**Neutral Citation No. - 2024:AHC:8624-DB**

**Reserved on : 21.12.2023**
**Delivered on : 18.01.2024**

**Court No. - 42**

**Case :-** WRIT - C No. - 22011 of 2023
**Petitioner :-** Manmeet Singh
**Respondent :-** Union of India and others
**Counsel for Petitioner :-** Kalpana Sinha, Sr. Advocate
**Counsel for Respondent :-** A.S.G.I., Gaurav Kumar Chand, Himadari Batra, Sumit Kakkar

**Hon'ble Mahesh Chandra Tripathi,J.**
**Hon'ble Prashant Kumar,J.**

**(Delivered by Prashant Kumar, J.)**

1. Heard Sri Utkarsh Srivastava, learned counsel for the petitioner, Sri Anurag Khanna, learned Senior Advocate assisted by Sri Sumit Kakkar, learned counsel for respondent nos.2 to 4 and Ms. Himadari Batra, learned counsel for respondent no.5.

2. The facts of the case are as follows:-

The petitioner took a loan of 9 lacs rupees from respondent no.5 on 26.12.2006 being "Loan Against Property-Home Saver" at an interest of 12.5% per annum. The repayment was to be made in 144 monthly installment of ₹12095/-. As per the agreement entered into between the petitioner and respondent no.5-bank, the rate of interest was variable. Clause 16 of the agreement defines variable interest rate. Clause 2.2 of the agreement defines the interest and Clause 2.3 defines the computation of interest. The relevant extract of the agreement is quoted below:-

> *"2.2 Interest*
> *(a) The rate of interest applicable to the said Loan as on the date of execution of this agreement is as stated in the Schedule thereto,*
> *PROVIDED THAT in the event SCB desires to increase or decrease the rate of interest prior to the disbursement of the full loan, the weighted average of the different rate of interest shall become*

*applicable to the Loan forthwith, from the date of such change in the rate of interest.*

*(b) The variable rate of interest shall be reviewed by SCB at the end of every three months from the month of disbursement and upon review SCB may decide to increase, decrease or remain the interest rate unchanged.*

***2.3 Computation of Interest***

*(a) The Bank shall charge interest at the rate specified in the Schedule hereto on the daily outstanding debit balance in the Home Saver Account. The debit balance in the Home Saver Account shall be difference between the Borrowing Limit and the credit balance in the account pursuant to deposits by the Borrower and credit of excess interest paid by the Borrower, as on the date of computation of interest. The Borrowing Limit shall be the Loan amount as per the Schedule hereto, which shall stand reduced with the amount of principle repaid or prepaid by the Borrower from time to time.*

***16. Variable interest rate***

*Usually the Bank reviews interest rates every three months from the month of disbursement or the previous review. The first time your interest rate may be eligible for a review will not be before the end of three calendar months from the month of disbursement.*

- *At the time of the review the bank may decide to increase , decrease or leave the interest rate unchanged.*
- *Your have been given a Special offer, SCB may announce Special offers from time to time. You have the option, at the sole discretion of SCB, to change to another Special offer provided you agree to pay a fee of 0.75% of the principal outstanding at the time of exercising the option.*
- *Standard Chartered Bank Home Loan Regular Rate may change from time to time depending on relevant market conditions. This information shall be available on www.standardchartered.co.in or at our Phonebanking helplines.*
- *In case of any unforeseen or extraordinary circumstances or sudden changes in market conditions SCB may at its sole discretion change the rate of interest."*

