

(1953) 08 AP CK 0007
In the Andhra Pradesh High Court
Case No : Appeal No. 936 of 1356F

Gulbarga Banking Co. Ltd.

APPELLANT

Vs

Gulam Nabi

RESPONDENT

Date of Decision : 28-08-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11
Hyderabad Civil Procedure Code, 1323 — Section 237

Citation : (1953) 08 AP CK 0007

Hon'ble Judges : Palnitkar, J;Deshpande, J

Bench : Division Bench

Advocate : Abdullah, for the Appellant;

Final Decision : Allowed

Judgement

1. This is a first appeal against the judgment and decree of the Divisional Court at Gulbarga. We have heard the arguments of the learned Advocate for the Appellant. The "Respondent is absent. Plaintiff-Appellant filed the suit for payment of Rs. 10,741-10-8 stating that Defendant took a loan from the Plaintiff-Bank of Rs. 10,000/- and mortgaged his properties and executed a registered deed dated 25th Amarbad 1352 P; that as per terms of the deed, Defendant had failed to pay three consecutive instalments and has, therefore, made a default; and that Defendant did not pay the interest as well Plaintiff therefore claimed the suit amount together with interest pendente lite till realisation in full on the basis of the mortgage bond. The Defendant-Respondent in his written statement admitted the execution of the mortgage deed and the drawing of the loan from the Plaintiff-Bank but pleaded that a decree with instalments of Rs. 500 per annum be passed against him. No evidence was produced on behalf of the Defendant in support of his plea for instalments. The lower Court in its judgment under, appeal passed a decree in favour of the Plaintiff and made it pay-able by instalments of Rs. 100/- per month and, also inserted a condition that in default of payment of three instalments, Plaintiff was entitled to sell" ,the "property

mortgaged and get the decretal amount.

2. The learned Advocate for the Appellant argues that the order of the lower Court making the amount payable by, instalments of Rs. 100/- per month is not at all warranted by the facts of the case. No reason has been shown by the lower Court as to why the instalments should be made. We agree, with that contention. Under Order 20, Rule 11 CPC (Section 237, H. Code of Civil Procedure), the Court can, while passing the decree, make an order that payment of the amount decreed shall be made by instalments for any sufficient reason. No sufficient reason has been advanced by the Respondent in his written statement. The statement that he was involved in some other suit concerning his business of purchase and sales of majors is not a sufficient ground for granting the instalments. No evidence has whatsoever been produced as to why instalments should be made. The discretion given to the Court under the rule must be exercised judicially. It must not be exercised in such a way as to amount to a virtual denial of the decree-holder's rights. In this case, the loan itself was advanced on condition that Defendant was to pay instalments of Rs. 250/- per month. There is no reason why the agreed amount of instalments was to be not reduced nor has the Defendant shown any reason as to why any instalments be made at all. The decree is for more than Rs. 10,000/-. Payment of monthly instalments of Rs. 100/- would certainly amount to a denial of the decree-holder's rights inasmuch as it will take a very very long time for the debt to be liquidated. It is to be remembered that the decree carries interest at the rate of 6 per cents per annum. The monthly interest on the decretal amount will be more than Rs. 50/- per month. The payment of its 100/- per month virtually amounts to a denial of the decree-holder's rights.

We therefore allow the appeal and set aside the order of the payment of the decretal amount by instalments awarded by the lower Court and pass a decree in favour of the Plaintiff for the amount of Rs. 10,741-10-8 principal plus interest pendente lite till realization in full at 6 per cent, per annum and declare that the Plaintiff will be entitled to sell the property if the Defendant does not pay the amount within two months from this date. The Appellant is entitled to the costs of this appeal.