

(2008) 09 KAR CK 0083

In the Karnataka High Court

Case No : Regular Second Appeal No. 240 of 1996

Canara Bank

APPELLANT

Vs

Smt. Gangamma and Sri. Patel Basappa

RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 100, 34 (1)

Citation : (2008) 4 KCCR 344 SN

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; R. Chandranna, for R1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The appellant, a Nationalised Bank, is the Plaintiff in O.S. No. 299/93 in the Court of Munsiff at Arsikere. The respondents were the defendants in the suit. In this appeal, the appellant has called in question, the correctness of the Judgment and Decree dated 20/12/1994 made in RA No. 23/1994 by the Civil Judge at Arsikere, to the extent It has rejected the interest @ 17.5% claimed In the plaint and has ordered for payment of interest @ 6% from the date of filing of the suit, to the date of realisation of the decretal amount.

2. For the sake of convenience, the parties will be referred to in the Judgment, with reference to their ranking in the trial Court/suit.

3. Brief facts, relevant for consideration and disposal of this appeal are as hereunder:

a) O.S. No. 299/93 was instituted by the plaintiff for recovery of a sum of Rs. 34,632/- with current and future interest @ 17.5% p.a., compounded with half yearly rests and costs. According to the averments made In the plaint, the defendants applied and availed loan of Rs. 30,000/- from the plaintiff on

17/7/84, for the purpose of growing crops and agreed to repay the loan amount with interest at the rate of 10% p.a., compounded with half yearly rests and also hypothecated the crops grown in the suit schedule property. The loan amount was agreed to be repaid in seven yearly equal annual instalments of Rs. 3,700/-. An equitable mortgage by deposit of title deeds pertaining to the suit schedule property was executed in favour of the plaintiff as security for the loan amount. The defendants executed the loan documents while availing the loan and subsequently the letters of acknowledgment of debt were execute in favour of the plaintiff. Suit was Instituted for non-payment of outstanding loan amount of Rs. 33,474/ with Interest debited up to 7/4/1993. The suit was filed for recovery of said amount along with interest from 8/4/93 up to the date of realisation.

b) Though the defendants admitted the availing of the loan from the plaintiff in their written statement, interalia disputed the charging of interest and they contended that, they are not due in the suit claim. They also contended that, they not agreed to pay the compound interest and stated that, the loan availed being for agricultural purpose, they are liable to pay interest @ 6% only, with yearly rests and the interest charged and collected by the plaintiff is high and exorbitant. Alternatively it was contended that, they have suffered loss in their agriculture and they are unable to pay the amount on a stretch and they require at least six half year equal instalments to repay the amount.

c) The trial Court, based on the pleadings of the parties, framed four issues. The plaintiff-Bank examined its officer as P.W.1 and got marked Ex.P-1 to P-16. The defendants did not lead any evidence.

d) The Trial Court, passed a preliminary decree against the defendants, for a sum of Rs. 30,000/- as shown in the ledger extract at Ex.P16 and it also held that, the defendants shall pay current Interest at the rate of 17.25% from the date of the suit, till the date of decree and it gave six months" time to pay the amount, in default, enabled the plaintiff, to put the suit schedule properties for sale, to recover the amount due.

e) The said judgment and decree was questioned by the plaintiff/appellant, in the Court of Civil Judge, Arasikere, wherein, after hearing, the appeal was allowed and the impugned decree was modified, decreeing the suit for Rs. 34,632/- with cost and directing the defendants to pay the said amount together with interest at the rate of 6% per annum from the date of filing of the suit to the date of realisation, granting six months" time to pay the decreetal amount and directing to draw a preliminary decree accordingly. In default, the plaintiff/appellant was enabled to proceed against the suit schedule properties for realisation.

4. I have heard Sri. Padubidri Raghavendra Rao, learned Senior Counsel for the appellant and Sri. R. Chandranna, learned Counsel for the respondents and perused the record.

5. The substantial question of law, which has been raised at the time of admitting the appeal is:

Whether the decision of the lower Appellate Court as regards the award of interest on the decretal amount from the date of suit until repayment at 6% simple, instead of contract rate of interest as claimed in the plaint is contrary to law and judicial pronouncements of this Court touching the matter in question and in particular, the decisions reported in Vijaya Bank Vs. S. Bhathija and another, and Syndicate Bank Vs. M. Jeevandar Kumar, ?

