

(1986) 07 KAR CK 0035

In the Karnataka High Court

Case No : Regular First Appeal No. 475 of 1985

Bank of India

APPELLANT

Vs

C.R. Ramalinga Gupta and Others

RESPONDENT

Date of Decision : 21-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11

Citation : (1989) 65 CompCas 322 : (1986) ILR (Kar) 3620

Hon'ble Judges : S.R. Rajashekhara Murthy, J;M.N. Venkatachaliah, J

Bench : Division Bench

Advocate : S.G. Sunderaswamy, for the Appellant; A.S. Viswanath, for the Respondent

Judgement

Venkatachaliah, J.—This appeal by the appellant-plaintiff, Bank of India, is directed against that part of the judgment and decree dated May 27, 1985, made in O.S. No. 11 of 1984, a suit for sale on a mortgage, on the file of the Principal Civil Judge, Shimoga, by which the appellant's claim for the enforcement of a covenant for compounding of interest with half yearly rests on the agricultural loan was disallowed decreeing the appellant's suit for sale on a mortgage.

2. On January 24, 1984, the appellant instituted a suit for recovery, from the respondent-defendants, of a sum of Rs. 27,002.45 said to be the principal and accrued interest on two loans of Rs. 6,000 and Rs. 2,500, dated August 11, 1975, and May 15, 1976, respectively, borrowed by the first-respondent. A certain Laxman Rao, the second defendant, was the surety. Respondent Nos. 2 to 6 in this appeal are his legal representatives.

3. The first loan of Rs. 6,000 was stated to be a crop-loan and the second one of Rs. 2,500 was obtained for the purpose of erecting a fence. The first loan was said to carry interest at 2 1/2% per annum and the second Interest on both the loans, it was claimed, was compoundable with quarterly rests. Both were agricultural loans and were secured by mortgage of immovable property.

4. The respondents, while admitting the transactions, however, contended that the appellant was not entitled to the compounding of interest claimed by it and that, at all events, the respondents were entitled to the grant of reasonable instalments for payment. The permissibility of the rates of interest charged was not challenged.

5. The court below framed the necessary and relevant issue arising out of these pleadings. On a consideration of the evidence, the trial court held that the appellant was not entitled to the compounding of interest observing.

"Both the loans are agricultural loans and the plaintiff-bank cannot claim compound interest. Therefore, the plaintiff-bank is entitled to claim simple interest at the agreed rate and not to the interest claimed."

6. This view is based on pronouncements of this court in *Bank of India v. Rao Saheb Keshav Rao* [1980] 2 Kar LJ 495 and *D. S. Gowda v. Corporation Bank* [1985] 57 Com Cas 49. *Bank of India v. Karnam Rang Rao* [1988] 64 Com 477 Cas 477 (Kar) came later.

7. The court below, according, held that as regards the first loan of Rs. 6,000, the appellant was entitled to the recovery of the said sum of Rs. 6,000 together with simple interest at 11 1/2% per annum from August 11, 1975, to March 1, 1981, and at the higher rate of 13 1/2% per annum from March 2, 1981, to the date of decree.

8. On the second loan of Rs. 2,500 also, the appellant was held disentitled to compounding of interest. Simple interest at 13% per annum was allowed for the first period from March 2, 1981, to May 27, 1985, at 13% per annum.

9. The total amount of interest on the two loans from the date of the loans till decree worked out to Rs. 10,793. This sum together with principal sums of Rs. 6,000 and Rs. 2,500, respectively, aggregated to Rs. 19,293. The trial court also limited the further interest on the realisation, to 6% per annum. A preliminary decree with six months' time was drawn up.

10. We have heard Sri S. G. Sundaraswamy for the appellant and Sri A. S. Viswanath for the respondents. Two contentions were urged in support of the appeal.

11. The first is that the view taken as to the impermissibility of the compounding of interest by the trial court is erroneous. The second is that the limiting of "further interest" to 6% was also erroneous as the suit was one for sale on a mortgage to which rule 11 of Order 34, Civil Procedure the provisions of Order 34, Civil Procedure Code, was not attracted.

12. On the first contention it was submitted that though the compounding of the interest with quarterly rests was authorised by the contract, the appellant had compounded the interest only with half-yearly rests. It was contended that such compounding of interest even in respect of agricultural advances, is permissible

and that the view to the contrary expressed by a Division Bench of this court in Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477 (Kar) cannot be said to hold the field and be binding in view of the orders of the Supreme Court staying the operation of the judgment.

