* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 11th May, 2026***
Pronounced on: 18th May, 2026

\+ **RFA 484/2026, CM APPL. 31525/2026 & 31526/2026**

M/S SETHI LEASING AND FINANCE CO. THROUGH ITS PROPRIETOR SH. DES RAJ SETHI
Through its proprietor
Sh. Des Raj Sethi
A-42, Chander Nagar,
Janak Puri, New Delhi-110058

....Appellant

Through: Mr. Harish Katyal, Mr. Kamal Singh & Ms. Deepshikha Naagar, Advocates

Versus

1. SHIV KUMAR PASRIJA
S/o Sh Nand Lal Pasrija
R/o 20-B/59-B, Ground Floor,
Tilak Nagar, New Delhi

2. SMT. RAJINI PASRIJA
W/o Shiv Pasrija
R/o: 20-B/59-B, Ground Floor,
Tilak Nagar, New Delhi

.....Respondents

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. ***Regular First Appeal*** under *Section 96 of the Code of Civil*

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Procedure, 1908 (Hereinafter referred to as 'CPC') has been filed on behalf of the Appellant / Plaintiff against the Judgment dated 27.11.2025 of the learned District Judge whereby the Suit of the Plaintiff / Appellant has been decreed in the sum of Rs. 5.60 Lakhs along with interest to *8% per annum*. The challenge by the Plaintiff / Appellant is limited to the reduction of the rate of interest from *3% per month to 8% per annum.*

2. **Brief facts** are that a Civil Suit bearing *Civ. DJ No. 610436/2016* under *Order XXXVII CPC* was filed by the Plaintiff / Appellant for the Recovery of Rs. 5 Lakhs along with interest @ 3% p.m. It was claimed by him that he had given a cash loan of Rs. 5 lakhs to the Defendants for a period of 24 months on a monthly interest of 3%.

3. **The Suit was decreed *vide* Judgement dated** 27.11.2025 for the claimed amount of Rs. 5 Lakhs, but the interest was granted @ 8% p.a., instead of claimed interest rate of 3% p.m.

4. The Plaintiff, in the **grounds of Appeal**, has contended that as per the Loan Agreement and the Promissory Note dated 19.07.2008, the contractual rate of interest was 3% per month, *i.e.*, 36% p.a. The learned District Judge has only granted 8% p.a. *pendente lite* and future interest, ignoring that it was a commercial loan transaction and the money had been disbursed through cheque dated 23.07.2008.

5. It is contended that the interest, at 8% p.a. has been granted, which is violative of the terms of contract, party autonomy, and statutory discretion under *Section 34 CPC*, which requires compensatory interest.

6. The Respondents had been wilfully defaulting from 2008-09, despite repeated reminders and Notices, and had been abusing the process by filing frivolous pleas and taking adjournments causing undue enrichment.

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7. The vital interests of the Appellant have not been safeguarded by awarding a nominal interest of 8% p.a., thereby penalizing the Plaintiff for litigation delay, orchestrated by the Respondents depriving him of commercial returns on funds, unlawfully retained since July, 2008. The impugned Judgment is contrary not only to law and fact, but has resulted in grave miscarriage of justice. The proceedings were continued for more than 13 years, which has caused not only monetary loss but also mental harassment.

8. It has not been appreciated that this transaction was commercial in nature, since the loan was availed by keeping the property documents as security, for securing the loan. However, the Appellant had committed a fraud because this very property in question, had already been transferred to Mr. Suresh Sangwan. The Appellant can in no manner, recover the amount from the property in question, since the fraud has been committed by the Respondents.

9. The learned District Judge merely opined that the interest @ 3% per month *"appears to be unconscionable and extortionate.*" This is not a finding of fact, but a subjective value judgment that cannot override the conclusive factual determination, in an earlier proceeding.

10. Reliance is placed on the Judgment of the Constitution Bench of Supreme Court in *General Assurance Society Ltd. v. Chandumull Jain and Another.*, AIR 1966 SC 1644, wherein it was observed that while interpreting documents relating to contract of Insurance, the duty of the Court is to interpret the words in which the contract is expressed by the party, because it is not for the Courts to make a new contract howsoever, reasonable, if the parties have not made it themselves.

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11. This proposition of law was reiterated in *Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd.*, (2013) 5 SCC 470, wherein it was held that the contract being a creature of an agreement between two or more parties, is to be interpreted by giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract howsoever reasonable, if the parties have not made it themselves.

12. Similar observations were made in *Shree Ambica Medical Stores v. Surat People's Cooperative Bank Ltd.*, (2020) 13 SCC 564, *GMR Warora Energy Ltd. v. Central Electricity Regulatory Commission* (2023) 10 SCC 401, and *Venkataraman Krishnamurthy and Another v. Lodha Crown Buildmart Pvt. Ltd.* in Civil Appeal No. 971/2023, decided on 22.02.2024 by the Apex Court, wherein the Apex Court held that the Court cannot rewrite or create a new contract between the parties.

