

(2003) 09 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7151 of 2002

Andhra Pradesh Co-operative Societies Housing Federation
Ltd.

APPELLANT

Vs

Sapna Co-operative Housing Society Ltd. and Others

RESPONDENT

Date of Decision : 17-09-2003

Acts Referred:

Banking Regulation Act, 1949 — Section 21A
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11

Citation : (2008) 1 ALT 383

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : T. Srikanth Reddy, for the Appellant; V. Ravinder Rao and G.P. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—The writ petition is filed challenging the judgment passed by the Co-operative Tribunal. Hyderabad in CTA No. 269 of 2000 dated 2-7-2001.

2. The facts, which are not in dispute are that the petitioner is Society which is involved in business of lending money to other societies. The 1 st respondent, a Co-operative Housing Society, took loan of considerable amount to provide flats to its members. The properties of the 1st respondent have been mortgaged with the petitioner while obtaining the loans, phase-wise. Many of the flats have been constructed and distributed to its members. As per the agreement, the rate of interest is 14.20% and 14.30% per annum and as many as four different mortgage deeds were executed for different properties. At one point, the 1st respondent became defaulter. The petitioner initiated proceedings under the provisions of the A.P. Co-operative Societies Act, 1964 (for short "the Act") and proceedings u/s 71 of the Act in order to recover the loan amounts. The competent authority u/s 71 of the Act calculated the interest at a compounding rate. The first respondent has no dispute with regard to the amounts defaulted

but disputed only the calculation of interest at the compounding rate. According to the 1st respondent, the rate of interest should be only as prescribed under the terms and conditions of the mortgage and they are entitled to a further slash in the rate of interest because of the pendency of the litigation for a considerable period. Since the competent authority u/s 71 of the Act did not accept the plea of the 1st respondent, permitted the petitioner to collect the dues with compounding rate of interest as claimed by the petitioner. The same has been challenged by the first respondent by way of an appeal before the Tribunal. The Tribunal having gone into the matter and after appreciating the whole issue held that the petitioner-Society is entitled to calculate at 14.20% to 14.30% simple interest and also awarded future interest at the rate of 6% per annum from the date of certificate u/s 71(1) of the Act. Hence, the Writ Petition.

3. It is the specific contention of the petitioner that the Society being involved in banking business is entitled to recover the dues with compounding interest after recalling the dues if necessary as contemplated under the agreement.

4. Learned Counsel for the 1st respondent submits that though the petitioner is involved in the money lending business, it is not covered by the Banking Regulation Act, and even otherwise it can calculate the rate of interest only at the rate prescribed under the terms and conditions of the mortgage. He further brings to the notice of the court that penal interest at the rate of 2.5% per annum has also been prescribed under the terms and conditions. Therefore, he contends that only at the rate specifically prescribed under the deed of mortgage, i.e., simple interest per annum, has to be calculated inasmuch as penal interest also is being calculated per annum. He further contends that like any other financial institution the instalments are not being collected either at quarterly or half yearly rests. From the very terms and conditions of the deed of mortgage, it is clear that the rate of simple interest has to be calculated on actual basis spreading over a period of 20 years and that the Society is not doing any business. It is only to cater to the needs of its members the amounts are borrowed and that only 1% extra is being collected from its members in order to meet the administrative and other incidental charges.

5. In the light of the relevant contentions, it is to be seen that the petitioner and the 1st respondent are strictly governed by the terms and conditions of the agreement. The mortgage deed, which is on record at Condition No. 3 reads as under:

The Mortgager-Society covenants with the Mortgagee-Federation that it shall pay 14.3% interest per annum on the instalments of the loan drawn from time to time up to the commencement of regular payment of instalments of the loan herein above mentioned and thereafter shall pay further instalments on the due dates as aforesaid.

6. A bare perusal of the said condition clearly indicates that the petitioner is entitled to calculate interest at 14,30% per annum. Clause No. 15 enables the

petitioner to collect penal interest at the rate of 2.5% per annum on any defaulted instalment. The cumulative effect of these specific conditions relating to the rates of interest would clearly go to show that the parties are bound by the terms and conditions of deed of mortgage and accordingly this court cannot give a different opinion or interpretation than the one given by the Tribunal. Accordingly, the petitioner is entitled to collect simple interest at the rate of 14.20% or 14.30% per annum as the case may be.