3. The petitioner, after paying off the entire claimed amount by the Bank, approached respondent no.5 for No Dues Certificate with a request for release of the documents of the property, which was placed as security against the loan amount. The No Dues Certificate was duly issued by the Bank and the papers relating to the property, kept as security, were also

returned to the petitioner. After closure of the loan account, when the petitioner checked the bank statement, he realized that the bank has illegally taken ₹27,00,000/- against the sanctioned loan of ₹9,00,000/-. As per the installment fixed by the Bank, at the time of sanction of loan if it is calculated @ 12.5 % the total amount due after paying the entire 144 EMIs would have come to ₹17,41,680/-. The petitioner on 8.6.2019 approached respondent no.5-bank by filing a complaint before it and sought its reply. Instead of replying to this complaint, respondent-Bank provided a day-wise calculation towards the home loan. Being aggrieved by the action of the Bank, the petitioner filed a complaint before the Banking Ombudsman, Reserve Bank of India (respondent no.4) under Clause 8(1)(x) read with Clause 8(2)(a) of the Banking Ombudsman Scheme, 2006 (hereinafter referred as 'Scheme, 2006'). The complaint was based on three issues, which were as follows:-

(a) Respondent no.5 had arbitrarily and unilaterally changed the interest rate during the period of loan against guidelines of the Reserve Bank of India.

(b) After four years of sanction of loan, respondent-Bank illegally and arbitrarily started charging thousands of rupees as yearly charges, though all the installment were paid in time.

(c) After four years from the date of completion of term loan, the respondent-Bank had charged ₹8717/- towards arrears including late charge in EMI, though all the EMIs were paid in time.

4. Thereafter, when the petitioner approached respondent no.4 to know the status of the complaint, he was informed that the respondent no.5-Bank has filed a reply. The petitioner repeatedly asked for a copy of the reply, but the same was not served to the petitioner and he did not get any chance to file objection to the reply filed by the respondent no.5-Bank. On 17.6.2020, the petitioner got an intimation from respondent no.4 stating that the complaint of the petitioner stood resolved in terms of Clause 11(3)(c) of the Scheme, 2006 and the complaint stood closed.

5. The impugned order dated 17.6.2020 passed by the Banking Ombudsman (respondent no.4) in Complaint No.201920011005735 is quoted below:-

> *"Dear Sir/Madam,*
>
> *The Banking Ombudsman Scheme 2006 (BOS-2006)*
>
> *Complaint No: 201920011005735 dated 03/09/2019 against STANDARD CHARTERED BANK*
>
> *We thank you for your Complaint No. 201920011005735*
>
> *2. In this connection, the bank's comments were sought and your complaint was examined along with the comments submitted by the bank.*
>
> *3. In the opinion of the Banking Ombudsman, the bank had adhered to the banking norms and practices in vogue and the complainant has been informed to this effect through appropriate means and* ***complainant's objections if any to the same are not received by Banking Ombudsman within the time frame provided,*** *accordingly your complaint was closed under Clause 11(3)(c) of BOS-2006 as settled by the bank.*
>
> *Please note that complaints closed under the aforesaid Clause are not appealable before the Appellate Authority in Reserve Bank of India, Details of BOS-2006 are available at our website* www.rbi.org.in/commonman.
>
> *4. You may note that despite the rejection of your complaint by the Banking Ombudsman, as aforesaid you are at liberty to approach a Civil Court of competent jurisdiction or such other authority in accordance with law for the redressal of your grievance.*
>
> *5. This has been issued under the orders of the Banking Ombudsman."*

6. The petitioner further submits that the order passed by Banking Ombudsman under Clause 11(3)(c) of the Scheme, 2006 is not appealable. The petitioner assailed the order in the instant writ petition with the following prayers:-

> *"(i) Issue an appropriate writ, order or direction quashing the order dated 17.6.2020 as issued by respondent no.4(Annexure-2 to this writ petition);*

*(ii) Issue an appropriate writ, order or direction directing respondent no.4 to consider the complaint of the petitioner dated 21.8.2019 (Annexure-5 to this writ petition) afresh after giving the petitioner an opportunity to file his objections and granting him reasonable opportunity of being heard."*

