

HIGH COURT OF MADHYA PRADESH BENCH AT

GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL NO.1632/2024

M/S Balaji Dal Mill

Vs.

State Bank of India and Others

&

WRIT APPEAL NO.1640/2024

M/S Balaji Food Products

Vs.

State Bank of India and Others

Shri Vashistha Narayan Dubey and Shri Maroof Ullah Siddiqui –

Advocates for the appellant.

Shri Sameer Kumar Shrivastava – Advocate for the respondents.

Judgment

(Delivered on 21st day of January, 2025)

1. Heard on I.A. No.6966/2024 and I.A. No.6970/2024, applications under Section 5 of the Limitation Act.

2. As per office note, Writ Appeal No.1632/2024 is barred by 280

days and writ appeal No.1640/2024 is barred by 285 days.

3. On due consideration, looking the reasons assigned therein and in the interest of justice, both the I.As. are allowed. Delay in filing the appeals is hereby condoned.

4. I.As. stand closed.

5. Regard being had to similitude of the dispute, both the appeals are heard analogously and decided by a common judgment. For factual clarity, facts of Writ Appeal No.1640/2024 are taken into consideration.

6. The instant writ appeal under Section 2(1) of the Madhya Pradesh Uchha Nyaylaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 is filed challenging the order dated 12th July, 2023 passed by the learned Single Judge in Writ Petition No.3592/2022 whereby writ petition preferred by the appellant as petitioner was dismissed.

7. Brief facts of the case are that the appellant/petitioner i.e. M/s Balaji Food Products (hereinafter referred as appellant) is a partnership firm registered under the Indian Partnership Act, 1932 as well as registered as a Micro Small and Medium Enterprise under the MSME Act, 2006.

8. The appellant has availed Cash Credit Limit in terms of Working Capital limits of Rs.4,75,00,000/- (Rupees Four Crores and 75 Lacs only) from the Respondent/Bank, which was sanctioned through a letter of arrangement dated 17.05.2017. Due to outbreak of pandemic of Covid-19, various businesses were affected and looking to the financial hardships, the respondent/Bank (in pursuance to Emergency Credit Line extended to MSME borrowers, by Government of India) had announced a Covid-19

related scheme, which was termed as CCECL (Common Covid Emergency Credit Line) to help certain businesses and MSMEs to continue uninterrupted and effortless functioning of their business, for which unconditional and irrevocable guarantee was provided by the Government of India in respect of such facilities.

9. The appellant being an MSME approached to the Respondent/Bank vide letter dated 21.04.2020 for availing of additional 10% CC Limit under the scheme from its existing limit of Rs.4.75 Crores to Rs.5.30 Cores and availed such additional credit facilities from the Respondent/Bank.

10. Thereafter, as submitted the appellant further approached for sanctioning of additional 20% of the limit under Common Covid-19 Emergency Credit Line (as per the scheme as extended by the Government of India) vide its letter dated 30.05.2020 and accordingly the Respondent/Bank had extended the limit of the borrower with additional limit of Rs.89 Lakhs under the GCL scheme on 02.06.2020 and for the same the appellant was asked to extend the security in respect of mortgage of immovable properties created in favour of the Respondent/Bank and the registration in respect of the extension of such mortgage was done with the Sub-Registrar office, Morena under E-Registration bearing No.MP25792020A1409509 dated 20.07.2020.

11. Thereafter, as per allegations, Respondent/Bank started charging the interest more than the earlier sanctioned rate (i.e. interest rate @ 1.40% above bank MCLR as agreed, as per sanction letter dated 17.05.2017) and

as the appellant was perplexed with the action of the Respondent/Bank of charging hefty rates of interest in lieu of the CCECL Scheme, forced the appellant to approach the Respondent/Bank for repayment of outstanding loan amount vide its letter dated 14.01.2021 after making the arrangement from another bank (ICICI Bank). The appellant deposited the Banker's Cheque bearing No.011916 dated 22.01.2021 for Rs.4,79,11,549/- and another Banker's Cheque bearing No.011915 dated 22.01.2021 for Rs.38,80,341/- in respect of outstanding amount lying in Cash Credit Account and its first CCECL Account and further deposited another Banker's Cheque bearing No.011921 dated 27.01.2021 for Rs.89,00,000/- in respect of liquidation of dues of its second CCECL Account, but Respondent/Bank did not encash the bankers cheque till 28th January, 2021, aggrieved by such arbitrary approach of the Bank, the appellant vide its communication dated 28th January, 2021 showed its concern and requested for deposit of bankers cheques on 28th itself and release the property documents/security, apart from reversal of the interest charged by the bank in respect of such period. Upon request so made by the appellant, the respondent/Bank deposited the Bankers' Cheques for clearing only on 29th January, 2021 and charged interest on outstanding loan amount, which resulted into double jeopardy to the appellant in view of charging of interest on the loan amount by two banks.