6. Learned Senior Counsel for the appellant contended that the lower Appellate Court has seriously erred in law in granting interest only at the rate of 6% per annum from the date of suit till the date of payment. He contended that, the lower Appellate Court has seriously erred in not applying and following the two decisions of this Court, reported in Vijaya Bank Vs. S. Bhathija and another, and Syndicate Bank Vs. M. Jeevandar Kumar, . He also brought to my notice, the decision of the Apex Court in the case of Central Bank of India v. Ravindra reported in Central Bank of India Vs. Ravindra and Others, and contended that, the decree passed by lower Appellate Court is erroneous, both on facts and In law.

7. Per contra, Sri. R. Chandranna, learned Counsel appearing for the respondents/defendants, while supporting the conclusion reached by the lower Appellate Court that, the award of interest @ 6% p.a. from the date of suit till the date of payment is fully justified, also contended that, the suit filed by the plaintiff is against agriculturists and the loan was an agricultural loan, fully secured by way of an equitable mortgage in favour of the bank and hence the appellant is not entitled to interest at more than 6% p.a. from the date of suit till the date of payment. He invited my attention to the provision contained In Order XXXIV Rule 11 of CPC (Code, for short) and the decision of the Hon"ble Supreme Court in the case of N.M. Veerappa Vs. Canara Bank and Others, , followed by this Court In the case of Canara Bank v. M.D. Chikkaswamy reported in AIR 2002 Kar 100. He contended that, since the loan advanced to the defendants was not for any commercial purpose and being an agricultural/crop loan, the lower Appellate Court was fully justified, in view of Sub-section (1) of Section 34 of the Code, in awarding interest only @ 6% p.a. from the date of suit till the date of payment. He also submitted that, having regard to the facts and circumstances of the case and in the light of the hardship pleaded by the defendants in their written statement, the rate of interest @ 6% from the date of suit till the date of payment, fixed by the lower Appellate Court on the adjudged sum of Rs. 34,632/- being reasonable and equitable, Is not liable to be interfered, in exercise of jurisdiction u/s 100 of the Code by this Court.

8. In the light of rival contentions and also the substantial question of law raised in the appeal memo and by this Court, the sole question that arises for my consideration is;

Whether the award of interest @ 65 p.a. by the lower Appellate Court on Rs. 34,632/- from the date of suit till the date of payment, is against law and requires to be interfered with?

9. The Trial Court decreed the suit for Rs. 30,000/- with interest. The lower Appellate Court found that, disallowing of the suit claim to the extent of Rs. 7,334/- is opposed to law, facts and probabilities of the case. Hence, it allowed the appeal In part and decreed the suit for Rs. 34,632/- with Interest @ 6% p.a. from the date of filing of the suit, to the date of realisation of the whole amount.

10. The decision In the case of Vijaya Bank Vs. S. Bhathija and another, , is in respect of a commercial transaction and not an agricultural loan. In the said case, after noticing the decisions of this Court in the case of Bank of India Vs. Karnam Ranga Rao and Others, and Bank of India Vs. C.R. Ramalinga Gupta and Others, , it has held that, it is not necessary to refer to them on the ground that, both the decisions deal with award of interest in the case of agricultural advances. Thus, a clear distinction was made, with regard to agricultural and non agricultural advances. In that background, considering the provision of Section 34 of the Code, it was held that, interest @ 16% p.a. from the date of suit, till the date of realisation, has to be paid. In my view, the said decision has no application to the instant case.

11. In the case of Syndicate Bank Vs. M. Jeevandar Kumar, , it was held that, for awarding lesser rate of interest, material to Justify the exercise of discretion of Court should be placed by the borrower and the conduct of borrower, honesty and fair approach In dealings, are relevant considerations, based on which, discretion could be exercised. Noticing the fact that, the borrower also owned a rice mill and was affluent enough to liquidate the outstanding amount within the agreed period and he caused delay of nearly two decades, the Court having been convinced that the borrower did not deserve any leniency and his conduct being a relevant factor, it was ordered that interest @ 16.5% shall be paid. There is no material on record, to find any fault with the conduct of the defendants herein. Hence, the said decision has no application.