ARGUMENTS OF PETITIONER

7. Learned counsel for the petitioner argued that the impugned order was passed in blatant violation of Clause 11 of the Scheme, 2006. Clause 11(2) of the Scheme, 2006, envisages power to the Banking Ombudsman to follow the process as he may consider just and proper. Clause 11(2) has been misused and no opportunity was ever given to the petitioner to furnish or vent his grievances. Even as per Clause 11(3)(c), the complaint may be deemed as resolved when, the Banking Ombudsman has informed the complainant of his opinion that the Bank has adhered to the banking norms and practices in vogue, and the complainant's objections, if any, to the same are not received by the Banking Ombudsman. However, the petitioner had repeatedly asked for the copy of bank's reply, but the same was not served to him and hence, he didn't get any chance to file objection. Even in RTI sought by the petitioner, the Office of the Banking Ombudsman admitted that no opportunity of submitting objection was granted to the petitioner. Hence, it is clear that the procedure of Clause 11(2) and 11(3) of the Scheme, 2006 was not followed by the Banking Ombudsman.

8. Learned counsel for the petitioner further argued that though the agreed rate of interest was 12.5 % but the respondent no.5-Bank had charged interest from 16% to 18%, and the same was done without consent of the petitioner. Counsel for the petitioner further relied on the Master Circular dated 2.7.2007 issued by Reserve Bank of India wherein Reserve Bank of India has directed as follows:-

*2. Guidelines*

*2.1 General*

*2.1.1 Banks should charge interest on loans/advances/cash credits/overdrafts or any other financial accommodation granted/provided/renewed by them or discount usance bills in accordance with the directives on interest rates on advances issued by Reserve Bank of India from time to time.*

*2.1.2 The interest at the specified rates should be charged monthly/rests (subject tol the conditions laid down in paragraph 2.10) and rounded off to the nearest rupee.*

*2.5 Floating Rate of Interest on Loans*

*2.5.1 Banks have the freedom to offer all categories of loans on fixed or floating rates, subject to conformity to their Asset-Liability Management (ALM) guidelines. In order to ensure transparency, banks should use only external or market-based rupee benchmark interest rates for pricing of their floating rate loan products.* ***The methodology of computing the floating rates should be objective, transparent and mutually acceptable to counter parties.*** *Banks should not offer floating rate loans linked to their own internal benchmarks or any other derived rate based on the underlying. This methodology should be adopted for all new loans. In the case of existing loans of longer/fixed tenure, banks should reset the floating rates according to the above method at the time of review or renewal of loan accounts,* ***after obtaining the consent of the concerned borrower/s.***

9. Learned counsel for the petitioner further submitted that, even as per the guidelines on the floating rate of interest of loans, the methodology of computing the floating rates should be **"objective, transparent and mutually acceptable to counter parties"** . The guidelines clearly stated that though the interest rates have been deregulated but charging of interest beyond a certain level seems to be usurious as the same can neither be changed nor it is conforming to the normal banking practice. The Board of Banks have been advised by the RBI to lay proper internal mechanism and procedure, so that usurious interest charged, including processing and other charges are not levied by them on loans and advances.

10. Learned counsel for the petitioner submits that when the loan agreement was entered into between the parties, there was no such mention

of charging annual maintenance charge, hence, it is not open for the bank to unilaterally charge any annual maintenance charges.

11. Learned counsel for the petitioner further submits that no opportunity of hearing was given by the Banking Ombudsman to the petitioner. The entire working of the Banking Ombudsman is completely opaque. The reply filed by the bank on the petitioner's complaint was not even shared by the bank and instead of asking for the same, respondent no.4 chose not to provide the same. Even the impugned order passed by the Banking Ombudsman does not give any reason for closure of the complaint of the petitioner. The impugned order passed by the Banking Ombudsman is a non speaking order and seems that it is just a formatted order.

**ARGUMENTS OF THE RESPONDENTS**

12. Per contra, Ms. Himadri Batra, appearing on behalf of respondent no.5 filed counter affidavit and submitted that, respondent no.5 (M/s Standard Chartered Bank) is a private bank and hence, not amenable to the writ jurisdiction. The bank does not qualify as a 'State' within the meaning of Article 12 of the Constitution of India. She submitted that in 2006 the petitioner approached the bank to avail loan against the property, which the bank sanctioned. The loan agreement was entered on 30.12.2006 for an amount of ₹9 lacs and was duly disbursed. The sanction letter and the loan agreement clearly shows that the petitioner had agreed to avail the loan against the property for a period of 144 months on a variable rate of interest. At the time of grant of loan the interest applicable was 12.5% per annum. This was not the fixed rate of interest but a variable rate of interest and the petitioner was well aware of the same. Clause 2.2 (b) of the loan agreement states that variable rate of interest shall be reviewed at the end of every three months. He further submitted that the variable home loan rates are linked to Mortgage Variable Reference Rate (hereinafter referred as 'MVRR') and any change in MVRR impacts the interest rate applicable.