12. The appellant vide its letter dated 04.02.2021 requested for reversal of interest for the said 7 days' period charged by the respondent/bank and when visited the Respondent/Bank on 08.02.2021 it was told by the concerned officials that the sanction letter dated 19.05.2020 issued by the

Respondent/Bank while extending the CCECL finance of Rs.45 Lakhs, contained the Clause of Pre-Payment charges of 2% of the Loan amount, which is required to be paid by the appellant over and above the interest of the loan amount.

13. The appellant vide its letter dated 10.02.2021 submitted that the loan under question is availed in pursuant to sanction letter of the Respondent/Bank dated 17.05.2017 and CCECL during the year 2020 was released by the bank in the line of the policy announced by the Government of India to support the MSME in view of the ongoing Covid-19 situation and since the sanction terms of the CC Limit as availed prior to availing of aforesaid CCECL, does not contain any such condition of pre-payment charges, hence the same cannot be imposed upon the appellant while releasing the CCECL. Further even otherwise levy of pre-payment charges on Cash Credit Account of the MSME, even on CCECL Account is not appropriate.

14. The Respondent/Bank allegedly vide its reply dated 10.02.2021 arbitrarily continued to justify its stand in respect of the pre-payment charges relying upon the clause of pre-payment charges appearing in their sanction letter dated 19.05.2020 issued by them while releasing the CCECL account. Thus, it was a case of arbitrary action on the part of the Respondent/Bank as initially they were charging rate of interest over and above the agreed sanction rate as per the sanction letter dated 17.05.2017, even after realization of proceeds on 30.01.2021, arbitrarily transferred the fund into TDR without any authorization from the appellant and thereafter again on 01.02.2021 got the TDR cancelled and credited it in

the loan account of the appellant and arbitrarily debited a sum of Rs.11,44,600/- on 25.02.2021 as pre-payment/foreclosure charges in addition to the arbitrary interest collected by the bank for the period of 7 days due to the reason of withholding of the bankers' cheque at their end.

15. Under such circumstances, appellant as petitioner has preferred the writ petition against alleged (as above) arbitrary action of the respondent/ Bank.

16. The learned Writ Court dismissed the writ petition filed by the petitioner/ appellant. Hence, appellant has preferred the writ appeal.

17. It is the submission of learned counsel for the appellant that appellant deposited Banker's Cheque on 22.01.2021 but respondent/ Bank did not put the said cheque for clearance till 28.01.2021 therefore, it was fault on the part of the respondent/ Bank and that too respondent/ Bank collected the interest for those seven days from the appellant, which is arbitrary and illegal. It is further submitted that without the instruction of the appellant transferred the fund into FDR and thereafter again cancelled the FDR and credited in the loan account of the appellant without any authority and knowledge of the appellant.

18. It is further argued that loan was availed to the appellant in pursuant to the sanction letter dated 17.05.2017 and CCECL was released by the respondent/ Bank during the year 2020 in the line of the policy announced by the Government of India in view of the ongoing Covid-19 situation and as the sanctioned CC limit was availed prior to CCECL, does not contain any such condition of pre-payment charges, hence same

cannot be imposed upon the appellant. Clause 3 of letter of arrangement dated 19.05.2020 in the table it is clearly specified under point (v) of the table of Enhanced Interest that Term Loan is not applicable upon the appellant. Clause 2 of the letter of arrangement dated 17.05.2017 itself reflects that the loan was repayable on demand on which respondent/Bank cannot charge pre-payment charges. So far as subsequent letter of arrangement dated 19.05.2020 is concerned, clause of pre-payment of charges does not apply to the appellant.

19. Learned counsel for the respondent/ Bank opposed the prayer and submits that while dismissing the writ petition, the learned Writ Court considered all the factual aspects in detail and thereafter passed the impugned order, hence no interference can be made out in the said order.

20. Heard the learned counsel for the parties and perused the record.

21. This is a case where petitioner as appellant has preferred this writ appeal against dismissal writ petition whereby he sought following reliefs:

“(i) Issue writ, order or direction in nature of mandamus or any other suitable writ declaring the actions of the Respondents as void and arbitrary.

