

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 259/2021

Venutai Ganeshrao Shevatkar,
Aged about 31 years, Occ –Govt. service,
R/o Forest Colony, Mini Depot, Dharni,
Distt. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
- 2) The Chief Conservator of Forests (Territorial),
Van Bhavan, Yavatmal.
- 3) The Deputy Conservator of Forests (Territorial),
Melghat Division, Paratwada.
- 4) The Range Forest Officer (Territorial),
Range Forest, Dharni
Distt. Amravati.

Respondents

Shri G.K. Bhusari, Ld. counsel for the applicant.

Shri M.I. Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 20th January 2022.

Heard Shri G.K. Bhusari, learned counsel for the
applicant and Shri M.I. Khan, Ld. P.O. for respondents.

2. Case of the applicant is as follows:-

By order dated 10.2.2020 (Annexure A-1), respondent No.3 sanctioned home loan to the applicant and 15 others. In this order, *inter alia*, following condition was incorporated-

“मुंबई वित्तीय नियम 1959 (सुधारित) च्या परिशिष्ट 26 मधील नियम (ई) प्रमाणे विहित नमूना बी-4 मध्ये नोंदणीकृत गहाणखत अग्रिम मंजूर झालेल्या दिनांकापासून तीन महिन्यांचे आत या कार्यालयास दाखल करणे आवश्यक असून सदरील गहाणखत अग्रिमाची व्याजासह पूर्ण परतफेड होईपर्यंत ग्राह्य राहिल”.

Due to Covid pandemic, the applicant could not submit requisite documents within the stipulated period of three months. By order dated 1.6.2020 (Annexure A-2), respondent No.3 extended the period to submit documents by three months. The applicant could not submit documents even within the extended period. He sought extension by filing an application (Annexure A-3 collectively). On 26.10.2020, he submitted mortgage deed in the office. On 9.12.2020, respondent No.3 passed order (Annexure A-4) for levy of penal interest at the rate of 2.75% as per G.R. dated 26.9.1997 (Annexure A-7) from the applicant and others who had not submitted the requisite documents within time. The applicant

filed applications (Annexure A-5 collectively) to waive penal interest. Rejection of this request was communicated to the applicant and one another vide letter dated 5.1.2021 (Annexure A-6). Hence this application impugning the order of levy of penal interest (Annexure A-4).

3. By filing reply (at pages 41 to 56), respondent Nos. 3 and 4 have resisted the application on following grounds:-

(i) The applicant cannot claim relief which is opposed to policy of the Government.

(ii) Only after giving ample time, including extension, penal interest is levied as per G.R. dated 26.9.1997.

(iii) G.R. dated 26.9.1997 is based on Bombay Finance Rules, 1959 which have statutory force.

(iv) Penal interest was rightly levied as per Clause-4 of the impugned order and Appendix-26, Clause 6 (e) of (amended) Rules of 1959.

(v) On recommendation of Audit Committee, relevant Rules / Clause to levy penal interest were strictly implemented.

4. The applicant has relied on the judgment dated 26.11.2019 passed by Principal Seat of this Tribunal in O.A. No.312/2017 (A-8). According to the respondents, said judgment is distinguishable to the facts.

5. In O.A. No.312/2017, question for determination was whether failure to submit mortgage deed and insurance policy within the stipulated period of 3 months from the date of disbursement of loan would make the defaulter liable to pay penal interest. This very question falls for determination in the instant O.A. as well.

6. I have quoted Clause / Condition 4 of the order whereby the loan was sanctioned (A-1). The impugned order levying penal interest (A-4), in addition, refers to G.R. dated 26.9.1997.

7. Clause / Condition 4 in Annexure A-1 merely provides for submitting mortgage deed within three months from the date of sanction of loan, but it does not provide that failure to do so would make the defaulter liable to pay penal interest. So far as question for determination is concerned, Rule 124 (b) of the Bombay Finance Rules, 1959 will have to be considered. It reads as under:-

“124. Reporting of default in payment of loan to Govt.

