added to 8 Lakhs already paid, it would indicate that more than substantial payments have been received by the Bank from the petitioner.

74. Yet it chooses to file only a short reply without adverting to any of these aspects on 22.02.2022.

75. The silence of respondent No.2 on these aspects suggests that it has no answer to the contentions raised by the petitioner, and that it has acted malafide, and had wrongly classified the loan account of the petitioner as NPA on 28.08.2019, and commenced proceedings under the SARFAESI Act, 2002 by issuing notice under Section 13(2) on 16.09.2019, which action cannot be sustained.

76. Counsel for the respondent-Bank also complained about the partition in the family of the petitioner and his brothers, and sought to justify the action of the Bank on the said grounds.

77. As already stated above, the Civil Court had granted a decree for partition of the secured properties in Civil Suit No. 85 of 2013 on 02.05.2015.

78. Admittedly, in the Civil Suit, the Bank was not a party, but information about the partition was given by the petitioner to the Bank vide Annexure P-44 on 12.09.2015 by enclosing the legal opinion, evaluation reports and maps of the individual properties of himself and his brothers.

79. Thereafter, the Bank on 04.11.2016, itself had certified that the petitioners CC limit account was working satisfactorily.

80. For the first time on 31.08.2018, more than 3 years after the partition, this issue about partition was mentioned by the Bank in Annexure P-46 letter dt.31.08.2018 alleging that it’s permission was not obtained and that there is a fraud.

81. The Bank then waited for a further period upto 11.07.2019 for issuing loan recall letter (Annexure P-56).

82. Even in the notice dt. 16.09.2019 (Annexure P-57), there is no reference to this ground of partition at all, and the reason assigned therein was that there was ‘non-payment of installment/interest/principal debt’ because of which petitioner’s loan account was classified as NPA.

83. Therefore, even the stand taken now by the Bank about the partition of the properties mortgaged to it by the petitioner and his brothers without its permission, appears to be clearly an afterthought to oppose the claim of the petitioner and is not bonafide.

84. In its reply dt 07.09.2019 to the notice under Section 13(2) of the SARFAESI Act, 2002 issued by the Bank, the petitioner had specifically raised the issue of overcharging of interest, and about the loan account being wrongly classified as NPA as per the Master Circular of the RBI dt. 01.01.2019 (Annexure P-19) with regard to the restructuring of the advances made to the MSME, but in the response Annexure P-59 dt.27.11.2019 issued by the Bank, it did not even refer to the RBI circular and did not explain why the relief of restructuring was denied to petitioner.

85. In the facts of the case, we do not see that any prejudice was caused to it on account of the death of the guarantor Sukhdev Kaur in 2010.

86. As admittedly 18 Lakhs have been paid to it by the petitioner as mentioned above, it is the duty of the Bank to withdraw the notice dt.16.09.2019 issued by it under Section 13(2) of the Act, cancel the classification of the petitioner's loan account as NPA, reclassify it as "standard", and inform the CIBIL about it. It also cannot deny restructuring to the petitioner as per the RBI Master Circular dt. 01.09.2019.

87. Since the stand of the petitioner is that the Bank had already charged 20,70,941.85 between the period 2006 to 2020 as per the CA certificate Annexure P-61 dt.15.09.2020 reflecting the excess interest charged by the petitioner upto that date, and the Bank has not shown how it is justified in charging interest at 16% + 2% penal interest, and we are satisfied that petitioner was overcharged interest by the Bank, it is held that the said sum of 20,70,941.85 ps. was wrongly and excessively charged from the petitioner by the respondent-Bank without authority to do so, and the Bank is directed to adjust the same against the outstanding amount claimed by it within a period of four weeks from the date of receipt of certified copy of this order.

88. Accordingly, Writ Petition is allowed; notice issued under Section 13(2) of the SARFAESI Act, 2002 dt. 16.09.2019 to the petitioner is set aside; the declaration of the petitioner's loan account as NPA on 28.08.2019 is also set aside; the respondents are directed to classify the account of the petitioner as "standard" and inform the CIBIL accordingly; sum of 20,70,941.85 ps. is held to have been wrongly and excessively charged from the petitioner by the respondent-Bank without authority to do so, and the Bank is directed to adjust the same against the outstanding amount claimed by it within a period of four weeks from the date of receipt of certified copy of this order.

89. The Bank is also directed to pay costs of 1,00,000/- to the petitioner in 4 weeks.

90. Pending application(s), if any, shall also stand disposed of.