7. The next question that arises for consideration is whether the Tribunal is justified in awarding future interest at 6% per annum from the date of certificate issued u/s 71(1) of the Act. In this connection, the learned Counsel appearing for the 1st respondent Mr. V. Ravinder Rao, relies on the judgment of the Supreme Court in N.M. Veerappa v. Canara Bank 1998 (2) ALT 6 (SC), while dealing with the scope of Section 21-A of the Banking Regulation Act, held that the said Section cannot be held to have intended to override a Central legislation like the CPC or Order 34 Rule 11 CPC. It is held at paragraph 23 as follows.

Secondly, as stated by the Federal Court in AIR 1940 20 (Federal Court) and by this Court in Soli Pestonji Majoo and Others Vs. Gangadhar Khomka, , the discretionary power conferred on the Civil Court under Order 34 Rule 11 to cut down the contract rate of interest for the period from date of suit and even upto the date fixed for redemption by the Court is very much there, even if there was no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. This Court observed in Soli Pestonji Majoo's case as follows.

It is apparent that the new rule as inserted by the Amending Act 21 of 1929 provides that the Court "may" order payment of interest to the mortgagee upto the date fixed for payment as the rate payable on the principal. It was held by the Federa Court in Jaigobind Singh v. Lachm Narain that the language of the rule gives a certain amount of discretion to the Court so far as interest pendente lite and subsequent interest and it was no longer absolutely obligatory on the Courts to decree interest at the contractual rates up to the date of redemption in all the circumstances even if there is no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918.

In other words, the discretionary power given to the Court under Order 34 Rule 11 of CPC, is an independent power notwithstanding the provisions of the Contract Act, or, Usurious Loans Act, 1918 permitting a Court to scale down contractual rates of interest.

8. It is relevant to extract Rule 49-A of A.P. Co-operative Societies Rules, 1964 (for short "the Rules").

Procedure regarding disposal of appeals by Tribunal:

The proceedings of the Tribunal shall be summary and shall be governed as far

as practicable by the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908).

This provision makes it clear that as far as practicable the proceedings of the Tribunal shall be guided by the CPC.

9. A conjoint reading of the principles laid down by the Apex Court as above, the Banking Regulation Act and Rule 49-A of the Rules, the Registrar and the Tribunal are to act as Court guided by the principles of CPC as far as possible. In such a case. Order 34 Rule 11 CPC confers discretionary power to the court as regards the fixation of rate of interest.

10. It is to be further noted that both the petitioner and the 1st respondent are societies though the activities are different, being one as a money lender and the other is a loanee striving for the benefit of the members of the society with no profit motive. In fact, the petitioner-society is not governed by the provisions of the Banking Regulation Act inasmuch as it is not registered under the Banking Regulation Act, but registered under the Co-operative Societies Act only.

11. It is further recorded by the Tribunal that the dispute subsequent to the order passed by the competent authority u/s 71 of the Act has been pending for a considerable time. In view of that pendency, the imperative corollary is that the petitioner would be entitled to collect the interest at the rates postulated under the terms and conditions of deed of mortgage, in which event the society and its members would be saddled with additional burden. In the present case, the major portion of the constructions have already been completed and possession has also been delivered to the members. At this stage, if the petitioner is allowed to collect the rate of interest even as envisaged under the terms and conditions of the mortgage, it would cause substantial burden and hardship to the buyers. It is to be borne in mind that the 1st respondent-society had not taken up the task of constructing the flats with any profit motive and the objective of the respondent-Society shall not be defeated nor the liability at this length of time shall not be allowed to be enhanced. Therefore this aspect had been taken into account by the Tribunal and accordingly reduced the rate of future interest from the stage of Section 71 proceedings and fixed interest at the rate of 6% per annum apparently to avoid any further hardship and additional burden to the members of the society. The said exercise of discretionary jurisdiction by the Tribunal being governed by the provisions of CPC is in my view, not only permissible as held by Apex Court in Veerappa's case (supra 1) but also justifiable.

12. For the foregoing reasons, I do not find any illegality or arbitrariness in the discretionary jurisdiction exercised by the Tribunal. The same is accordingly upheld.

In the result, the writ petition is liable to be dismissed and is accordingly dismissed. No costs.