12. When the suit is a mortgage suit and a decree is made on that basis, while awarding Interest, whether the Court was required to apply the provision of Section 34 or Order 34, Rule 11 of the Code, was the subject matter of consideration, in the case of State Bank of Mysore Vs. G.P. Thulasi Bai, , wherein, it has been held that, in the case of mortgage suits, the Court has discretion under Order XXXIV Rule 11 of the Code, for not granting contractual rate of interest for the period after the suit. In the decision of the Hon"ble Supreme Court, in the case of N.M. Veerappa (supra), it has been held that, it is not permissible for the Court to apply the provisions contained in Section 34 of the Code and it is only the provisions contained in Order XXXIV Rule 11 of the Code which are required to be applied. The relevant portion of the decision reads as follows:

Section 34 does not apply to mortgage suits:

7. Section 34 of the CPC applies to simple monies decrees and payment of interest pending such suits. Order 34 Rule 11, CPC deals with mortgage suits and

payment of interest. It is obvious that so far as mortgage suits are concerned, the special provisions in Order 34, Rule 11 alone is applicable and not Section 34. This has been laid down in several decisions of this Court and also by the Karnataka High Court in Thulasi Bai's case.

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Resulting legal position under Order 34, Rule 11, CPC:

17. From the aforesaid rulings the following principles can be summarised, (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34, Rule 2(c)(i) or Order 34, Rule 4(1) or Order 34, Rule 7(c)(1), respectively in suits for foreclosure, sale or redemption, (b) But after 1929 Amendment, because of the words used in the main part of Order 34, Rule 11, namely that "the Court may Order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It has been so held in Jaigobind's case by the Privy Council AIR 1940 20 (Federal Court) and by this Court in Soli Pestonji Majoo and Others Vs. Gangadhar Khomka, that the new provision gives a certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned. (c) It is no longer obligatory to award the contractual rate after date of suit and up-to-date fixed for redemption as above-stated even though there was no question of the contractual rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 amendments is that the Court has discretion to fix interest from date of suit under Order 34, Rule 11(a)(1) up-to-date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable - on the principal amount found or declared due on the mortgager is concerned, (e) The Court has also power to award from date of suit under Order 34, Rule 11(a)(iii) a rate of interest on costs, charges and expenses as per the contract rate or falling such rate, at a rate not exceeding 6%, This is the position of the discretionary power of the Court, from date of suit up-to-date fixed in the preliminary decree as the date for payment. (f) Again under Order 34, Rule 11(b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest up-to-date of realisation or actual payment, on the aggregate sums specified in Clause (a) of Order 34, Rule 11, could award interest at such rate as it deemed reasonable.

(underlining is by me for emphasis)

13. In the case of Syndicate Bank Vs. A.V. Angadi and Others, , Division Bench of this Court, has held that, it is not obligatory that, in all circumstances the Court

should award the contract rate of interest from the date of suit and the discretion is vested in the Court to award lesser rate of interest having regard to the circumstances of the case.

14. In the case of *Bank of India v. Karnam Rangarao and Ors.* AIR 1986 Kar 4282, a Division Bench of this Court, considering an issue which had arisen on account of an advance made by the bank to agriculturists and after noticing the Circulars issued by the RBI, regarding the charging of interest on agricultural loans, has held as follows:

21. To sum up the above discussion; the circulars/directives of the Reserve Bank direct that agricultural advances should not be treated on par with the commercial loans in the matter of application of the system of compounding interest. The farmers do not have any regular source of income other than sale proceeds of their crops is an acknowledged fact. "They get income generally only once a year. They are, therefore, not in a position to pay interest at usual fixed intervals like monthly, quarterly and half yearly. 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.

(Italics by me for emphasis)

The said decision when questioned in CA No. 544/1986, in the Hon"ble Supreme Court, has held as follows:

22. Insofar as Civil Appeal No. 544 of 1986 is concerned it relates to the bank's right to charge compound interest i.e. interest with periodical rests on agricultural advances. We have already referred to the various circulars issued by the Reserve Bank from time to time in exercise of power conferred by Section 21/35A of the Banking Regulation Act. We have pointed out that the said circulars/directives provide that agricultural advances should not be treated on par with commercial loans insofar as the rate of Interest thereon is concerned because the farmers do not have any regular source of income except sale proceeds of their crops which income they get once a year. The question of recovery of interest with quarterly or six monthly rests from farmers is, therefore, not feasible. The fact that the farmers are fluid at a given point of time every year has to be kept in mind in determining the point of time when they should be expected to repay the loan or pay the instalment/interest on advances. Therefore, to allow the banks to charge interest on quarterly or half yearly rests from farmers would tantamount to virtually compelling them to pay compound Interest, since they would not be able to pay the interest except once in a year i.e. when they receive the income from sale proceeds of their crops. The Reserve Bank has shown concern for the farmers by directing all banking Institutions to so regulate the recovery of interest as to coincide with the point of time when the farmers are fluid. It has, therefore, been emphasised by the Reserve Bank that interest should be charged once a year to coincide with the point of time