13. In Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477 (Kar), this court observed (at pages 480, 483 and 491) :

"The question raised by this appeal is of general nature and it relates to the right of the bank of charge compound interest on agricultural advances. Similar questions have been raised in a large number of appeals pending in this court and subordinate courts. The question, though reeks of simplicity, is not easy of solution.....

The courts cannot reopen any account maintained by banks relating to transaction with its customers on the ground that the rate of interest charged, in the opinion of courts, is excessive or unreasonable. Section 21A of the Banking Regulation Act is a restraint on such power of courts. However, in any case, if it is proved that the interest charged by banks on loans advanced is not in conformity with the rate prescribed by the Reserve Bank, then the court could disallow such excess interest and give relief to the party notwithstanding the provisions of section 21A

Banks should not compound interest on current dues. Banks should not also charge interest with monthly, quarterly or half-yearly rests on overdue loans. Perhaps, it may not be illegal to charge interest with yearly rests".

14. The appellant's claim for compounding of interest from the date of the transaction till the date of suit with quarterly or half-yearly rests becomes impermissible to be granted in view of the above decision. The correctness of this view is pending decision in appeal before the Supreme Court Having regard to these circumstances, the course that commended itself as appropriated in many other similar appeals was to admit the appeals in this court and keep them pending till the disposal of the appeal before the Supreme Court preferred in Karnam Rao's case [1988] 64 Com 477 Cas 477 (Kar).

15. However, learned counsel on both sides in this appeal agreed that if may not be necessary to keep this appeal so pending and the appeal could [1988] 64 Com 477 Cas 477 (Kar), provided that some satisfactory provisions are made in the judgment to enable, without the parties having to approach the Supreme Court, a reopening of the decree to bring it in accord with the principle that may ultimately be laid down by the Supreme Court.

16. Indeed, what imparts a particular significance to this aspect is that there is a large number of appeals, now pending before this court, in which the main point, if not the sole point, is the one touching on the enforceability by nationalised banks or the scheduled banks of covenants concerning the compounding of interest on agricultural advances. More or less similar contentions also arise in

appeals arising out of suit for enforcement by these banks of the recover of non-agricultural advances as well. In the present case, however, the rate of interest is not challenged.

17. The predicament of the creditor-banks in these cases, as it now obtains, is a difficult one. They have brought suits for sale mortgages. Having regard to the decisions as to the permissibility of compounding of interest, their suits have been only partially decreed. Preliminary decree have been drawn up by the trial courts in these suits on the basis of the partial success. The creditor-banks, aggrieved by the disallowance of the rates and compounding of interest, have brought appeals before this court. The benefit of the preliminary decrees so passed in their favour, even to the extent they go, are not availed of by the banks owing to the circumstances that they have themselves canvassed appeals against those the circumstances that they have themselves canvassed appeals against those preliminary decree and, therefore, the drawing up of final decrees pursuant to the preliminary decrees are deferred till the disposal of the appeal preferred against the preliminary decrees. Even where the disputed amounts are obviously small, the recovery of the amounts determined in the preliminary decrees are indefinitely postponed. Apparently, they seem to entertain a double whether, pending their own appeal against the preliminary decree, they could themselves seek and execute a final decree based on the preliminary decree under appeal. This seems to be on the impression that there could not be two final decrees in the same suit. They also seem to be unsure as to the consequences that may ensue from the sale of security or the hypotheca, even before their claims are finally decided in appeal.

18. A satisfactory basis for the disposal of such appeals has to be found, a basis which, while enabling present disposal of the appeals, on the basis of the principle and reasoning in Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477 (Kar), would also preserve to the creditors the security for such higher sums as they may becomes entitled to as result of the decision in the said appeal without it being necessary for the banks to file appeals in each of the cases.

19. The points for consideration, therefore, are :

(a) Whether this appeal could be disposed of on the principle of Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477 (Kar), reserving liberty to the appellant to seek appropriate modification of the preliminary decree or the final decree after the decision of the Supreme Court in appeal in that case. The question that inevitably arises is whether, during the pendency of the plaintiff's own appeal against a preliminary decree for sale is the additional relief granted in the appeal to be worked out; and

(b) What is the rate of interest to be granted from the date of the preliminary decree till realisation ? Whether the rate of 6% granted by the court below is justified ? At what stage is this question to be determined ?