13. It is, therefore, submitted that the interest may be granted @ 3% p.m. *w.e.f.* the date of filing of the Suit on 30.03.2012 till realization, instead of 8% p.a., as has been granted by the learned Trial Court.

Submissions heard and record perused.

14. The Plaintiff, as per his own case, had given a loan of Rs. 5 Lakhs to the Defendants / Respondents. According to him, a Loan Agreement was executed whereby the parties agreed that the Defendants would repay the loan by way of monthly instalments of Rs. 14,500/- starting from June, 2008 till June, 2012. In the month of June 2009, the monthly instalment was increased from Rs. 14,500/- to Rs. 15,000/-. A blank cheque of Rs. 5 Lakhs was also issued by the Plaintiff as security. According to the Plaintiff, as per

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the terms of the Agreement, **the interest was payable @ 3% p.m.**

15. The *only ground of challenge* in the present Appeal is the grant of *pendente lite* and future interest @ 8% p.a. on the decretal amount of Rs. 5.60 lakhs, when it should have been granted @ 36% p.a.

16. The main emphasis of the Appellant is that once the parties to the contract had specifically agreed to the payment of interest @ 3% p.m., the Court could not have rewritten the terms of the loan and *suo moto* decided that this interest rate was unconscionable and to grant interest @ 8% p.a.

17. The ***first aspect*** which may be observed is that the loan was of Rs. 5 Lakhs, but the Suit amount was claimed as Rs. 5.60 Lakhs which included the pre-Suit interest, and the interest has been given not only on the principal amount but on Rs. 5.60 Lakhs which includes the pre-Suit interest.

18. The ***second aspect*** which emerges is that the Plaintiff has claimed that he had given a *friendly loan* of Rs. 5 Lakhs, but at the same time, is claiming an interest of 3% p.m. by claiming it to be a *commercial transaction*. This is an *inherently contradictory* plea taken by the Plaintiff.

19. The ***third aspect*** which arises is the challenge to the reduced *pendente lite* and the future rate of interest. It is significant to refer to *Section 34 CPC* which pertains to the grant of interest in a decree for payment of money. The section reads as follows:

> ***"34. Interest.***
>
> *(1) Where and in so far as* ***a decree is for the payment of money****,* ***the Court may****, in the decree,* ***order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged****, from the date of the suit to the date of the*

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*decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [**with further interest at such rate not exceeding six per cent. per annum, as the Court deems reasonable on such principal sum**], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit."*

20. A bare reading of *Section 34 CPC* indicates that the power of Courts to award pendente lite and future interest in a Decree for payment of money, is a **discretionary power**, *de hors* the contract between the parties.

21. The Supreme Court in the case of *Central Bank of India v. Ravindra & Ors.*,MANU/SC/0663/2001 held that,

*In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, **the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest**. The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons.*

22. Likewise, in the case of *Tomorrowland Limited vs. Housing and Urban Development Corporation Limited and Ors.*, MANU/SC/0206/2025; 2025:INSC:207, it was held that the power to award interest ought to be exercised judiciously, in alignment with equitable considerations and also

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ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case, applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.

23. A similar observation was made in *Small Industries Development Bank of India v. M/s. Sibco Investment Private Limited*, Civil Appeal No. 8 of 2022, wherein it was observed that the award of interest under *Section 34 CPC* ***is a discretionary remedy, steeped in equitable consideration.***

24. Learned Counsel for the Appellant himself has placed reliance on *Ram Singh Narain Singh vs. Dewan Cand Nand Kishore*, 1959 Supreme (P&H) 155, wherein it was held that the *pendent lite* and future interest is to be governed by *Section 34 CPC*. *Section 79* of *the Negotiable Instruments Act, 1881* (*hereinafter referred to as* '*NI Act*') mandates a Court to allow interest at the specified date on a principal amount due on a negotiable instrument, from the date of the instrument till its tender or realization of the amount. It was clarified that *Section 79 NI Act* would be applicable till the time of institution of the Suit, wherein no option is left with the Court to cut down the contractual rate of interest, *unless the Court comes to the conclusion that the interest is penal or exorbitant* as held in the case of *Bishan Das vs. Gurdasmal*, AIR 1930 Lah. 148. If the rate is proper, the Court may allow the contractual rate from the date of the instrument to the date to be fixed but it. However, *pendent lite* and future interest is essentially governed by *Section 34 CPC*.

25. Similar observations have been made in *Laxmi Chand Gangaram vs. Brijbhushandas*, Supreme (MP) 161, wherein it was held that the Court is

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bound to allow contractual rate of interest for the period from the date of institution of the Suit till the date of payment. However, *it is the discretion which has to be exercised by the Court judicially and not in an arbitrary and capricious manner*.

