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In the Karnataka High Court

Case No : Regular First Appeal No. 41 of 1981

Canara Bank APPELLANT

Vs

Beauline and others RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96 (3)

Citation : (1992) 75 CompCas 775 : (1990) 2 KarLJ 392

Hon'ble Judges : N.D.V. Bhat, J;K.A. Swami, J

Bench : Division Bench

Advocate : Y.K. Narayana Sharma, for the Appellant; B. Vedanta Iyengar, for the Respondent

Judgement

Swami, J.—This appeal by the plaintiff is preferred against the decree dated February 12, 1980, passed by the II Additional Civil Judge, Bangalore City, in O.S. No. 675 of 1977.

2. At the outset, Sri Vedantha Iyengar, learned counsel for the respondents-defendants Nos. 3 to 6 and 8 to 11, raised a preliminary objection that the appeal is not maintainable in view of the provisions contained in sub-section (3) of section 96 of the Civil Procedure Code, as the decree under appeal is one passed on a compromise. It is also next contended that awarding of interest from the date of the decree till the date of realisation is in the discretion of the court; that there was no compromise in this regard by the parties. Hence, the future interest awarded at 6 per cent. per annum is in accordance with law and as such it is not liable to be interfered with.

3. The appeal in question is confined to the awarding of future interest at 6 per cent. per annum from the date of the decree. Therefore, the two points that arise for consideration in this appeal are :

1. Whether the appeal is maintainable ?

2. Whether the future interest awarded at 6% per annum is in accordance with

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law ?

4. Point No. 1. - The plaintiff filed the aforesaid suit for recovery of a sum of Rs. 48,941.41 together with court costs and current interest on Rs. 48,517.41 at 18 per cent. per annum from the date of the suit till the date of realisation. The plaintiff also further prayed for direction for seizure and sale of the hypothecated movables described in the plaint in the schedule attached to the plaint for realisation of the amount and to proceed against defendants Nos. 2 to 11 personally and against their other properties.

5. Defendants Nos. 3 to 11 put in their appearance through a counsel. Defendants Nos. 1 and 2 were ex parte. Defendant No. 3 filed the written statement and defendants Nos. 4 to 11 adopted the written statement filed by defendant No. 3. Issues also were framed in the suit. However, at the stage of recording evidence, the parties-defendants Nos. 3 to 11 and the plaintiff arrived at a compromise. Accordingly, the compromise memo dated February 11, 12, 1980, was tiled before the trial court with a request to pass a decree in terms of the compromise. The compromise arrived at by the parties reads thus :

"The plaintiff and defendants Nos. 3 to 11 file the compromise petition under Order 23, rule 3 of the CPC :

1. The suit be decreed as prayed for in the plaint with costs and current interest less Rs. 4,000 (rupees 2,000 received on January 3, 5, 1978, and Rs. 2,000 received on February 12, 1980).

2. The defendants shall pay a sum of Rs. 13,000 on or before March 15, 1980.

3. The entire balance due shall be paid on or before April 1, 1980.

4. It is further agreed that if the defendants pay a sum of Rs. 13,000 on or before March 15, 1980, as stipulated above, the balance due shall be paid within two years from today by paying a minimum of Rs. 2,000 per month with the single default clause.

5. If the defendants commit any default in paying any one of the instalments aforesaid, then the entire balance amount due shall be paid immediately on such default and the decree shall be executable immediately for the entire balance due.

Therefore, the parties pray that the suit be decreed with the above terms in the interest of justice."

6. The trial court recorded the compromise and passed the decree in the following terms :

"Parties report compromise by petition under Order 23, rule 3 of the Civil Procedure Code. The compromise petition is signed by the plaintiff and defendants Nos. 3 to 11 and their advocate. D-1 and D-2 though appeared have not filed any written statement. They are absent. Hence, they are set ex parte.

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Heard. Compromise read and recorded. Suit decreed in terms of compromise against all the defendants. But future interest payable from this day shall be 6% on the suit claim.

Let a decree be drawn accordingly.

(Sd.) VIII Additional Civil Judge, Bangalore city."