20. Re : Contention (a). - Where, in a suit for sale on a mortgage, the mortgagor

admits a part of the debt and disputes the rest, the court can pass a partial preliminary decree. A final decree on that basis can also be passed. Though rule 6 of Order 12, Civil Procedure Code, which enables judgment on admissions is, in terms, inapplicable to suits on mortgages covered by Order 34, Civil Procedure Code, it is always the power of a court to decide one question arising in the suit at one stage and to reserve another for investigation at a later stage. This is inherent in judicial functions and does not require any express authorisation of the Code to do what, in such matters, is essentially a question of meeting the ends of justice and for the evident advantage to the parties. Consequently, a plaintiff who appeals against a preliminary decree for a claim disallowed in the preliminary decree can, pending such appeal, seek and enforce a final decree so that the fruits of his partial success could be realised. The remaining claim is deferred for further investigation. If a plaintiff succeeds on that part of the claim in appeal, the final decree made could be supplemented or, fresh final decree passed incorporating the additional reliefs subsequently adjudicated.

21. The rule that there cannot be more than one final decree in a case does not really come in the way. The rule, in the ultimate analysis, means no more than that there should not be two final decrees operating at one and the same time. Where the very preliminary decree pursuant to which the final decree is itself superseded, then the final decree must also be amended or passed afresh. There is really only one final decree operating at a given point of time. This is precisely what Chief Justice Sulaiman pointed out in *Aziz Ahmad and Others Vs. Riaz-ul Hasan and Others*

"..... It was explained in the Full Bench case of *Sat Parkash and Another Vs. Bahal Rai and Another* that when it is said that it is impossible to hold that there can be more final decrees than one in a suit for sale upon a mortgage, it must be meant that on the date when the decree-holder presented his application praying for the final decree to be passed, there could be no more than one final decree, and it cannot mean that when the preliminary decree of the trial court has been superseded by the decree passed in appeal, the trial court cannot pass a fresh final decree."

22. The principle is the same in the present case, but with one difference. The decision of this court in *Karnam Ranga Rao's case* [1988] 64 Com 477 Cas 477 (Kar) does not preclude the compounding of interest with yearly rests. The appellant could be given that relief. But, the banks need not be compelled to take up each case by appeal to the Supreme Court. The benefit of the ultimate decision in the appeal in *Karnam Ranga Rao's case* [1988] 64 Com 477 Cas 477

(Kar) can be given to them, by expressly providing in the judgment for a modification of the decrees.

23. What then is the position of the security respecting the debt subsequently adjudicated if, in the meanwhile the security is sold pursuant to the earlier final decree ?

24. Dr. Ghosh on The Law of Mortgages in India envisages cases where the mortgage money is payable in instalments or where interest alone is expressly recoverable. The security could be sold and if there is no surplus left after satisfying the part of the secured debt sued upon, then the rest of the debt will be left with no security and the consequences of the inadequacy of security and the need to and occasion to enforce the personal covenant will arise. If there is a surplus of sale price, it is held for the benefit of the rest of the secured debt. At page 641. the learned author states :

"As I have already said, where the debt secured by the mortgage is payable by instalments, an action may be instituted by the mortgagee as soon as the first instalment fall due; and if the property may be conveniently sold in portions, a part of it may be sold to pay the instalment already due and a further order for sale may be made upon a subsequent default and the mortgagee is not entitled to call in the principal money till the expiration of a fixed time, he may sue for the interest as soon as it falls due, and sell a sufficient portion of the property which will then pass to the purchaser free of incumbrances. (3) If, however, the property cannot be sold in portions, the proceeds may be either made over to the mortgage subject to the proper rebate of interest, or paid into the court and invested for his benefit."

25. Again, at page 628, the learned author comments :

"So, if the mortgagee sells the entire estate for the purpose of realising one of the debts, it will generally speaking, operate as an absolute release of the security. But if he sell only a part, he can follow the residue for the satisfaction of any other secured debt due to him. But to argue that because he cannot sell the entire estate without releasing his security, a mortgagee, who has two or more mortgages the same premise, is in every case bound to include them in one suit is an obvious non sequitur. When the debt is payable by instalments," says Jones, in action to foreclose may be brought when the first instalment falls due and is not paid. If the mortgage secures the payment of several notes, it may be foreclosed upon the non-payment when due of any of them. Foreclosure may be had for any part of the mortgaged debt, whether principal or interest, due at the time and no more." In such cases, the mortgagee sells only a sufficient part of the mortgaged premises; though if the property cannot be conveniently divided, the whole may be sold, and if there is a balance after paying the amount due, it is paid into the court and invested for the benefit of the mortgagee."