13. She submitted that the bank was free to increase, decrease or keep the interest rate unchanged, which will be subject to changes of interest rate according to the guidelines made by the Reserve Bank of India and the variable rate of interest on home loan would change from time to time depending on the relevant market factors and conditions.

14. She further submitted that, as per guidelines of Reserve Bank of India, respondent no.5 has sent regular intimations to the petitioner with regard to change in rate of interest applicable on his loans. She has also annexed the copy of the physical intimation sent to the petitioner, annexing the chart, showing that some emails were sent to the petitioner.

15. She submitted that, in February, 2011 the bank decided to impose annual maintenance charges on the home saver account. This was duly communicated to the petitioner along with the revised schedule of service charges applicable on the loan account through email.

16. She argued that, in April, 2019, the petitioner approached the bank and requested for prepayment of his loan and closure of his account. Accordingly, a pre term closure letter was given by the bank. Respondent no.5 on 16.4.2019 issued a loan closure report. After paying the entire claimed amount, no dues certificate along with all the property documents were handed over to the petitioner.

17. She further argued that, when the petitioner approached respondent no.5-bank in August, 2019, raising concern regarding rate of interest charged, the bank duly provided the breakup of interest charged on the loan and intimated that no excess amount was charged.

18. Thereafter, when the petitioner had raised dispute before the Banking Ombudsman, the Banking Ombudsman asked for reply of the bank, which was duly submitted and thereafter the Banking Ombudsman had passed order on 17.6.2020. The bank further submitted that the variable category loans are linked to a reference rate called as MVRR. The change in MVRR will have

an impact on the interest rate charged on the loans, which are sanctioned under "variable" interest rate category.

19. It was further submitted that, since the petitioner has not objected to annual charges, hence, the bank was justified to charge the same as it is also not contrary to the terms and conditions.

20. Mr. Sumit Kakkar, learned counsel appeared on behalf of the Reserve Bank of India (respondent no.2) and submitted that, the RBI has deregulated the interest rate on commercial banks after 1994 as a part of the financial sector reforms. RBI decided to grant greater operational freedom to the banks in determining the interest rates on advances based on commercial considerations. The rate of interest charged by the banks on advances depends on a large number of factors such as cost of fund, cost of operation, credit worthiness of borrowers, riskiness of the loan portfolio, availability of collateral, business strategy of lender, market competition, profit expectations etc. However, the banks were required to give notice of any change in the terms and conditions including interest rate, service charges etc. to the borrower and also ensure that changes in the interest rates and charges are effected prospectively.

21. He submits that RBI had been issuing instructions/guidelines to the banks from time to time on matters relating to interest rates on advances. It is further submitted that the consent of the customer on such change was essential.

22. Sri Kakkar, referring to the affidavit filed by RBI, has submitted that RBI has filed master direction dated 3rd March, 2016 whereby RBI has issued master direction for interest rates on advances. This direction was called RBI (Interest Rate on Advances) Directions, 2016. Chapter II of this Direction laid down the 'Interest Rate Framework'.

