(1996) 12 KAR CK 0015

In the Karnataka High Court

Case No : Regular First Appeal No. 641 of 1996

Canara Bank, Consumer Banking Division, M.G. Road, Bangalore — APPELLANT

Vs

U.S. Hashmath Ali — RESPONDENT

Date of Decision : 09-12-1996

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

Citation : (1997) 5 KarLJ 169

Hon'ble Judges : Chidananda Ullal, J

Judgement

1. The instant appeal is filed by the plaintiff/bank to challenge the judgment and decree in Original Suit No. 3689 of 1990, dated 31-1-1994 on the file of the City Civil Judge (C.C.H. No. 14) Bangalore City in so far as the same related to non-grant of interest at contractual rate of interest at 2% p.m. or 24% p.a. on the suit claim of Rs. 98,400.64/- from the date of suit to the date of realisation and granting interest only at 12% p.a. on the sum of Rs. 67,624.50/- , the principal amount, from the date of suit to the date of realisation.

2. The parties herein are referred to as they appeared in the suit before the Court below.

3. The facts in brief relevant to the instant appeal are as follows:

That the plaintiff/bank on an application, Ex.P. 1 given by the defendant extended the credit facility under Cancard and the defendant took cash and goods worth in all Rs. 67,624.50/- in respect of the said Cancard bearing No. 9057655, dated 20-9-1988. That the defendant utilised the Cancard from 20-9-1988 to 30-9-1989 and the defendant had to pay in all Rs. 98,400.64/- with the agreed interest at 2% p.m. The defendant did not pay any sum to the plaintiff/bank, whereupon the plaintiff/bank had filed a suit before the City Civil Judge (C.C.H. 14) Bangalore City (hereinafter referred to as ''City Civil Judge'') praying for decree to recover Rs. 98,400.64/- with the agreed interest at 2% p.m. or 24% p.a. That the defendant did not appear before the Court below despite the notice was taken out on him by sub-service through paper publication. Despite taking out the notice by sub-service through paper publication, the defendant did not appear before the Court below, and therefore, the City Civil Judge had placed the defendant ex parte. The plaintiff/bank examined its manager as P.W. 1 and in support of its case marked Ex. P-1, the application of the defendant, applying for Cancard, statement of account sent by the plaintiff-bank to the defendant from time to time as Exs. P-1 to 17 and the accounts extract and the legal notice as Exs. P-18 and

20 respectively. Yet another letter written by the defendant, wherein he had informed the plaintiff/bank that he had suffered loss and the same was marked as Ex. P-19. However, the learned City Civil Judge relying upon Ex. P-19, the letter referred to above, wherein the defendant had stated to have suffered loss and further placing reliance on the judgment of the Supreme Court in State of Madhya Pradesh and Others v M/s. Nathabhai Desaibhai Patel, AIR 1972 SC 1545, and a decision of this Court in, ILR 1985 Kar. 2976, in his discretion allowed the interest at 12% p.a. while decreeing the suit of the plaintiff/bank with the direction to the defendant to pay Rs. 98,400.64/- together with interest at 12% p.a. on the sum of Rs. 67,624.50/- , the principal amount due from the date of suit i.e. 3-7-1990 till the date of realisation.

4. Having been aggrieved thereby, the plaintiff/bank had preferred the instant appeal in so far as the same related to non-grant of agreed rate of interest at 24% p.a., on the suit claim of Rs. 98,400.64/- from the date of suit to the date of realisation.

5. The defendant in the instant appeal was sent with notice by the Court but the same was unserved and returned with postal endorsement that the defendant left the address. Thereafter, the plaintiff/bank took out notice by sub-service by paper publication in Deccan Heralad, dated 24-5-1996. Despite such a public notice, the defendant remained absent, and therefore, the Court had no go, but to place him ex parte. Accordingly the defendant is placed ex parte.

6. The short point for my consideration in this appeal is whether the impugned judgment and decree passed by the City Civil Judge is just and proper and whether the same is called for to be interfered with, by this Court in the instant appeal.

7. The learned Counsel appearing for the plaintiff/bank in the instant appeal had argued that the City Civil Judge was not justified in not granting the interest at the agreed rate of 24% p.a. from the date of realisation on the suit claim of Rs. 98,400.64/- and further granting only at 12% p.a. on a sum of Rs. 67,624.50/- , the principal amount, from the date of suit i.e. 3-7-1990 to the date of realisation totally overlooking the binding decision of a Division Bench of this Court in Vijaya Bank, Bangalore v S. Bhathija and Another, 1993(2) Kar. L.J. 609. He had also pointed out that in the instant case, the defendant did not appear before the City Civil Judge despite the notice was taken out against him by sub-

service by paper publication and he had not at all chosen to contest the suit either before the City Civil Judge or before this Court. Further, he had pointed out that the City Civil Judge had not assigned reason or reasons for the grant of lesser rate of interest at 12% p.a. and for not granting agreed rate of interest at 24% p.a. in passing the impugned judgment and decree.