26. Similar observations were made in *K. Ramaswamy, Gomathi Bhawan vs. SBI, Madurai City Branch*, 1984 Supreme (MAD) 478, that *Section 34 CPC* provides for a reasonable rate of interest, to be normally decided by the Court on the facts and circumstances of each case, and that such discretion has to be exercised judicially.

27. Likewise, in the case of *State of A.P. vs. G. Damodar Naidu*, 2023 Supreme (AP) 931, it was held that even though the Plaintiff had claimed interest @ 24% per annum, but the Court considering that it was a commercial transaction, where the litigation had remained pending for 30 years, granted the interest @ 15% per annum.

28. The concept of grant of interest under *Section 34 CPC* was considered in the context of whether it is nature of a penalty or on account of the delayed payment, was considered in detail in the recent judgment of *BPL Limited vs. Morgan Securities and Credits Private Ltd*., 2025 Supreme (SC) 1997, wherein after discussing the various judgments of England and other foreign jurisdiction, it was held that the most venerated test for determining the penalty clause was propounded by Lord Dunedin in the case of *Dunlop Pneumatic Tyre Co. Ltd. vs. New Garage and Motor Co. Ltd*., [1915] AC 79, wherein four rules for the construction of liquidate damages were formulated by Lord Dunedin. It was held as under :

> *"Lord Dunedin in Dunlop Pneumatic Tyre Co. (supra) where the learned Judge formulated the following four*

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rules for the construction of liquidated damages. A clause is said to be in nature of a penalty if :
a) The sum pre-estimated is unconscionable and extravagant compared to the greatest loss that could conceivable be proved to arise from the breach.
b) The breach consisting only of not paying a certain amount, and the sum stipulated is a sum greater than the sum which ought to have been paid.
c) A single lump sum is made payable on the occurrence of one or more or all of several events, some of which may occasion serious and other but trifling damage.
d) The sum stipulated is not a genuine pre-estimate of damage in cases where it is impossible to make a precise pre-estimation."

29. It was further observed that these aforesaid principles may be relevant while looking into clauses of simple damages in standard contracts, but may be difficult to apply in complex contracts. It was further observed that these tests need a criticism where there is absence of consideration appropriated to commercial reality; in complicated cases and the rigid dichotomy *i.e.*, genuine and non-genuine pre-estimate of loss is misleading, artificial and arbitrary.

30. In the case of *BPL Limited* (supra) it was further noted that decades after *Dunlop* (supra), the Supreme Court of India in *Fateh Chand vs. Balkishan Dass*, 1963 SCC OnLine SC 49, examined a deed of sale which provided that if the Sale Deed was not registered by the purchaser with in the stipulated time, the earnest money and the sale price of INR 1,000 and 24,000 respectively, paid by the purchaser would be forfeited. The Supreme Court applied the *Dunlop Test* and noted that the INR 24,000 stipulation was not a "*genuine pre-estimate of loss*" and was manifestly in the nature of a

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penalty.

31. Again, in *Maula Bux vs. Union of India*, (1969) 2 SCC 554, it was held by the Apex Court that in cases where the parties are unable to determine the reasonable compensation, if the amount decided by the party is a "*genuine pre-estimate of damages*", it should be considered a reasonable compensation.

32. Likewise in *Kailash Nath Associates vs. DDA*, (2015) 4 SCC 136, the Court held that only those liquidated damages which are "*genuine pre-estimate of damages*" can be enforced as a reasonable compensation.

33. After making a reference to all the aforesaid Judgments, it was held in *BPL Limited* (Supra) that wherever the stipulation in case of default of payment of loan is in the nature of penalty, then the same must be rejected.

34. It is, therefore, evident that the common thread through all these Judgments is that *firstly*, where in a contract, the stipulation of interest is in the nature of penalty, the same may not be awarded by the Court. *Secondly*, the payment of *pendent lite* and future interest, is the discretion of the Court in terms of *Section 34 CPC*.

35. In the present case, the exercise of discretion by the learned District Judge in awarding *pendente lite* and future interest @ 8% p.a. cannot be said to be either arbitrary or contrary to *Section 34 CPC*, which vests the court with the discretion to award such interest as it deems reasonable.

36. The Appellant, while describing the advance as a friendly loan, has simultaneously sought interest @ 3% p.m. by characterising it as a commercial transaction, which itself reflects an inconsistency in the foundation of the claim. Further, it was observed that the decretal amount of Rs. 5.60 Lakhs, already included the pre-suit component.

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37. Thus, the reduced rate of interest @8% per annum, *cannot be termed so inadequate or unjust as to warrant interference*.

38. As such, the claim of the Appellant for seeking enhanced *pendente lite* and future interest on a friendly loan, does not hold merit.

39. From the aforesaid discussion, it emerges that there is ***no merit*** in the present Regular First Appeal warranting interference with the impugned Judgement and Order dated 27.11.2025.

40. The Appeal, is hereby **dismissed**. Pending Applications, if any, also are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 18, 2026/*N*

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