> ***"Interest Rate Framework***
> *(a) Scheduled commercial banks shall charge interest on advances on the terms and conditions specified in these directions.*

*(i) There shall be a comprehensive policy on interest rates on advances duly approved by the Board of Directors or any committee of the Board to which powers have been delegated.*

*(ii) All floating rate loans, except those mentioned in section 13, shall be priced with reference to the benchmark indicated in chapter III.*

*(iii) Banks shall have the freedom to offer all categories of advances on fixed or floating interest rates.*

*(iv) When the floating rate advances are linked to an internal benchmark rate, banks shall determine their actual lending rates by adding the components of spread to the internal benchmark rate.*

*(v) The reference benchmark rate used for pricing the loans shall form part of the terms of the loan contract."*

*Clause 6 of Chapter III of this guideline lays Internal Benchmark as to what would be the Base Rate, Marginal Cost of Funds based Lending Rate (MCLR).*

*Clause 7 lays down the External Benchmark .*

*Clause 8 (Chapter IV) lays down Spread under Base rate system for customer.*

*Clause 9 states of Reset of Interest rate under MCLR system*

*Clause 10 lays down Transition to Base Rate from BPLR etc.*

23. In the rejoinder affidavit filed by the petitioner it is submitted that letter of intimation annexed to the counter affidavit clearly showed that the intimation was sent to a wrong address, it was sent somewhere in Maharashtra and the same has never been received by the petitioner.

24. On being asked to supply the proof of the receipt, the counsel for the respondent-bank stated that it is a very old intimation, so they do not have proof of delivery.

25. Learned counsel for the petitioner further submitted that they filed chart showing that emails have been sent and they have not annexed single email whereby they have informed the petitioner that they will be charging such a heavy rate of interest.

26. He further submitted that in February 2011 monthly maintenance charge on the Home Saver Account was introduced by the bank, so the respondent-bank unilaterally started charging the same, though the same was not agreed upon.

27. In fact, the emails annexed along with the reply of respondent no.4 shows that the email was sent to the petitioner, however, the increase from 12.5% per annum has not been mentioned anywhere in the email, it was actually not revealed. One of the emails is being reproduced hereunder:-

> *"Dear Mr. Singh,*
>
> *This is further to our telephonic conversation regarding your complaint number 20190703711474 raised with us.*
>
> *We understand from your discussion that you require certain clarification regarding the revision in interest rate happened in your loan account ending with 3060. We have reviewed your loan account in detail and wish to clarify the following.*
>
> *As per the terms and conditions of the sanction letter duly agreed and signed by you, the above loan was booked under "variable" interest category. Accordingly, the interest rate of the loan account is subject to revision by the Bank. As per the Bank's process, all "variable" interest category loans booked prior to July 2010 has been linked to MVRR (Mortgages Variable Reference Rate) of the Bank. Any change in the MVRR would have an impact on the interest rate of the loans sanctioned under the "variable" interest category. The said information was clearly communicated to you in the terms and conditions of the sanction letter (attached herewith) which was duly agreed and signed by you.*
>
> *Accordingly, on account of the revision of MVRR, the interest rate of your loan account has been revised time to time and the communication regarding the same was sent to your registered mailing address. The revision in the interest rate has lead to the revision in the instalment and tenure of your loan. We have attached the rate revision details along with day wise interest calculation for your reference. Please use your 11 digit loan account number to view the attachment. In view of the above, we regret our inability to accede to your request for interest reversal. We seek your understanding towards the same.*
>
> *Trust we have addressed your concerns.*
>
> *Your sincerely,*
> *Kalalvani S*
> *From the Office of Head, Customer Service "*

## ANALYSIS, REASONING AND CONCLUSION

28. We have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, we have perused the pleadings, grounds taken in the petition, affidavits and annexures thereto and the reply filed by concerned parties.

29. The objection has been raised by the private bank i.e. respondent no.5 regarding the jurisdiction, as no writ can be issued against a private Bank. The said objection of Ms. Batra is misconceived as the relief prayed by the petitioner is for quashing the order passed by the Ombudsman in accordance with the Banking Regulation of RBI Circulars, which provides that the complaint has to be adverted/adjudicated by the Ombudsman. The said decision/order comes under Article 12 of the Constitution, hence, the writ is maintainable.

