

(2000) 06 KAR CK 0048

In the Karnataka High Court

Case No : Regular First Appeal No. 357 of 1995

Canara Bank, Somwarpet Branch, Kodagu District

APPELLANT

Vs

T.T. Nanjunda and Another

RESPONDENT

Date of Decision : 14-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 26, 34

Citation : (2001) 3 CivCC 560 : (2001) 3 KarLJ 527

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. Heard. Though this is an Regular First Appeal of the year 1995, for one reason or the other the same has so far remained to be disposed of.

2. The appellant-Canara Bank have a limited grievance in this appeal namely that the Trial Court has erred in awarding only simple interest as per the decree while in fact, under the law when the loan becomes overdue, Bank is permitted to enforce what is known as penal rate of interest which includes the amount which is added on because of the default and the Bank is also entitled to compound the same yearly. The appellant's learned Counsel submitted that the defendants had not filed any written statement before the Trial Court and that the Bank's case has been virtually uncontroverted. His submission is that in these circumstances, the Trial Court was in error in having refused to permit the compounding of the interest even though this happened at a subsequent stage after the computation was filed and the Court passed orders on the same. His submission therefore is that interference by this Court is called for insofar as the terms of the decree are liable to be varied.

3. On behalf of the respondents, the original defendants, a serious challenge is presented with regard to the very maintainability of the suit. This is really not on a point of law but something that emerges out of the documents executed between the parties and in the absence of a written statement, this Court would have been justified in precluding the respondents from raising any factual issues. However, in the interest of fairness and since it is really a mixed submission on

the question of fact and law arising out of the interpretation of the documents, I have considered the submission on merits. The defendants' learned Counsel submitted that a perusal of the agreement executed between the parties will, very clearly indicate that there was to be a total "repayment holiday" for the period 1986 up to 1993 and that the repayments were to commence in annual instalments from 31-12-1994 up to 31-12-2001. There is no dispute about the fact that clause (d) of the Schedule does provide for this. Her submission therefore is that this agreement has to be strictly construed insofar as the very first repayment from the defendants was to be on 31-12-1994 and if the suit was filed by the Bank in the year 1993 and the same came to be decreed in the year 1994 i.e., on 23-11-1994, that the entire proceeding was virtually non est because no liability had arisen as on the date when the suit was filed or for that matter decreed. To this, the Bank's Counsel replied by pointing out that as and by way of collateral security, a mortgage deed was executed and that the deed in question very clearly stipulates that the interest will be payable half yearly and it is his submission that since the defendants were persistent defaulters for the payment of the interest, that the liability arose and that they were also liable to pay penal interest in keeping with the law in force. What is really contended is that by virtue of the defaults committed by the defendants, that the cause of action for recovery had arisen and that the Bank was in these circumstances justified in recalling the loan along with interest.

4. It is undoubtedly true that a Court will have to harmoniously construe various agreements entered into between the parties and I do find that on a careful computation of the figures in the loan agreement, that the time schedule starting from December 1994 was only in respect of repayment of the principal. The mortgage deed very clearly stipulates that the interest had to be paid every half-yearly and one may reasonably assume that this was the intention of the parties because there is no other way of construing it insofar as the Bank is a financial institution and there is no reference in the agreement to the interest because this had been separately provided for in the mortgage deed. The defendants' learned Counsel has raised an interesting argument whereby she submits that when the Bank uses the term "repayment holiday", that the Court will have to construe that the interest payments would be co-extenso with the other repayments and only commencing from December 1994. It is impossible for me to uphold this argument because there is nothing to this effect in the mortgage deed and on a plain example of construction, the Court will have to hold that the interest was payable half yearly on and from the date when the loans were availed of. Under these circumstances, I see no ground on which this Court can find fault with the Trial Court in having decreed the suit.

5. The defendants' learned Counsel did raise one other argument. It was submitted by her that in paragraph 8 of the original judgment, the Court has made certain observations with regard to the rate of interest and has held that the Bank is not entitled to compound the same. Her submission is that the Bank has effectively not challenged this order but has come against the subsequent

order wherein the claim for compound interest in the computation has been turned down. It is a rather technical argument but the submission is that if the Bank has not challenged the original order, then it is not entitled to present a piecemeal challenge to the subsequent one. In my considered view, on a careful examination of the appeal papers, I find that this would virtually amount to legal hair splitting because effectively, the two orders merge and the challenge presented by the Bank would necessarily involve the finding of the Trial Court to the effect that they are not entitled to the additional rate of interest. Consequently, I do not see any ground on which this plea can be upheld.

6. Before parting with this judgment, this Court needs to observe that it is not only the Courts but the allied forums set up for this purpose that are virtually choking under the load of recovery proceedings instituted by the Banks. The Central Government has recently published the figure of 51,000 crores as the outstanding debts and the Banks have tried to get over the embarrassment for the last several years by categorising this head of dues as the "non-performing assets". While the general impression has been projected that it is the rank dishonesty on the part of the borrowers, large and small, who have been following the dictum that Bank loans need never be repaid, that this state of affairs has come about, an analysis of the true facts will however indicate that the Government has totally overlooked the most important factor responsible for this public loss of horrifying dimensions namely the high level of dishonesty and negligence, for which the Bank's own officers are responsible in the majority of cases. The considerations under which these loans have been granted and in the majority of cases to totally undeserving persons without observing even the most elementary norms, is the startling point. It is not difficult for the Courts to see through why these loans were granted and the considerations for doing so. If the assets of the concerned officers were to be investigated the results may be very distressing in all these cases. In almost every one of these cases, there has been neither any vigilance nor follow up but on the other hand, close collusion with the defaulter all the way down the line for which again, the reasons are more than obvious. Recovery proceedings have been invariably instituted virtually on the last day of limitation and every effort has been made to ensure that the litigation fails. If a survey is done in respect of conduct of Bank cases, it will be found that on the majority of occasions the requisite evidence is not produced and even whenever the institutions obtain favourable orders from the Trial Court, that the institution really never recovers the outstanding. The bottom line of this unhappy story is that this class of litigation represents a clear attempt to shift the misdeeds of the Bank Officers to the legal system in the hope that they will receive a decent burial. Every one of these institutions are hopelessly over-staffed. This category of employees particularly the executives at the higher level are extremely well-paid and there is no excuse whatsoever for this state of affairs. The Government of India and the R.B.I. would do well in focussing serious attention on the internal rot that is destroying the system. The history of massive scams in which the Courts have been required to convict several Bank

Officers particularly the ones involved in the decision making process where disbursement of money and recoveries are concerned is only illustrative of the fact that the Government has totally overlooked fixing the responsibility at the right quarters for what has happened. Rs. 51,000 crores is not a small amount and while this Court does not for a moment desire to underscore the role of the borrowers, the important question is as to who has facilitated at all levels the bleeding of these financial institutions. It is wrong to expect the Courts and the Debt Recovery Tribunals to be able to provide reliefs of any consequence if the cases have been sabotaged all the way.

(emphasis supplied)

7. In the result, the appeal succeeds. The appellant-Bank shall file a fresh computation before the Trial Court indicating the rate of interest as applicable to agricultural loans with the additional 2% which the Bank is entitled to charge as and by way of penalty. Consequently, the Bank would be entitled to interest at the rate of 14.5% which can be compounded annually. A fresh computation to be filed before the Trial Court and the Trial Court to draw up a decree in keeping thereof. The appeal succeeds to this extent. No order as to costs.