7. The grievance in this appeal as pointed out is that the trial court is in error in awarding future interest at 6% per annum from the date of the decree till the date of realisation. The contention of the appellant is that when once the parties arrive at a compromise, the court has no option but to record the compromise and pass the decree in terms of the compromise. The compromise also contains the terms regarding the future interest as prayed for in the plaint; that the plaint contained a prayer for future interest at 18 per cent. per annum. Therefore, the parties had also agreed for payment of future interest. As such, it was not open to the court to exercise any discretion regarding the future interest independent of the compromise.

8. There is no doubt that sub-section (3) of section 96 of the CPC specifically provides that "No appeal shall lie from a decree passed by the court with the consent of parties." If the decree is passed in terms of the compromise, there cannot be any grievance left with the parties against such a decree and such a decree is not appealable. If, on the contrary, the decree passed by the court is not in conformity with the terms of the compromise and contains terms contrary to the terms of the compromise, such a decree, to the extent it contains terms which are not in conformity with the terms of the compromise, cannot be considered to be one passed with the consent of the parties because it contains terms which are not agreed to by the parties. In such a case, the aggrieved party is entitled to come up in appeal to the extent the decree passed by the court is not in conformity with the terms of the compromise. Therefore, in the instant case, we have to find out whether the decree passed by the trial court in awarding future interest at 6 per cent. from the date of the decree till the date of realisation of the suit claim is in conformity with the compromise. We have already seen the prayer made in the plaint, and also the terms of the compromise. The prayer made in the plaint includes the prayer for future interest at 18 per cent. from the date of snit till the date of realisation. The compromise also specifically states that the suit be decreed as prayed for in the plaint with costs and current interest. The plaint contained prayer for awarding interest at 18 1/2 per cent. In the compromise, it is stated that the current interest prayed for in the plaint to be decreed. There is no ambiguity whatsoever to hold that there is no compromise between the parties regarding the future interest. At any rate, the trial court does not state that the compromise does not cover future interest and that, therefore, it is awarding future interest at a lesser rate than as claimed in the plaint. No reason whatsoever is assigned by the trial court for awarding future interest at 6%. The transaction in question is a commercial transaction. Even in the absence of agreement between the parties regarding

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future interest, it is open to the court to award future interest at more than 6%. Exercise of discretion by the trial court in awarding future interest as contended by learned counsel for the defendants-respondents does not arise in a case where the parties agree for awarding future interest at a certain rate. It is open to the parties to the suit to agree to any terms. The jurisdiction of the court is only to satisfy itself as to whether there is a lawful agreement and the terms of the agreement are lawful and it is in writing and signed by all the parties. The agreement as to future interest in respect of a commercial transaction at the rate of 18 1/2% cannot be held to be unlawful merely because in the case of transactions other than commercial transactions, the court cannot award such interest at more than 6 per cent. is on the date of the decree.

9. In the case of commercial transactions, it is open to the court to award such interest at more than 6 per cent. from the date of the decree. Hence, we are of the view that the decree passed by the trial court in so tar it awards future interest at 6 per cent. is not in conformity with the compromise arrived at by the parties and recorded by the court. Therefore, sub-section (3) of section 96 of the CPC is not attracted. The said provision is attracted only when the decree is passed in conformity with the terms of the compromise agreed to by the parties but not to a case where the decree varies from the terms of the compromise. Hence on point No. 1, it is held that the appeal is maintainable.

10. As the parties themselves have agreed for awarding future interest at 18 1/2% per annum, the trial court is nor justified in awarding future interest at 6 per cent. Hence, point No. 2 is answered accordingly.

11. For the reasons stated above, this appeal is allowed. The decree of the trial court awarding future interest at 6 per cent. from the date of the decree till realisation on the suit claim is set aside and there shall be a decree in terms of the compromise recorded by the trial court for future interest at 18 1/2% as agreed to by the parties on the suit claim less the amounts paid as stated in para 1 of the compromise from the date of the suit till the date of realisation.

12. In the facts and circumstances of the case, there shall be no order as to costs in this appeal.

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