



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 88/2024

Amarbhaw Power Private Limited, Registered Office Divya A-14 ,
Ii Extension, Kamla Nehru Nagar, Jodhpur Through Its Director
Piyush Mathur, R/o A-14, 11 Extension, Kamla Nehru Nagar,
Jodhpur, Rajasthan.

----Appellant

Versus

1. Punjab National Bank Limited, Branch At Pal Road,
Jodhpur Through Its General Manager, Punjab National
Bank Limited, Branch Pal Road, Jodhpur.
2. Punjab National Bank Limited, Branch At Pal Road,
Jodhpur Through Its Managing Director And Ceo,
Registered Office 7, Bikaji Kama Place, New Delhi.

----Respondents

For Appellant(s) : Mr. Vikas Balia, Sr. Adv. With
Mr. Divik Mathur
For Respondent(s) : Mr. Jagdish Vyas

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANJEET PUROHIT**

Judgment

- | | | |
|--|---|---------------|
| 1. Date of conclusion of arguments | : | 15/12/2025 |
| 2. Date on which judgment was reserved | : | 15/12/2025 |
| 3. Whether the full judgment or only
the operative part is pronounced | : | Full Judgment |
| 4. Date of pronouncement | : | 20.01.2026 |

Reportable

Per : (Mr. Sanjeet Purohit,J.)

FACTUAL BACKGROUND

1. The present Civil Misc. Appeal is preferred against the judgment
and decree dated 10.05.2023 passed by the learned Commercial Court
No.2, Jodhpur, in Civil Original Suit no. 64/2021 (NCV No. 74/2020),



whereby the suit so filed by the appellant-plaintiff for recovery of sum of Rs. 5,52,000/-, being the amount recovered by the respondent Bank towards prepayment charges, came to be dismissed.

2. The suit has been preferred with following facts:-

2.1 It is mentioned in the plaint that the appellant, for the purpose of expansion of its business activities, approached the respondent bank, seeking credit facilities. Upon due consideration, the respondent Bank issued a sanction/acceptance letter dated 22.12.2015 allowing following credit facilities in favour of the appellant-plaintiff:

(i) Fund Based Working Capital Limit – Rs.50,00,000/- (enhanced to Rs.62,50,000/-);

(ii) Term Loan – Rs.2,76,00,000/- for establishment of a new turbine mill.

2.2. The sanction letter contained detailed terms and conditions, including stipulation that pre-payment charges at the rate of 2% would be levied on the limit/outstanding amount, whichever was higher, in the event the account was taken over by another bank or financial institution. At the same time, a hypothecation agreement was executed between the parties and Clause 5(ii) of the said agreement also specifically provided for levy of pre-payment charges at the rate of 2% in case of premature closure of the loan.

It was averred that the respondent-Bank is admittedly signatory to the Code of Bank's Commitment to Micro and Small Enterprises (hereinafter referred to as "the Code"), which provides for pre-payment of loan without levy of prepayment penalty in case of borrower being MSME, therefore, the condition of prepayment charges contained in the sanction letter as well as hypothecation agreement being contrary to the "Code" which is invalid.

2.3. It was further pleaded that appellant repaid the entire loan amount prior to the completion of the agreed loan period, however, the





respondent bank levied a sum of Rs.5,52,000/- towards pre-payment charges.

2.4. Questioning the said levy, the appellant addressed representations to the respondent Bank between May and June 2018, seeking exemption from pre-payment charges by placing reliance upon the Code.

2.5. Appellant also referred to the information supplied by the respondent Bank under Right to Information Act, 2005, through its communication dated 18.08.2018 stating that no pre-payment charge is permissible on temporary loans obtained by MSMEs. However, the respondent-Bank has refused to waive the pre-payment charges and the same were paid by the appellant-plaintiff.

2.6. It is also contended that appellant approached the authorities under the Banking Ombudsman Scheme, 2006, but the complaint was rejected vide order 18.03.2019.

2.7. In this factual background, the appellant-plaintiff preferred the suit for recovery of Rs.,5,52,000/- so also seeking declaration that Clause 5 (ii) of the Hypothecation agreement is illegal.

3. The suit was contested by the respondent-Bank by way of filing a written statement stating therein that the prepayment charges have been levied strictly in accordance with terms and conditions of hypothecation agreement executed between the parties and in consonance with the guidelines issued by the Reserve Bank of India, which is fortified by the order of the Banking Lokpal rejecting the complaint of the appellant.