(a) x x x

(b)The authority which sanctions a loan may, insofar as law allows, enforce a penal rate of compound interests, upon all overdue instalments of interest or principal and interest. If a penal rate is enforced, it should not be less than (14 ½ per cent per annum or more than 17 percent) per annum. (The penal rate of interest should be charged in lieu of the rate of interest charged.)

8. Plain reading of this Rule shows that it provides for levy of compound interest on overdue instalments. It does not authorise levy of penal interest.

9. Clause 6 (e) of the amended Rules reads as under:-

“6 (e) Advance required for purchasing a ready-built house may be sanctioned by the competent authority after being satisfied that prima facie the title of the Government servant on completion of the contemplated purchase will be good and marketable. Payment of the entire amount required by and admissible to the applicant may be made in one lump sum on the applicant executing an agreement in Form “A2” for the repayment of the loan. The purchase shall be completed and the houses mortgaged to Government within 3 months of the drawal of the advance by execution of a mortgage-deed in Form “A4” attached hereto failing which the advance together with the interest thereon shall be refunded to Government forthwith, unless an extension of time is granted by the Head of Department concerned.

While authorising disbursement of an instalment of an advance under Rule 6, the Head of Department will issue a certificate to the effect that the required formalities in pursuance of which the instalment has become due, have been complied with.”

This Rule, too, does not provide for levy of penal interest in the event of failure to submit mortgage deed within the stipulated period.

10. In O.A. No. 312/2017, G.R. dated 27.2.2012 was also considered and it was held—

“14. Now turning to G.R. dated 27.2.2012, Condition No.12 of the G.R. is relied upon by the learned CPO, which is as follows:-

“12. शासकीय अधिकारी / कर्मचाऱ्यांना मंजूर करण्यात आलेले अग्रिम ज्या प्रयोजनाकरिता मंजूर केले आहे त्या कारणाकरिता त्याचा विनियोग न केल्यास किंवा अग्रिम व व्याज परतफेडीच्या संदर्भातील अटी व शरतीचे पालन न केल्यास किंवा त्यात कोणत्याही प्रकारची कसूर झाल्यास कसूरदाराकडून अग्रिमची रक्कम प्रचलित व्याजदरापेक्षा २.७५ प्रतिशत जास्त दराने दंडनीय व्याजची आकारणी करून, दंडनीय व्याजासह अग्रिमाची रक्कम एकरकमी वसूल करण्यात यावी”

True, the above G.R. provides for charging 2.75% interest as a penal interest but it is restricted to the failure of Government servant to use the advance for the purpose other than the purpose of grant of loan and if the Government servant commits any default in payment of instalment or commits any default of terms and conditions of repayment, in that event only, the Government servant will be liable to pay penal interest @

2.75% p.a. Needless to mention that the plain reading of Clause No.12 of G.R. dated 27.2.2012 makes it quite clear that the liability of penal interest @ 2.75% p.a. is applicable where the Government servant fails to repay the loan as per the conditions set out or used the advance for other purpose. This Clause cannot be construed in the manner Respondent proposed. One needs to interpret Clause No.12 as it is and nothing more can be inserted or added therein. It is well settled principle of construction or interpretation of documents that one has to give plain meaning to it on the basis of words used therein keeping in mind its object and which is not there cannot be imported therein, particularly when, it is prejudicial to the interest of party concerned. The intention has to be gathered from the contents of the documents and the same shall be in conformity with the real intention of the parties to the documents."

Thus, there is no enabling provision for levy of penal interest. In the absence of such provision, levy of penal interest cannot be sustained. Hence, the following order:-

ORDER

- (i) The O.A. is allowed.

- (ii) Orders directing and confirming levy of penal interest (Annexure A-4 and A-6) are quashed and set aside.
- (iii) No order as to costs.

(M.A.Lovekar)
Member (J)

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