(ii) The Respondents may kindly be directed to refund the amount unlawfully charged/usurped from the Petitioner.

(iii) Any other relief/direction which this Hon'ble Court may deem fit and proper may kindly be granted to the Petitioner.

a. Letter of Arrangement dated 17.05.2017 issued by the Respondent No.1 i.e.. State Bank of India, S.M.E Branch Through its Branch Manager.

- b. Letter dated 23.03.2020 issued by the respondent bank.*
- c. Letter dated 21.04.2020 for Common Covid-19 Emergency Credit Line of 10% in CC Limit of the petitioner.*
- d. Letter dated 30.05.2020 for Common Covid -19 Emergency Credit Line of 20% in CC Limit of the petitioner.*
- e. Registration certificate dated 20.07.2020 in respect of creation/extension of equitable mortgage for the financial facilities availed by the petitioner created in favour of the respondent bank.*
- f. Letter dated 14.01 2021 of the petitioner addressed to the respondent bank in respect of proposal for repayment of outstanding loan/financial assistance.*
- g. Letter/mail dated 28.01.2021 in respect of deposit of demand drafts dated 22.01.2021 and 27.01.2021 for closure of the CC Limit and CCECL.*
- h. Letter dated 04.02.2021 of the petitioner apprising about delay in presentation/clearing of DD by the respondent bank and requested for reversal of interest charged by the bank after that date.*
- i. Letter dated 10.02.2021 of the petitioner bringing the notice of the sanction letter dated 17.05.2017 having no such clause of prepayment charges and requested for appropriate consideration.*
- j. Letter dated 10.02.2021 issued by Respondent Bank.*
- k. Letter dated 22.02.2021 issued by Respondent Bank along with providing the copy of Letter of Arrangement dated 19.05.2020 issued by the Respondent Bank.*
- l. Letter dated 22.02.2021 of the petitioner bringing the notice to the respondent about the letter dated 19.05.2020 alleged to be issued by the respondent bank in pursuant to*

request dated 21.04.2020 for consideration of Common Covid -19 Emergency Credit Line of 10% in CC Limit being availed by the petitioner in pursuant to sanction letter dated 17.05.2017, having no such clause of prepayment charges and requested for appropriate consideration.

m. Letter dated 24.02.2021 of the petitioner requesting for closure of all the accounts and release of property papers.

n. Letter/Email dated 15.04.2021 of the petitioner reminding about its grievances in respect of its continuous representation for reduction in charging of higher rate of interest and an account of non- consideration of its request, resulted into deposit of demand drafts for closure of bank account and continuity of harassment to the petitioner even after the payment of the dues by levy of arbitrary foreclosure charges and non-release of property documents apart from lodging the complaints to the Banking ombudsman/other concerned authorities.

o. Letter dated 16.04.2021 written to the Banking Ombudsman regarding the arbitrary acts of the Respondent Bank and asking for refund of Foreclosure Charges and Refund of Interest charged due to delay in presentation of DD for clearing by the Respondent Bank.”

22. From the reliefs claimed, it appears that appellant has challenged certain transactional dispute with the respondent/ State Bank of India. Those transactional dispute as referred in the pleadings and relief claimed carry trappings of disputed questions of facts. Respondents opposed those submissions and reliefs. Those transactional issues could have been decided in the writ proceedings or some alternative forum like Civil Proceedings or Arbitration Proceedings would be an appropriate mode of adjudication, is the Question. However, the Writ Court found the writ petition maintainable and proceeded on the merits of the case.

23. The learned Writ Court discussed the issues on merits in following manner:-

“28. The facts which are admitted and not controverted by the respondent/Bank are that on 28.04.2017 the petitioner has moved an application for availing Cash Credit facility requesting the respondent/Bank for sanction working capital limit as existing/enhance levels. Vide letter dated 17.05.2017 the respondent/Bank sanctioned the credit facility to the petitioner. Clause 2 of letter of arrangement dated 17.05.2017 mentioned the period of advance and repayment terms, wherein for working capital it had been mentioned that it is to be repayed on demand. The relevant extract of clause 2 is reproduced herein under:-

"The facility which has been sanctioned on 17.05.2017 is available for 12 months from that date, subject to renew after every 12 months, when it may be cancelled/reduced depending upon conduct and utilisation of the advance or as per the Bank's Scheme."

Further more, under the said clause it has been clearly mentioned that:-

"Pre-payment charges, as applicable, shall be payable in case of pre-payment of term loan installments."