3.1. It is further stated that the Code only provides for the best practices committed by the member banks to the MSME borrowers, however the same cannot prevail over or nullify the agreed terms between the parties.





3.2. Justifying the Clause 5(ii) of the hypothecation agreement, it is contended that the same deals with a specific situation i.e. taking over of loan by another financial institution and therefore, said condition cannot be said to be violative of Code.

3.3. It is further stated that once the appellant-plaintiff has voluntarily agreed to the terms of the hypothecation agreement, the objection for the pre-payment charges raised at the later stage is barred by principle of estoppel.

4. Based upon the pleadings of the parties, learned trial Court framed eight issues for adjudication. While considering the arguments advanced and the evidences adduced, the learned Trial Court decided issue Nos. 1 and 3 conjointly, holding that paragraph 5.3(H) of the Code prohibits levy of pre-payment charges only where the MSME repays the loan from its own sources. Whereas, in cases of loan taken over by another bank or financial institution, the contractual terms more specifically Clause 5(ii) of the hypothecation agreement would prevail.

4.1. learned Commercial Court further held that the appellant failed to establish the outstanding loan amount as on the date of pre-payment and, therefore, could not substantiate its plea that the charges were calculated on an excessive amount.

4.2. Based upon the adjudication of issue No.1 and 3, the learned Commercial Court decided the other issues accordingly and vide its judgment and decree dated 10.05.2023, dismissed the suit preferred on behalf of the plaintiff-appellant. Aggrieved thereby, the present appeal has been filed.

SUBMISSION BY THE PARTIES

5. Learned counsel for the appellant submitted that the levy of pre-payment charges upon the appellant, being an MSME, is ex facie illegal and contrary to the Code, to which the respondent bank is a signatory.





It was contended that the Code has been framed pursuant to the regulatory framework of the Reserve bank of India and is binding upon all signatory banks.

5.1. It was further urged that paragraph 5.3(H) of the MSME Code clearly mandates that banks shall permit MSMEs to prepay loans without levying pre-payment penalty. The respondent Bank, having voluntarily adopted the Code, could not resile from its obligations by taking shelter under contractual clauses, which runs contrary to the provisions of Code.

5.2. Learned counsel also placed reliance upon the communication (Exhibit-11) issued under the Right to Information Act, wherein it was stated that no penalty can be charged from MSMEs for pre-payment of loans. According to the appellant, this admission clearly establishes illegality of the levy.

5.3. Without prejudice to the above, it was argued that even assuming the levy of 2% pre-payment charge to be valid, the same could only have been computed on the outstanding amount as on the date of pre-payment and not on the entire sanctioned loan amount of Rs.2,76,00,000/-. The levy on the full amount was thus asserted to be arbitrary and sustainable.

6. Per contra, learned counsel for the respondent bank supported the impugned judgment and submitted that the pre-payment charges were levied strictly in accordance with the contractual terms voluntarily agreed upon by the appellant. The hypothecation agreement, duly executed between the parties, expressly provided for levy of 2% pre-payment charges in the event of takeover of the loan by another bank or financial institution.

6.1. It was submitted that the MSME Code does not create an absolute prohibition against levy of pre-payment charges in all circumstances.





Reliance was placed upon paragraph 5.3(H) of the Code to argue that the exemption from pre-payment penalty applies only when the loan is repaid from the borrower's own sources of income. In cases where repayment is effected through takeover by another bank, the Code does not bar levy of pre-payment charges.

6.2. It was further submitted that the appellant failed to lead cogent evidence before the Trial Court to establish the exact outstanding amount at the time of pre-payment. In the absence of such proof, the contention regarding wrongful computation of the pre-payment charges was rightly rejected.

6.3. Questioning the conduct of the appellant-plaintiff, it is stated that the plaintiff, once agreed and acted upon the terms of voluntarily executed contract, is estopped from raising grievance against the prepayment charges, clearly stipulated in the hypothecation agreement.

ANALYSIS AND REASONING

7. We have heard learned counsels for the parties at length and have perused the record of the case, including the pleadings, documentary evidence and the impugned judgment dated 10.05.2023 passed by the learned Commercial Court.