30. Apparently, in this case the petitioner has sought a loan of ₹9 lacs from respondent no.5-bank and the bank while sanctioning the loan had agreed to charge 12.5% variable rate of interest and the entire amount was to be paid in 144 months. However, the petitioner, who has been paying the EMIs in time, chose to close the loan account. After closure of the loan account, when the petitioner checked the statement of loan account of ₹9 lacs @ 12.5% interest per month, which would turn out to be ₹17,41,680/-, against which the bank had charged ₹27 lacs. It is observed that the bank should not have charged such an exorbitant amount in the garb of higher rate of interest charged by them. There was no rationale to charge such high rate of interest.

31. During the course of argument, learned counsel for the bank handed over the chart which showed the rate of interest, though being agreed for 12.5% interest rate per annum, but actually they had charged in between 16-18% throughout the period of loan.

32. The bank has not given any rationale to charge such a higher rate of interest. The bank is trying to mask their arbitrary and illegal action by stating that the petitioner has agreed in the loan agreement to pay floating

rate of interest and RBI has allowed the bank to charge interest based on the market conditions.

33. In the affidavit filed by RBI, they have stated that the rate of interest charged by the banks on loans depends on large number of factors such as cost of fund, cost of operation, credit worthiness of the borrower, riskiness of loan portfolio, availability of collateral, market competition and profit expectations etc. In this case, interest charged by the bank was agreed to be 12.5% but the bank has charged in between 16-18% most of the time, which is almost 40-50% higher than the agreed rate of interest of 12.5%.

34. In this case, credit worthiness of the borrower, riskiness of the loan portfolio, availability of collateral remained the same. However, the cost of funds, cost of operations, profit expectations cannot go upto such a level. This increase of interest on these factors are opaque and hence, cannot be charged on such higher rate. It is a clear case where the bank, after execution of the loan agreement and disbursal of the loan, has been charging exorbitantly.

35. In this case, respondent no.5 claims to have been sending notices about change of interest rate to the petitioner but the notices were never received by the petitioner, and the address on which the notices were sent was also incorrect. Moreover, the bank could not place any proof of delivery of those notices sent to the petitioner.

36. The bank claims that they had been sending email to the petitioner informing him about the change of interest rate but has not placed any email on record. Though, respondent no.2 in its counter affidavit has annexed one of the emails but even therein, there is no mention of change of MVR from12.5% to 16% or 18%.

37. The bank is also not justified to charge excessive interest rate as per the RBI Master Circular dated 2.7.2007. Clause 2.5.1 of the Circular clearly stated that the methodology of computing floating rates should be objective, transparent and mutually acceptable to counter parties. In this case, the bank

has failed to place any document on record to show that the petitioner has mutually accepted for the increase in rate which they had been charging.

38. Further, Clause 2.12 of RBI Master Circular lays down excessive interest rate charged by the bank. The same is being quoted below:-

> *"2.12. Excessive interest charged by banks*
>
> *2.12.1 Though interest rates have been deregulated, charging of interest beyond a certain level is seen to be usurious and can neither be sustainable nor be conforming to normal banking practice. Boards of banks have, therefore, been advised to lay out appropriate internal principles and procedures so that usurious interest, including processing and other charges, are not levied by them on loans and advances. In laying down such principles and procedures in respect of small value loans, particularly, personal loans and such other loans of similar nature, banks should take into account, inter-alia, the following broad guidelines:*
>
> - *An appropriate prior-approval process should be prescribed for sanctioning such loans, which should take into account, among others, the cash flows of the prospective borrower.*
> - *Interest rates charged by banks, inter-alia, should incorporate risk premium as considered reasonable and justified having regard to the internal rating of the borrower. Further, in considering the question of risk, the presence or absence of security and the value thereof should be taken into account.*
> - *The total cost to the borrower, including interest and all other charges levied on a loan, should be justifiable having regard to the total cost incurred by the bank in extending the loan, which is sought to be defrayed and the extent of return that could be reasonably expected from the transaction.*
> - *An appropriate ceiling should be fixed on the interest, including processing and other charges that are levied on such loans, which should be suitably publicised."*

39. A plain reading of this Clause shows that it was incumbent on the bank not to charge usurious interest, including processing and other charges. An appropriate ceiling should also be fixed on interest including processing and other charges that are levied on such loans and the same should be suitably publicized. In this case, though it is clear that variable rate of interest has been charged by the bank, but the same has not been accepted by the

petitioner/customer. Further, the bank on its own had charged annual maintenance charges which was not even agreed upon by the petitioner.

