(2013) 06 MAD CK 0112

In the Madras High Court

Case No : A.S. No. 252 of 1990

Central Bank of India		APPELLANT
	Vs	
Vet Pharm and Others		RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 11(a)(i), Order 34 Rule 11(a)(iii), Order 34 Rule 11(b), Order 34 Rule 2(c)(i)

Citation : (2013) 06 MAD CK 0112

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : V. Bhiman for Mr. S. Sampathkumar, for the Appellant; V. Achuthan for Respondent No. 1, Mr. R. Vijayan for Respondent No. 3 and M/s. Smith and Bhagley, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The plaintiff in O.S. No. 19 of 1983 on the file of the Subordinate Court, Tiruvallur, is the appellant. This appeal is

filed by the appellant, aggrieved by the grant of decree passed by the trial Court in awarding 6% interest from the date of decree. The case of the

plaintiff as per the plaint is as follows: The plaintiff/appellant sanctioned a term loan of Rs. 8.09 lakhs on 23.7.1979 and a cash credit of Rs. 1.90

lakhs as working capital to the defendants/respondents and as a security for the above credit facilities the defendants/respondents executed the

term loan agreement dated 13.8.1979 for Rs. 9.99 lakhs agreeing to repay the said amount with interest at 10% p.a. with quarterly rests. They

have also executed an agreement of hypothecation of even date hypothecating the machineries poultry equipments, hatchers poultry flock etc. and

another hypothecation agreement dated 13.8.1979 hypothecating the live stocks. It is further case of the appellant/plaintiff that the defendants 2 to

7 as partners of the 1st defendant firm have also executed a demand promissory note for a sum of Rs. 9.99 lakhs on 13.8.1979 agreeing to repay

the same with interest at 10% p.a. with quarterly rests. As the respondents/ defendants failed to repay the amount, the suit was filed for recovery of

the amount at the rate of 11.5% p.a. till realization and for costs.

2. The respondents/defendants filed the statement admitting the grant of term loan and working capital and further stated that because of the failure

to grant phase II loan the entire project was completely ruined and therefore they were not liable to make any payment.

3. On the basis of the above pleadings the trial Court framed the following issues:

(1)Whether the interest claimed is usurious ?

(2)To what relief if any the plaintiff is entitled ?

4. The trial Court held that the interest charged by the appellant/plaintiff is not usurious and answered Issue No. 1 against the

respondents/defendants and while answering Issue No. 2 held that the appellant/ plaintiff is entitled to claim interest subsequent to the decree at the

rate of 6% per annum. Aggrieved by the finding of the trial Court that the appellant/plaintiff is entitled to claim interest at the rate of 6% per annum,

this appeal is filed.

5. Mr. V. Bhiman, the learned counsel appearing for the appellant submitted that the Court below without properly appreciating Section 34 of the

CPC erred in awarding interest at the rate of 6% per annum after the date of decree till the date of realization and considering the purpose for

which the loan was sanctioned which was commercial in nature, ought to have granted contractual rate of interest even after the decree. He also

relied upon the Judgment of the Hon''ble Supreme Court and rendered in Civil Appeal No. 972 of 1995 dated 19.12.2002 (Syndicate Bank Vs.

R. Veeranna and others) and the Judgment reported in N.M. Veerappa Vs. Canara Bank and Others, in support of his contention.

6. Considering the arguments of the learned counsel for the appellant, the point that arises for consideration in the First Appeal is:

Whether the trial Court erred in not awarding contractual rate of interest from the date of decree till the date of realization ?

7. As stated supra, the trial Court held that the rate of interest claimed by the appellant/plaintiff was not usurious and the appellant/plaintiff was

entitled to claim interest at the rate of 6% per annum as per the contract till the date of passing of the decree. The only grievance of the

appellant/plaintiff was that the trial Court ought to have granted the contractual rate of interest even after the decree till the date of realization.

8. To appreciate the contention of the learned counsel for the appellant we will have to see Section 34 C.P.C. which reads as follows:

34. Interest:- (1) Where and in so far as a decree is for the payment of money, the Court, may, in the decree, order interest at such rate as the

Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest

adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent per

annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the

Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may

exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys

are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I: In this sub-section, ""nationalised bank"" means a corresponding new bank as defined in the Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1970(5 of 1970)

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of

the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of

payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

9. As per the proviso to Section 34 C.P.C., when the liability had arisen out of commercial transaction the rate of such further interest may exceed

6% per annum but shall not exceed the contractual rate of interest. Therefore discretion has been given to the Court to award interest exceeding

6% per annum in case of commercial transaction.

10. In this case, the trail Court held that there was no pleading in the plaint that the loan was advanced for commercial transaction and admittedly

the loan was given for running a hatchery which is an allied industry to the agricultural industry. Therefore, the trial Court has rightly exercised its

discretion and awarded interest at the rate of 6% per annum from the date of decree till the date of realization.

11. In the Judgment reported in N.M. Veerappa Vs. Canara Bank and Others, the Hon''ble Supreme Court while interpreting Order 34 C.P.C.,

held as follows:

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)(i), respectively in suits for foreclosure, sale or redemption. (b) But after the

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 case by the Privy Council and by this Court in

S.P. Majoo case 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. It is no longer obligatory to award the contractual rate after date of suit and up to the 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 the date of suit under Order 34 Rule 11(a)(i) 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 mortgagor is concerned. (e) The Court has also power to award from the date of suit under Order 34 Rule 11(a)(iii) a rate of interest on

costs, charges and expenses as per the contact rate or failing such rate, at a rate not exceeding 6%. This is the position of the discretionary power

of the Court, from the date of suit up to the 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

realization 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.

12. As per clause (d) the Hon''ble Supreme Court held that even after the 1956 Amendment the Court has discretion to fix interest, the same rate

as agreed in the contract, or in the absence of any rate fixed, such rate as the Court deems reasonable on the principal amount found or declared

due. Therefore it is not obligatory on the part of the Court to grant contractual rate of interest from the date of decree. In this case, the Court

exercised its discretion in awarding 6% per annum from the date of decree holding that the transaction was not a commercial transaction and there

was no pleading to that effect. Therefore, the above Judgment is not applicable to the facts of the case. The other Judgment of the Hon''ble

Supreme Court in Civil Appeal No. 972 of 1995 dated 19.12.2002 (Syndicate Bank Vs. R. Veeranna and others) is also not applicable to the

facts of the case. In that reported case the Hon''ble Supreme Court dealt with the grant of interest prior to the passing of the decree. Hence, I do

not find any merit in the first appeal and the Judgment and Decree of the trial Court are confirmed and the first appeal is dismissed. In the result, the

First Appeal is dismissed. No costs.