8. The controversy in the present appeal revolves around the legality of levy of pre-payment charges upon a Micro, Small and Medium Enterprise (MSME) in the context of the contractual stipulations contained in the hypothecation agreement vis-à-vis the Code of Banks' Commitment to Micro and Small Enterprises, 2015.

9. For ready reference, Clause 5(ii) of the Hypothecation Agreement dated 22.12.2015 (Exhibit-4) is quoted below:

"5. That the borrower agrees to pay and bear the -

(i)

(ii). Prepayment Charges/Premium @ 2% on the outstanding under the loan which is prepaid in case the loan is prepaid;"





The sanction letter dated 22.12.2015 inter alia contains the stipulation regarding prepayment charges and the same is part and parcel of the hypothecation agreement – Appendix I. The condition regarding prepayment under the sanction letter is quoted below:

"Prepayment charges – *The prepayment charges @ 2% will be levied on the limit/outstanding whichever is higher, if the account is taken over by some other bank / Financial institutions."*

On the other hand, Clause 5.3(H) of the Code relating to pre-payment is quoted below: -

"5.3. Sanction / Rejection

We will :

... ..

(H). Permit prepayment of floating rate of loans without levying any prepayment penalty."

9.1. A bare reading of Clause 5.3(H) of the Code and the condition relating to pre-payment charges under the Agreement would reveal that they are distinct and not contrary to each other. Clause 5.3(H) of the code pertains to pre-payment charges simplicitor i.e. payable by the borrower himself from its own income sources. It does not prohibit levy of pre-payment charges where the loan is prepaid pursuant to takeover by another bank or financial institution. Whereas, the clause 5(ii) of the hypothecation agreement read with relevant conditions of sanction letter expressly governs a distinct situation where the loan is taken over by another bank or financial institution. In this view thereof, it cannot be said that the conditions of hypothecation agreement is contrary to the Code. Since both the provisions govern different set of scenarios, the provisions stipulated in the code cannot be read in a manner that substitutes or supplants the terms mutually agreed upon by the parties.

9.2. In the present case, the factual position, as emerged on record, is that the appellant repaid the loan by obtaining finance from another bank, thereby resulting in takeover of the account of the respondent





bank. Such a situation squarely falls within the contingency contemplated under Clause contained in the hypothecation agreement, which expressly provides for levy of pre-payment charges @ 2%. The levy of pre-payment charges in the present case is, therefore, a direct consequence of the contractual stipulation agreed between the parties and cannot be said to be arbitrary or illegal.

10. It is an admitted position, that the relationship between the appellant and the respondent bank is governed throughout in terms of sanction letter and the hypothecation agreement executed pursuant thereto. It is only at the stage of repayment of the loan amount by way of take over of loan by another financial institution, the appellant – plaintiff relied upon the conditions of the Code.

10.1. It is a settled principle of law that once a borrower voluntarily and by exercising his own free will, enters into a contract, he is bound by the terms and conditions stipulated therein and cannot be permitted to bypass the same. The Hon'ble Apex Court in the case of **Union Bank of India v. Krupanidhi Educational Trust & Ors.; (2021) 18 SCC 318** while reiterating the said position of law held that once the parties have consciously entered into and executed a loan agreement, the terms and conditions contained therein constitute a concluded and binding contract, enforceable against both sides. The relevant paragraph of the judgment is reproduced herein below:

"7. We are of the considered opinion that once a loan agreement was signed between the parties, a concluded contract came into being incorporating pre-payment charges. The agreement would bind the parties. The respondent Bank was the beneficiary of the pre-closure charges and therefore if it opted to waive a part of the benefit by reducing the pre-closure charge from 2% to 1%, it was their discretion and jurisdiction which obviously inures to the benefit of the complainant. But in no case could the pre-payment charge be lowered beyond that waived by the respondent Bank under the agreement. The National Commission opined that the





respondent Bank ought to have given further concession. This opinion was not based on any reasoning or law, except to state that the complainant was an educational trust, without any reference to the contract signed between the parties and which binds both of them. We are, therefore, of the considered opinion that the National Commission erred in introducing a third case very different from that as contained in the agreement signed between the parties by reducing pre-payment charges further. This could not have been done."

Thus, it is clear that the clause providing for levy of pre-payment

or pre-closure charges formed an integral part of the contractual arrangement and could not be disregarded or altered by judicial or quasi-judicial fora on considerations of equity or sympathy.