when the farmer is fluid and interest on current dues should not be compounded although it may be done when the advance/instalment becomes overdue. Thus according to the circulars/directives, so far as loans for agricultural purposes are concerned, at best interest may be charged with yearly rests and may be compounded if the loan/instalment becomes overdue. In the present case, since interest was charged with six monthly rests that was clearly in contravention of the Reserve Bank circulars/directives. Compounding of Interest on current dues on agricultural advances having been discouraged, the Bank was not entitled to charge interest with shorter periodical rests and compound the same. The Bank could add interest outstanding to the principal and compound the interest when the crop loan or term loan becomes overdue having regard to the tenor of the circular dated March 14, 1972. The High Court was, therefore, fully justified in coming to the conclusion that the Bank was not entitled to charge Interest with half yearly rest.

(underlining is by me for emphasis)

15. In the case of Central Bank of India v. Ravindra (supra), while considering the reference made to the Constitution Bench, with regard to what is the meaning to be assigned to the phrases "the principle sum adjudged" and "such principal sum" as occurring in Section 34 of CPC 1908 (as amended by the CPC (Amendment) Act (66 of 1956) w.e.f. 1.1.1957), Hon"ble Supreme Court, after referring to the case law with regard to the right of banks to claim interest, inter alia held as follows:

55(6) Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six monthly rests depending on rotation of the crops in the area to which the agriculturist borrowers belong.

It was further held as follows:

55(8) Award of interest pendente lite and post decree, is discretionary with the Court as it essentially governed by Section 34 of CPC "dehors" the contract between the parties. In a given case, if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of principal sum actually advanced the Court may exercise its discretion in awarding interest pendent lite and post-decree interest at a lower rate or may even decline awarding of such Interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

In the said decision, the Constitution Bench, has specifically approved the decision rendered in the case of Corporation Bank v. D.S. Gowda reported in AIR 1994 SCW 2721, wherein the CA No. 544/1986 between Bank of India v. Karnam Rangarao, after consideration was dismissed.

16. From the declaration of law made by the Apex Court, it has become clear

that, agricultural borrowings are to be treated on a pedestal different from others and charging and capitalisation of interest on agricultural loans cannot be permitted, except on annual or six monthly rests, depending on the rotation of the crops in the area to which the agriculturists/borrowers belong.

17. In the written statement, the defendants have pleaded that they had not agreed to pay interest @ 17.25% with half yearly rests and that they are not liable to pay such interest and that they have lost the crops on account of failure of rains and that their survival itself has become difficult. Ex.P16, the account extract shows that, the bank has capitalised interest on half yearly basis and the interest was charged accordingly till the date of filing of the suit. PW-1 has admitted that the loan was an agricultural loan and half yearly rests was adopted and that the Circulars issued by the RBI has not been produced before the Court.

18. In view of the provision contained in Clause (iii) of Rule 11(a) of Order XXXIV of the Code, the suit being one relating to mortgage of immovable property, the rate of interest that could be awarded by the Court from the date of suit till the date of preliminary decree is concerned, cannot exceed 6% per annum from the date of preliminary decree till the date of realisation. In view of the admission of PW-1 that the loan is a crop loan and also by way of mortgage by deposit of title deeds and in the light of stand taken by the defendants in the written statement and In view of the fact that the plaintiff - bank had already charged interest on half yearly rests on the amount claimed in the suit, the lower Appellate Court is justified in awarding the interest at the reasonable rate of 6% per annum, from the date of filing of the suit till the date of realisation. Hence, no interference with regard to rate of interest at 6% per annum, awarded by the lower Appellate Court, is called for.

19. In view of the settled position of law by the Hon''ble Apex Court and also by this Court, in the decisions referred to supra and in view of the facts and circumstances of the case, substantial question of law is answered by holding that, the awarding of interest @ 6% simple, is not contrary to law and judicial pronouncements, but is in consonance with law and declaration of law by the Apex Court.

20. The appeal is devoid of merit and hence, is hereby dismissed. No costs.