(1992) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Appeal No. 606/85

Andhra Bank, Sultan Bazar, Hyderabad — APPELLANT

Vs

M/s. Manney Industries and others — RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34, 96

Citation : AIR 1993 AP 53 : (1993) 1 ALT 134 : (1993) 1 APLJ 35 : (1993) 2 CivCC 221

Hon'ble Judges : Radhakrishna Rao, J;Mohilal B. Naik, J

Bench : Division Bench

Advocate : M/s B. Nagi Reddy, for the Appellant; Mr. Koka Raghava Rao, for the Respondent

Judgement

1. The plaintiff in OS No. 185/83 on the file of the Addl. Dist. Judge, Rangareddy District at Begumpet, Secunderabad is the appellant herein and the present appeal is preferred against the judgment and decree in OS No, 185/83. The appellant-plaintiff is a nationalised bank viz. Andhra Bank, Sultanbazar Branch, Hyderabad, filed a suit for recovery of a sum of Rs. 9,49,137-54 and they sought a decree against D1 to D7 (respondents 1 to 7) who are the partners and also against D8 (respondents herein) who created an equitable mortgage. The fact of amount that was lent to the sick unit which was meant for commercial purpose is not in dispute. The default committed by the respondent-defendants is also not in dispute. Since the appellant-plaintiff failed in recovering the amount due, filed the suit and the court below after considering the evidence granted decree for the original amount that has been claimed and with interest at 6% p.a. from the date of suit till the date of realisation. While granting the decree with interest at 6% p.a. the lower court relied upon the decisions reported in Soli Pestonji Majoo and Others Vs. Gangadhar Khomka, , Jaigobind Singh v. Lachminarain, AIR 1940 FC 20; and also Pentala Githavardhana Rao and Others Vs. The Andhra Bank Ltd. and Others, . The appellant-bank being aggrieved that as it is a commercial transaction and as the amount that has been lent is only for commercial purpose

and while the agreed contractual rate of interest is at 17% p.a. it is contended that the court below ought not have granted interest at 6% p.a. from the date of suit till the date of realisation.

2. Granting of interest subsequent to the filing of the suit as contemplated under S. 34 of CPC is discretionary one. The Court may as per the proviso to Section 34, CPC, which read as follows:

"Whether the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed at 6% per annum, but shall not exceed contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transac tions."

On a reading of this proviso it can never be said that the Court can grant only 6% p.a. interest from the date of institution of the suit, though the discretion has to be exercised judiciously. The discretion can be exercised on the basis of the proviso by granting interest from 6% p.a., to the contractual rate that has been entered into between the parties concerned. In this case, sufficient reasons have been given by the Court below as to why interest at 6% p.a., from the date of suit till the date of realisation was granted. In a decision reported in P.G. Rao v. Andhra Bank Limited (supra) a Divisional Bench of this Court is of the view that:

"in suit for redemption the courts are under no obligation to award interest at the contractual rate after the date of redemption, even though that rate is not penal or excessive. Award of interest for period subsequent to the date of the suit is discretionary with the Courts."

The Division Bench relied upon the Supreme Court decision reported in S. P. Majoo v. Gangadhar (supra). The Supreme Court in turn relied upon the decision reported in Jaigobind Singh v. Lachminarain (supra) wherein they have held that it is not absolutely obligatory on the Courts to decree interest at the contractual rates after the dates of redemption in all circumstances even if it is not penal, excessive or substantially unfair and the Courts have got discretion so far as interest payable subsequent to the date of the suit is concerned.

3. The Courts, undoubtedly, have got discretion but that discretion has to be exercised basing on the facts and circumstances that has been brought out therein. It is not an absolute rule that even in the case of commercial transactions where the amount lent for commercial purpose, the Court must grant interest only 6% p.a. from the date of suit. Ample discretion has been given to the Courts and the Court is competent to grant, in commercial transactions, further interest which may exceed 6% p.a. but shall not exceed contractual rate of interest. If the contract rate is 17% p.a., and the transaction is for commercial purpose, when there are no sufficient reasons for reducing the same, granting of interest at 6% p.a. from the date of suit till the date of realisation is ordinarily unjustified. A person who has contracted particular rate of interest, having failed in repaying the amount due on the ground of improper

utilisation, cannot be allowed to claim minimum rate of interest from the date of institution of the suit. If it is so every person who contracted with higher rate of interest but defaulted will exercise that option though the amount borrowed (was) for commercial purpose.

4. This Bench is of the view that the discretion has to be exercised judiciously and supported by reasons for granting interest at 6% p.a. from the date of filing of the suit or rate higher than 6% p.a., and below the contractual rate of interest. In this case the unit has become sick immediately after jts commencement and thereafter they could not pay the due amount and another person has taken over the unit and created an equitable mortgage and so under these circumstances and taking into consideration that they have not earned any yield or profit out of the transactions even from the inception of the unit itself and in view of the fact that the unit had become sick immediately after its commencement, the learned judge thought it fit and granted interest at 6% p.a., from the date of suit till the date of realisation. Normally, this court would not interfere with the discretion exercised by the lower court regarding the rate of interest provided it satisfied the reasons that have''been given by it are sound and reasonable. We fortified our view even by the decision reported in The State of Madhya Pradesh and Others Vs. Nathabhai Desaibhai Patel, , wherein the Supreme Court took into account the conduct of the parties and the reasons given by them which are as follows:

"Coming to the question of interest subsequent to the date of the institution of the suit, it was found that the appellant had unlawfully withheld the amount due to the respondent even after coming to know that the collection made was an illegal one. Before instituting the suit, the respondent had issued a notice to the appellant, calling upon the appellant to pay the money illegally collected from it; but despite that notice, the appellant failed to pay back the amount illegally collected from the respondent. That being so, in our opinion, the High Court was jusitified in awarding interest on the principal" amount from the date of the suit."

In the special circumstances of the case, as found by the Court below, which are sound and well founded, granting interest at 6% p.a. from the date of filing of the suit till the date of realisation is perfectly justified and does not warrant any interference by this Court.

5. The appeal is dismissed accordingly. There shall be no order as to costs.

6. Appeal dismissed.