10.2. Moreover, the principle of "**argumentum ad hominem**" underscores that a party must adhere to its prior statements or conduct and cannot later contradict or challenge a position it has already accepted. In the present case, the appellant borrower, having consciously agreed to the terms and conditions of the hypothecation agreement, is bound by the same and is consequently estopped from avoiding the contractual commitments therefrom or seeking the intervention of this Court.

10.3. The Hon'ble Apex Court in the case of **Water Resources Deptt. v. Rattan India Power Ltd., (2023) 19 SCC 410** held that after signing the contract, the parties shall be estopped from questioning or seeking deviation. The relevant paragraph of the judgment is reproduced herein below:

"19. In the present case, the appellant and Respondent 1 had entered into an agreement on 22-5-2012. This agreement categorically stated that Respondent 1 would pay a sum of Rs 1,00,000 per hectare towards irrigation restoration charge. Therefore, Respondent 1 is not justified in challenging the levy of Rs 1,00,000 when it itself had agreed to the same. In fact, on the same day, Respondent 1 had also issued an undertaking that it would pay the





stipulated sum within a specific period of time. We may note here that right from the very beginning i.e. in the sanction order, the demand notice and in all its letters, the appellant had stipulated a sum of Rs 1,00,000 per hectare as irrigation restoration charges. All these communications get subsumed in the agreement dated 22-5-2012. Therefore, we are of the view that signing the agreement and issuing an undertaking would estop Respondent 1 from challenging the levy of Rs 1,00,000 as irrigation restoration charges."

10.4. Obligations arising out of contractual relationships must be complied in good faith by the parties. The appellant borrower, having benefited from the said agreement cannot be allowed to approbate and reprobate by challenging the obligation arising from the very same agreement.

10.5. The Hon'ble Apex Court in the case of **Union of India v. N. Murugesan, (2022) 2 SCC 25** held that one cannot take advantage of one part of the agreement while rejecting the rest. The relevant paragraph of the judgment pertaining to "approbate and reprobate" is reproduced herein below:

"26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An





element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.”

10.6. In view of the aforesaid discussion, the appellant borrower, being a signatory of the agreement is precluded from disputing the legality of levy of pre-payment charges as stipulated under Clause 5(ii) of the hypothecation agreement, read with the relevant conditions of the sanction letter.

11. As regards the plea that the pre-payment charges were calculated on an excessive amount, we find no infirmity in the findings recorded by the Trial Court. The appellant failed to place on record cogent material to establish exact outstanding balance as on the date of pre-payment. In the absence of such evidence, the Trial Court was justified in rejecting the said contention. Therefore, the findings recorded and the conclusion drawn by the learned Commercial Court regarding issue No.1 and 3 are absolutely justified and deserves no interference.

12. The reliance placed by the counsel for the appellant on the Code of Banks' Commitment to Micro and Small Enterprises is misconceived. The Code, by its very nature, is a statement of voluntary commitments and best practices adopted by banks to ensure fair treatment of MSME customers. The same, by its nature, cannot ipso facto automatically override or nullify express contractual terms mutually agreed upon between the parties. The Code cannot be read in isolation or in a manner that rewrites or supplants binding commercial contracts.

13. The contention of the appellant that the respondent Bank's reply under the Right to Information Act amounts to an admission barring levy of pre-payment charges is also devoid of merit. The said communication cannot override the express contractual provisions nor





can it be construed as conferring a substantive legal right contrary to the agreement executed between the parties. At best, it reflects a general position and cannot be applied *dehors* the specific facts and contractual framework agreed between the parties.

14. In view of the aforesaid discussion, we are in complete agreement with the impugned judgment of the learned Trial Court. The findings recorded are based on proper appreciation of the contractual documents and the applicable legal principles and do not warrant interference from this Court in appellate jurisdiction.

15. Consequently, the appeal being devoid of merit is hereby dismissed. The judgment and decree dated 10.05.2023 passed by the learned Trial Court is affirmed.

16. All pending applications, if any, stand disposed of accordingly.

17. Record of the Trial Court be returned forthwith along with a copy of this judgment.

18. No order as to costs.

(SANJEET PUROHIT),J

(DR.PUSHPENDRA SINGH BHATI),J

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