8. Therefore, he prayed that the appeal be allowed and the plaintiff/bank be granted with relief of grant of agreed rate of interest at 24% on the suit claim of Rs. 98,400.64/- from the date of suit to the date of realisation.

9. Therefore the solitary point for my consideration is with regard to non-grant of contractual rate of interest at 24% p.a. on the suit claim of Rs. 98,400.64/- paise by the City Civil Judge.

10. On perusal of the impugned judgment passed by the learned City Civil Judge, it is seen that the interest at 12% p.a. was granted by him in exercise of his discretion under Section 34 of Code of Civil Procedure. But it appears to me that the City Civil Judge while so exercising his discretion he had to assign reason or reasons thereto. The Supreme Court and this Court held time and again that while exercising the discretion under Section 34 of Civil Procedure Code, in the matter of grant of future interest from the date of suit to the date of realisation, the Court should assign reason for exercising that discretion so that the exercise of discretion is more transparent, understood and appreciated. Unfortunately in the instant case in hand the City Civil Judge had not assigned any reason worth the name for exercising his discretion to grant interest at 12% p.a. on the principal amount of Rs. 67,624.50/- from the date of suit to the date of realisation and further for not granting the contractual interest at 24% on the suit claim of Rs. 98,400.64/-.

11. Normally, if the Trial Court in exercise of its discretion in the matter of either refusing or allowing the interest from the date of suit to the date of realisation, the Appellate Court will not ordinarily interfere. But in the instant case in hand, the discretion by the City Civil Judge to award interest at 12% on the principal amount of Rs. 67,624.50/- is without there being any reason assigned. It appears to me that the same is owing to the erroneous view of law well-settled by the Supreme Court as well as by this Court that the exercise of jurisdiction under Section 34 of Civil Procedure Code should be based on reason and it cannot be arbitrary. That being the position, I hold that there is no proper exercise of discretion by the City Civil Judge in grant of the future interest from the date of suit to the date of realisation at 12% p.a. Hence, in my considered view, under the facts and circumstances of the case, it is just and proper for this Court to interfere with the impugned judgment and decree of the City Civil Judge. The plaintiff/bank in the instant appeal before this Court had challenged the judgment and decree of the City Civil Judge in so far as the same related to non-grant of interest at the agreed rate of interest at 24% p.a. on the suit claim of Rs. 98,400.64/- and differential amount in the interest up to the date of appeal to the sum total of Rs. 99,444/-.

12. In my considered view, the above claim of the plaintiff/bank is not tenable. It is in the evidence on record of the case file of the City Civil Judge advanced by the plaintiff/bank in producing Ex. P-19, a letter, received by them from the defendant himself to the effect that the defendant had suffered loss, he being the business man, obviously it should be in his business. By taking note of the said precarious financial position of the defendant, in exercise of the discretion under Section 34 of Civil Procedure Code in the matter of grant of future interest from the date of suit to the date of realisation, I deem it fit to award interest at 15% p.a. on a sum of Rs. 67,624.50/- , (the principal sum due) from the date of suit to the date of realisation of the sum due.

13. The interest at the above rate is granted on Rs. 67,624.50/- for the following reasons:

(i) That the interest at 2% p.a. or 24% p.a. is on the high side.

(ii) That the sum due under the Cancard of the plaintiff/bank cannot strictly be called a commercial transaction in view of the fact that the credit facility under the Cancard was for purchase of goods by the defendant and the worth of goods purchased was only to a tune of Rs. 67,624.50/-.

(iii) That the plaintiff/bank have produced Ex. P-19, a letter, written by the defendant himself to the effect that he suffered loss.

(iv) That the interest at 15% p.a. has been allowed only on a sum of Rs. 67,624.50/- (the principal amount due) and not on Rs. 98,400.64/- , for the reason that the said sum includes interest of Rs. 30,776.14/- (Rs. 98,400.64/- less Rs. 67,624.50/-) at contractual rate of interest at 24% p.a. on Rs. 67,624.50/- and granting future interest on the entire sum of Rs. 98,400.64/- paise would tantamount to grant of interest, on interest of Rs. 30,776.14/- and is totally impermissible.

For the aforesaid reason, the judgment and decree of the Court below is set-aside and modified in so far as the same related to grant of future interest now to pay at 15% p.a. (as against awarding of interest at 12% p.a. by the City Civil Judge) on the sum of Rs. 67,624.50/- , the principal amount claimed in the suit from the date of suit i.e. 3-7-1990 to the date of realisation.

14. It is made clear that the order of the City Civil Judge to pay a sum of Rs. 98,400.64/- with cost in the impugned judgment and decree is unaltered and therefore to sustain.

15. In the result, the appeal of the plaintiff/bank is liable to be allowed in part in the above terms and accordingly the appeal stands allowed in part together with proportionate cost.

16. The decree to follow.