29. On 21.04.2020, the petitioner had sought 10% extension under the Scheme known as Common Covid Emergency Credit Line (CCECL), introduced by the respondent/Bank and again vide letter dated 30.5.2020 an extension for 20% of CC limit under the said Scheme was sought and the same was extended by the respondent/Bank and the limit of the borrower/petitioner was raised to Rs.5,30,00,000/- with additional limit of Rs.89,00,000/- w.e.f. 02.06.2020 and for that the petitioner was even asked to extend the security in respect of mortgage of immovable properties credited in favour of respondent/Bank and registration in respect of said extension of such mortgage was done with the Sub-Registrar

office, Morena under E-registration on 20.07.2020.

30. Thereafter as per the terms of letter of arrangement dated 19.05.2020, the interest @ 1.5% above EBLR (earlier it was 1.4% above MCLR as agreed as per sanction letter dated 17.05.2017) and interest on working capital (CCECL) @ 7.4 % per annum was agreed to be charged by the respondent/Bank w.e.f. 19.05.2020.

31. Though the petitioner who was signatory to the said letter of arrangement dated 19.05.2020 had now raised a ground that an interest higher to that which was agreed at earlier point of time was charged from the petitioner without its knowledge, and in view of the aforesaid charging of the higher rate of interest the petitioner was compelled to ask the ICICI Bank to take over the said loan and after its approval from the Bank bankers' cheque bearing Nos.011916 and 011915 amounting of Rs.4,79,11,549/- and Rs.38,80,341/- were issued on 22.01.2021 for closing of the working capital (CC) Account and another bankes' cheque bearing No.011921 dated 27.01.2021 amounting to Rs.89,00,000/- for closing the working capital limit (CCECL) account was submitted, the said argument as advanced on behalf of the petitioner has no force, as the petitioner with open eyes have accepted the letter of arrangement dated 19.05.2020, wherein under clause 3 there was specific mention of the rate of interest which would be charged on the working capital (CC) and working capital (CCECL) accounts @ 1.5% above EBLR and 7.5% per annum respectively. Thus, at this juncture, it cannot be said that the said charging of the interest was arbitrary on the part of respondent/Bank, thus, so far as answer to this contention raised on behalf of petitioner is concerned, is in negative, accordingly, is rejected.

32. So far as the contention of the petitioner that though the bankers' cheque was served upon the respondent/Bank on 22.01.2021 but the same was encashed only on 29.01.2021 and interest has been charged upon the limits, is concerned,

the respondent/Bank in para 5.13 and 5.14 of their reply had specifically stated that they have returned back the amount of interest for the period for which the bankers' cheque were lying with the respondent/Bank. Thus, the grievance so far as this aspect is concerned, has come to an end.

33. *So far as the levy of pre-payment charges @ 2% of the pre-paid amount from the petitioner is concerned, in clause 2 of the letter of arrangement dated 19.05.2020 there is a clear stipulation with regard to pre-payment of penalty, which is reproduced herein under:-*

"Prepayment penalty - 2.00% of the pre-paid amount (loans prepaid out of higher cash accruals from the project/ refinancing under 5/25 on the date of refinancing / equity infusion by promoters / borrowers will not attract prepayment/ pre closure charges)."

34. *As per the said clause, 2% of pre-paid amount was required to be paid by the petitioner and this was also agreed by the petitioner while signing the said letter of arrangement with open eyes. Here it is not a case that the respondent/Bank has taken the petitioner by surprise, as in the earlier letter of arrangement dated 17.05.2017 under Clause 2, there was a mention of pre-payment charges which is reproduce herein under:-*

"Pre-payment charges, as applicable, shall be payable in case of pre-payment of Term Loan installments"

35. *Thus, since the terms and conditions of letter of arrangement dated 19.05.2020 was very much clear and the same since was accepted by the petitioner, now at a belated stage it cannot be agitated that the pre-payment charges as has been levied by the respondent/Bank was per se illegal.*

36. *The petitioner has raised another ground of levy of pre-payment of charges on the basis that earlier in the sanction letter dated 17.05.2017, there was no condition with regard to pre-payment charges and at the time when letter of*

arrangement dated 19.05.2020 was executed, the said clause was not informed by the respondent/Bank cannot be accepted, as it is not a case where an ex parte letter of arrangement has been issued by the respondent/Bank, partners of the petitioner/firm has signed the document which amounts to accepting the terms and conditions thereof and, therefore, the contention that bank officials had not informed about the change the terms and conditions of the CC limit at the time of documentation is baseless.

