
(1995) 12 MAD CK 0006
In the Madras High Court
Case No : A. No. 432 of 1984

Central Bank of India

APPELLANT

Vs

R. Maruthappa Gounder and two others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Citation : (1995) 12 MAD CK 0006

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—Plaintiff is the appellant. The averments in the plaint are as follows:

The first defendant has mortgaged his lands in favour of the plaintiff Bank for Rs. 15,000/-on 6.11.1989. He had also executed a promissory note

on the same date in favour of the plaintiff promising to repay the amount with interest at the rate of 4% over the Reserve Bank of India rate subject

to a minimum of 9% per annum. He has also hypothecated the crops. The defendants have committed default in payment of instalments of the loan

and the interest on due dates First defendant has failed to repay the amount in spite of repealed demands. Hence the suit.

2. The first defendant has filed a written statement contending as follows: The plaintiff is not entitled to claim compound interest. The first defendant

did not execute any document of renewal. No confirmation letter was also executed by him. Interest claimed is excessive and usurious. The suit is

barred by limitation.

3. The parties went for trial on the question of interest alone before the trial Court. The trial Court has held that the plaintiff is entitled to a decree

for Rs. 15,000/- with interest thereon at 9% per annum from the date of loan till date of suit and interest as per the Rules after the decree till realisation.

4. Aggrieved over the same, the plaintiff has come forward with the appeal.

5. The trial Court has held that the defendants are entitled to the benefits of the Usurious Loans Act and therefore granted a decree in favour of the

plaintiff with simple interest at 9% per annum from the date of loan to the date of suit and thereafter as per Rules till realisation. It is against this

finding of the trial Court, in which the trial Court has awarded simple interest only at 9% per annum, the plaintiff has preferred this appeal in fact.

the trial itself was only on the question of interest. According to the learned counsel appearing for the appellant, the plaintiff being a Nationalised

Bank, and the transaction being one governed by the Banking Rules and Regulations Act which is a self-contained Act, the finding of the trial Court

that the interest for which the parties have agreed is high and therefore the defendants are liable to pay simple interest only at 9% per annum is

incorrect, since Usurious Loans Act does not apply to Nationalised Banks. The learned counsel appearing for the respondent would on the other

hand argue that in the statement of claims filed by the plaintiff. the details of interest is not given, and the trial Court has given valid grounds for

awarding a lesser percentage of interest and it docs not call for any interference by this Court.

6. It has been decided in the decision reported in Indian Bank. Tiruvannamalai v. V.A.B. Gurukul AIR 1988 Madras 296 as follows:

The sphere of operation of the Banking Regulation Act and the Usurious Loans Act are very different, in that one is concerned with the control and

regulation of the business of banking excluding the rate of interest on advances to be made by the banking companies, while the other is intended to

secure relief from excessive claims for interest sought to be enforced through Courts. The provisions of the Banking Regulation Act 1949, alone

regulate the rate of interest on advances by nationalised bank and there is no inconsistency between its provisions and the provisions of the

Usurious Loans Act. Consequently, there is no question at" the provisions of the Usurious Loans Act prevailing over the provisions of the Banking

Regulation Act.

...The primary object of the Usurious Loans Act is to confer a power on Court to afford relief to a debtor, if the Court has reason to believe that a

particular transaction between the parties is substantially unfair. No particular rate of interest, has been prescribed in the Usurious Loans Act and

the reasonableness or otherwise of the rate of interest in any given case has to be decided and determined in the light of the statutory provisions

contained therein. The provisions of the Usurious Loans Act do not in any manner control or regulate the charging of rates of interest, but are

intended merely to afford relief from a claim for excessive interest in cases where the transaction is considered to be substantially unfair.... When a

nationalised bank controlled by the provisions of the Banking Regulation Act 1949 lends money to a debtor charging interest at the rates

prescribed by the Reserve Bank of India from time to time, it cannot be said that the charging of such rates by such banks is per se excessive so as

to render such transaction "substantially unfair" so that the transactions can be ripped open by applying the provisions of the Usurious Loans Act

and the rate of interest cut down accordingly.

Admittedly, the respondents have agreed to pay contract rate of interest on the amount sanctioned by the bank. The question whether the contract

rate of interest is payable when the loan has been sanctioned by the bank has come up for consideration in the decision reported in Corporation

Bank Vs. D.S. Gowda and Another, wherein the Apex Court has held that in case of commercial loans, interest with quarterly rests is permissible

but in case, of agricultural loans, interest can be fixed with annual rests coinciding with the time when the farmer can repay and if thereafter the

fanner fails to pay the interest it will be open to compound the interest on the crop loan and instalments upon the terms loan becoming overdue.

The Apex Court has also held that in deciding the question whether the rate of interest is excessive, the Court should have reason to believe that

the transaction between the bank and borrower was substantially unfair and it is a rebuttal presumption. In the present case, the defendants have

committed default in payment of instalments is not disputed. When the defendants commit default in payment of interest, whether the defendants

can contend that the Bank is charging usurious rate of interest was also considered by the Apex Court in the above decision and they have held

that where the default is made in payment of instalments, the claim of the debtor that interest is usurious cannot be a tenable one. Therefore, I am of opinion that the contention of the learned counsel appearing for the appellant that the trial Court has committed an error in awarding simple interest at 9% only when the parties have agreed to pay interest at 9% with quarterly rests and when the defendants have committed default in payment of instalments, is well founded and on that ground, the judgment of the trial Court has to be set aside. I therefore hold that the appellant is entitled to set aside the decree of the trial Court in so far as the awarding of rate of interest is concerned. In the result, the appeal is allowed and the decree and judgment of the trial Court are set aside in so far as the awarding of rate of interest is concerned and the suit is decreed with costs throughout.