40. The respondent no.5-bank failed to provide and adopt a transparent method of charging of the interest. It has been pointed out that the respondent-bank did resort to an arbitrary methodology. As per the guidelines given by the RBI, any change in that rate cannot be applied to the customers without notice to him and without his consent.

41. The respondent bank had increased the floating rate of interest arbitrarily without any proof of notice to the complainant. It was not mutually acceptable to him and the consent was not taken as per the guidelines of the RBI referred above.

42. It has been further observed that the borrower bind themselves into long running documents intentionally formulated by the bank. They fill in the blanks without even caring to read what has been provided in the terms and conditions and later the borrowers unwittingly fall into this trap and are made obligated and liable to pay the same. In this view, it would amount to unfair trade practices.

43. The Hon'ble Supreme Court in the matter of **Central Bank of India vs. Ravindra** [1] has held as under :

> *"During the course of hearing it was brought to our notice that in view of several Usury Laws and Debt Relief Laws in force in several States private money lending has almost come to an end and needy borrowers by and large depend on banking institutions for financial facilities. Several unhealthy prac-tices having slowly penetrated into prevalence were pointed out. Banking is an organised institution and most of the banks press into service long running documents wherein the borrowers fill in the blanks, at times without caring to read what has been provided therein, and bind themselves by the stipulations articulated by best of legal brains. Borrowers other than those belonging to corporate sector, find themselves having unwittingly fallen into a trap and rendered themselves liable and obliged to pay interest the quantum whereof may at the end prove to be ruinous. At times the interest charged and capitalised is manifold than the amount actually advanced. Rule of damdupat does not apply. Penal interest, service charges*

1 (2012) 1 SCC 367

> *and other over-heads are debited in the account of the borrower and capitalised of which debits the borrower may not even be aware. If the practice of charging interest on quarterly rests is upheld and given a judicial recognition, unscrupulous banks may resort to charging interest even on monthly rests and capitalising the same. Statements of Ac- counts supplied by banks to borrowers many a times do not contain particulars or details of debit entries and when written in hand are worse than medical prescriptions putting to test the eyes and wits of the borrowers. Instances of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot be generalised.*

44. Surprisingly, RBI had been issuing guidelines but has done nothing for the implementation of the same. They have just been a mute spectator allowing the banks to charge arbitrarily a very high rate of interest.

45. Even if the benefit of doubt is given to the bank that they are free to charge the interest rate but it is duty of the RBI to see that the customers are not inconvenienced by huge rate of interest charged by the banks.

46. The Banking Ombudsman, who is supposed to look into the grievances of the customers, has miserably failed to adjudicate the matter. It is surprising that the customer had been writing to the Ombudsman to give copy of the reply, but the same has not been provided. The order dated 17.6.2020 clearly mentioned that no objection by the complainant was received by the Banking Ombudsman but later, under the RTI sought by the petitioner, the Banking Ombudsman admitted that no opportunity for submitting the objection was granted to the petitioner. Even the impugned order of closure of petitioner's complaint by the Banking Ombudsman is a non speaking order and only a formatted order, which has been passed mechanically, without application of mind.

47. Accordingly, impugned order dated 17.6.2020 passed by the Banking Ombudsman (respondent no.4) is set aside and the matter is relegated back to the Banking Ombudsman to decide the same, after giving due opportunity of hearing to the parties by passing a speaking order.

48. It is further clarified that the observations given above may not come in the way of passing the order and Banking Ombudsman will pass the order

applying its independent mind and in accordance with law. Since the matter has been languishing since August, 2019, respondent no.4 is directed to decide the petitioner's complaint within three months from the date of production of a certified copy of this order.

49. The writ petition, accordingly, stands **allowed.**

**Order date :** 18.01.2024
Manish Himwan