108803 - Should he take more than what is owed as compensation for late repayment?

the question

A person has bought a small forage factory from me for an amount of 14000 pounds. He signed an empty cheque for me, which is to be paid once the factory starts working. The factory has already started working few months ago. He ignores paying intentionally, and I have complained to the court. My question is: is it permissible for me to write an amount that is bigger than 14000 in return for the delay? Bear in mind that he is rich and the factory works well, and he is gaining wealth of it.

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for you to write more than the amount mentioned in order to take more as compensation for the delay, because that would be a kind of riba, and Allah has forbidden it definitively as He says (interpretation of the meaning):

“Allah has permitted trading and forbidden Riba” [al-Baqarah 2:275]

And the Messenger of Allah (peace and blessings of Allah be upon him) cursed the one who consumes riba and the one who pays it, the one who writes it down and the two who witness it, and he said: they are all the same. Narrated by Muslim.

It says in the statements of the Fiqh Council: If the one who is buying by instalments delays payment of instalments beyond the stipulated time, it is not permissible to make him pay more than the debt by prior stipulation or otherwise, because that is riba which is haraam. End quote

from Majallat al-Majma’ al-Fiqhi (6/1/445-448)

Secondly:

If the debtor refuses to pay the debt and he is well off and can afford to pay, then he is liable for all costs incurred by the lender in order to get his money back.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

If the one who owes the debt is able to pay it off, but he delays it until the lender has to make an official complaint, whatever he has to pay because of that is to be paid by the wrongdoer who delayed repayment, if the cost is of a regular amount. End quote from Majmoo’ al-Fatawa (30/24).

Based on this, you can add to the amount mentioned whatever you spent in order to get the repayment, such as hiring a lawyer, so long as the debtor is well off – as you mentioned. But if he is in financial difficulty and cannot pay off the debt, then it is not permissible to refer the matter to the courts, rather you should be lenient with him until Allah makes him solvent. Allah says (interpretation of the meaning): “And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay” [al-Baqarah 2:280].

See also the answer to question no. 106556.

And Allah knows best.