26. So, in the end, the answer to point (a) is that a preliminary decree can be made in the present case on the basis of the reasoning in Karnam Ranga Rao's

case [1988] 64 Com 477 Cas 477 (Kar), permitting compounding of interest with yearly rests. The appellant would be entitled to an appropriate modification or amendment of the decree if the principle laid down in the said a peal entitled it to higher sums. If the amount is not deposited by the respondents, the appellant would be entitled to a final decree pursuant to that preliminary decree. The appellant can bring to sale the security or such portions of it as may be sufficient to satisfy the claim. Surplus, if any, in the first case and the unsold portions of the security in the latter case, would continue to be security for such additional sums as the appellant may becomes entitled to and in accordance with the pronouncement of the Supreme Court in the said appeal.

27. What we have said above on point (a) in relation to suits arising out of agricultural loans applied with equal force to suits arising out of non agricultural advances as well.

28. Re : Contention (b) - In regard to the rate of interest subsequent to the date fixed for the deposit by the preliminary decree till realisation learned counsel for the appellant says that in a mortgage decree, such interest must also be awarded at the contract rate. This is not correct. The matter passes from the area of contract into the area of judgment and the court is not bound to award the contract rate, but may award at rates it considers reasonable. Such future interest is payable on the aggregate amount of the principal, interest and costs awarded by the preliminary decree. In *Sundar Koer v. Rai Sham Krishen* ILR[1907] Cal 150, 161, the Judicial Committee said :

"..... their Lordship have no hesitation in expressing their concurrence with the High Court of Calcutta, not only in allowing interest after the fixed day, but also in a allowing interest at the court rate and not at the mortgage rate. They think that the scheme and intention of the Transfer of Property Act was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend, not on the contents of his and, but on the directions in the decree"

29. It is not merely a money claim. It is a part of the mortgage money. The proper stage for decreeing such future interest is the stage of passing the final decree. But award of such interest in the preliminary decree may not be improper. The court can determine and fix it even the period subsequent to the date fix for payment in the preliminary decree till realisation though this is usually done at the stage of final decree.

30. In this case, we set aside the determination of the future interest and leave it to be decided by the court below either at the stage of passing the fresh preliminary decree or leave it to be decided at the final decree stage.

31. Point (b) is answered accordingly.

32. The appeal is allowed, the judgment and decree under appeal set aside and the suit remitted to the court below with the following directions :

(i) That a fresh preliminary decree shall be passed with interest up to the date of suit at the rates now granted by the court below permitting the compounding of interest with yearly rests :

(ii) In regard to the interest from the date fixed in the preliminary decree for deposit till realisation, the court below may provide for it there in the preliminary decree or expressly leave it to be fixed at the age of passing of the final decree;

(iii) If the deposit is not made in compliance with the preliminary decree so made, the appellant shall be entitled to a final decree and shall be entitled to bring to sale the security or such portions thereof as may be sufficient to satisfy the decree and/or such part of the security as may remain unsold, as the case may be, shall continue to be held as security for any further liability that may arise by virtue of the decision of the Supreme Court in the appeal in Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477. In the case of surplus of sale price that may continue to be held as security, it shall remain in court subject to directions of the court regarding investment and interest accruing thereon;

The respondent-mortgagor may, however, furnish alternative security to the satisfaction of the court and withdraw such surplus sale price in which case, such substituted security shall be held in lieu of the surplus sale price;

(iv) If the principle of the decision of the Supreme Court in Karnam Ranga Rao's case entitles the appellant to further amounts, the appellant shall file an appropriate application for the modification of the preliminary decree or the final decree, as the case may be, in the court passing the decree. Such application shall be filed within three months of the date of decision in Karnam Ranga Rao's case [1988] 64 Com 477 Cas 477 by the Supreme Court. The court before which such application is filed will modify if justified by the decision of the Supreme court;

(v) The security referred to in clause (iii) above shall continue to subsist for the appellant-plaintiff for a period of three months after the disposal of the appeal in the Supreme Court in Karnam Ranga Rao's case and if the appellant files an application for modification of the decree in terms of clause (v) above, till the claims contained in a such application is decided and satisfied;

(vi) The appellant shall file before the trial court a memo of calculations setting out the sums due as on the date of the suit on the basis of interest at the rates now granted compounded with yearly rests. The respondent shall be at liberty to make submissions in regard to the correctness of the computation;

(vii) Both the parties are directed to appear the trial court on October 15, 1986, without the need for service of further notices to them from the court below upon remand. The court below is directed to call this matter on October 15, 1986, for taking further proceedings. The appeal is disposed of accordingly. No costs.

(viii) The appellant shall be entitled to refund of the court-fee paid on the memorandum of appeal.