*37. Accordingly, the petition is hereby fails and is dismissed. So far as the judgment cited by the counsel for the petitioner in the matter of **DLF Limited Vs. Punjab National Bank (supra)**, the Court therein was dealing with an issue, wherein as per the admitted agreement between the parties, there was no reference whatsoever to the pre-payment charges and there was only use of words "after a moratorium of 30 months from the date of disbursement" in relation to repayment of the loan and in that context the Court has held that the petitioner therein was only obliged to re-pay the loan within a period of 30 months and the respondent/Bank has agreed not to enforce the said obligation for the said period. The Court therein from the language of the loan agreement and other documents had held that it cannot be said that the respondent/Bank had at the time of granting the loan informed the petitioner that it could not pre-paid the loan before 30 months or that if it so prepaid the loan, it will be liable for charges. Thus, facts of this case are not applicable to the present case.*

*38. So far as the reliance placed in the matter of **Devendra Surana Vs. Bank of Baroda and Ors (supra)** is concerned, therein the eventuality of payment of penalty for foreclosure of amount was dependent upon of Circular dated 07.05.2014 issued by Reserve Bank of India and as therein the foreclosure happen subsequent of the Circular dated 07.05.2014, whereby Reserve Bank of India has directed that no foreclosure or pre-payment of penalties on all floating term loans sanctioned to the individual borrowers would be levied. The demand of the*

bank thus, was held to be illegal. Since, it is also not a case herein, the same is not applicable.

*39. So far as the reliance placed in the matter of **State Bank of Patiala Vs. Permanent Lok Adalat (PUS) Rewari and ors.** is concerned, the facts of the present case are altogether different as the pre-payment charge was in the form of taking over the loan by some other bank and in that context when the matter went before the permanent Lok Adalat, it was held that the directions were issued to the Bank to release the property documents kept as a security after recovery of the charges, if any, then the pre-payment charges were taken over the charges by the respondent/Bank. Thus, being based on different facts of the present case, it is not applicable to the present case.*

*40. So far as the reliance placed in the matter of **Salubrity Biotech Ltd. and Ors. Vs. Bank of Baroda, Vadodara & ors** is concerned, it is an order of High Court of Orissa at Cuttack. The learned single Judge therein while taking note of the application submitted by the petitioner requesting for the CC limit, the sanction letter and one Circular dated 12.11.2010 issued by the Reserve Bank of India observed that there was no mention of pre-payment charges in the sanction letter except for the mention of pre-payment charges in the Circular and as the said Circular was not disclosed to the petitioner therein, the imposition of pre-payment charges was held not to be sustainable. As the facts of the present matter are altogether different, the said judgment has no applicability.*

*41. Lastly, the reliance placed in the matter of **Gyuankund Trust Vs. Punjab National Bank & ors.** decided by learned **Single Judge in High Court of Punjab and Haryana** the issue in the matter was that whether the pre-payment charges can be asked for, if they are not part of sanction letter and when it was not made a part of sanction letter at the time loan is sanctioned, the parties can still bind themselves by a supplementary agreement and therein, in the sanction letter there was no clause regarding any pre-payment charges, nor*

there was any supplementary agreement in this regard between the parties and in that context it was held that since there was no agreement between the parties in so far as 2% pre-payment charges were directed to be recovered in case the borrower has closed his loan account prematurely, the the same amount cannot be charged by the bank. Since, the analogy, which has been culled out from the aforesaid judgments which is also based on different facts, therefore, the same is not applicable to the present case.”

24. If all these factual details are being discussed at length by the learned Writ Court then scope of interference in writ appeal constricts.

25. Besides that the Hon'ble Apex Court in the case of **M/s Radhkrishan Agrawal and Others Vs. State of Bihar (1977) 3 SCC 457, Than Singh Vs. Superintendent of Taxes AIR 1964 SC 1419, State of Orissa Vs. Narain Prasad and Others (1996) 5 SCC 740, Noida Entrepreneurs Association Vs. U.P. Financial Corporation 1994 Supp.(2) SCC 108 and Bharat Cooking Coal Ltd. Vs. Amar Dev Prabha (2020) 16 SCC 759** has considered the power of Constitutional Courts *vis a vis* contractual rights.

26. Considering over all facts and circumstances of the case, we are of the view that the learned Writ Court did not commit any error in passing the impugned order. Writ petition was dismissed after considering all the factual and legal aspects of the controversy involved.

27. As such, no interference is warranted in the impugned order, the writ appeals are hereby *dismissed*.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE