
(1995) 09 MAD CK 0031
In the Madras High Court
Case No : Civil Suit No. 1288 of 1991

Indian Overseas Bank

APPELLANT

Vs

Mrs. V. Vijayanthimala and Others

RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Banking Regulation Act, 1949 — Section 21A, 47A
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 34

Citation : (1996) 1 CTC 724

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Nalini Chidambaram, for Rathina Ashokan and others, for the Appellant; P.H. Pandian for P.H. Manoj Pandian, for the Respondent

Judgement

S.S. Subramani, J.—This suit is filed by a Nationalised Bank for recovery of a sum of Rs. 74,81,271.40P. together with interest at 25% per

annum with quarterly rests by sale of the mortgage properties and also personally from the defendants.

2. The facts which are not disputed are, that the first defendant availed financial assistance from the Bank of Tamil Nadu which is now merged with

the plaintiff-Bank. It is said that as per three financial facilities of Rs. 5,50,000 Rs. 7,50,000 and Rs. 1,77,000 amounts were due from the

defendants. It is also said that an equitable mortgage has been created by deposit of title deeds by defendants 2 and 3. The facilities were availed

for construction of a cinema theatre and for purchase of machineries for the same. It is also averred that the contract rate of interest was 19 1/2%

per annum with quarterly rests. Since the Bank is supervised and controlled by the Reserve Bank of India, they are bound to implement the rates

of interest as revised from time to time. It is said that from 12.4.1982 till 3.7.1991 the defendants are liable to pay interest at 9 1/2% per annum

with quarterly rests and from 3.7.1991 they are (plaintiff) entitled to calculate interest at 25% per annum with quarterly rests. On the basis of

calculation, it is said that the defendants are liable to pay an amount of Rs. 74,81,271.40P. It is said that various demands were made for settling

the transaction. But in spite of the same, the defendants have not cared to do so, which necessitated the filing of the suit. It is also averred that the

defendants had been renewing the documents from time to time.

3. In the written statement filed by the defendants, the transaction is not disputed. They only say that the rate of interest calculated is excessive.

According to the defendants, the suit claim is isolated and loaded with interest much more than the borrowed sum that the plaintiff-Bank has a

special financial role to play in the economic life of the people, that it is not a money lender only bent upon earning interest, that the industrial

finance has different legal incidents, and that the straight and bona fide course for such a Bank is to call for the discharge of the loan if the operation

of the account has been irregular, if the project has become a failure, and if the securities have depleted.

4. On the basis of the pleadings, the following issues have been raised:-

(1) Whether the interest claimed by the plaintiff/Bank is excessive? and

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

5. By consent of parties, Ex.P-1 to P-78 are marked. They are documents filed by the plaintiff bank to prove the transaction and also the Circulars

from time to time regarding the rate of interest. Even though the amount borrowed is only Rs. 14 lakhs, the amount now claimed is more than Rs.

74 lakhs, i.e., more than Rs. 60 lakhs is claimed towards interest, and that is challenged by the defendants in the written statement.

6. Issue Nos. 1 and 2. In the documents executed by the defendants, the rate of interest is mentioned as 19 1/2 per annum with quarterly rests.

The lender Bank was the plaintiffs predecessor, namely, Tamil Nadu Bank Limited. The defendants have executed various documents evidencing

same.

7. Since the suit is for recovery of money by sale of mortgage properties, the provisions of Section 34 of the CPC may not apply. We are

governed by Order 34, Rule 11, C.P.C, and also Section 21-A of the Banking Regulation Act. Since Order 34, Rule 11, C.P.C. governs the

matter, it is better we consider that provision before going to the case-law on the point. It reads thus:-

Payment of interest- In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court, may order

payment of interest to the mortgagee as follows namely:-

(a) interest upto the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the

mortgagor or other person redeeming the mortgage.

(i) on the principal amount found or declared due on the mortgage, at the rate payable on the principal, or, where no such rate is fixed, at such rate

as the court deems reasonable.

(ii) xxxxx

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-

security up to the date of the preliminary decree and added to the mortgage-money at the rate agreed between the parties, or, failing such rate, at

such rate not exceeding six per cent, per annum as the Court deems reasonable;

(b) subsequent interest upto the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in

accordance with that clause at such rate as the court deems reasonable.

8. In *Soli Pestonji Majoo and Others Vs. Gangadhar Khomka*, their Lordships held thus:-

Order 34, Rule 2 and 4 which applies to a mortgage suit, enjoins the court to order an account to be taken of what is due to the plaintiff at the

date of such decree for principal and "interest on the mortgage". The special provisions in O.34 has therefore to be applied in preference to the

general provisions in Section 34. Till the period for redemption expires the matter is considered to remain in the domain of contract and interest

has to be paid at the rate and with the rests specified in the contract of mortgage but after the period for redemption has expired the matter passes

from the domain of contract to that of judgment. The right of the mortgagee will henceforth depend not on the contents of his bond but on the

directions of the decree. Order 34, Rule 11 gives a certain amount of discretion to the court so far as interest pendente lite and subsequent interest

is concerned and it is no longer absolutely obligatory on the courts to decree interest at the contractual rates upto the date of redemption in all

circumstances even if there is no question of the rate being penal, excessive or substantially unfair.

It was held so in Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, also. Their Lordships held that Section 34 of

the C.P.C. is not applicable, and that interest would be payable on the principal amount due in accordance with the terms of the agreement

between the parties till the entire amount due was paid. Their Lordships were considering the provisions of State Financial Corporations Act,

1951. In the said decision, their Lordships held thus:-

Section 34 of the Code is not applicable to this case. The proceeding instituted u/s 31(1) of the Act is something akin to an application for

attachment of property in execution of a decree at a stage posterior to the passing of the decree. Therefore, no question of passing any order u/s

34 of the Code would arise since section 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage

posterior to the decree. Moreover, even under the Code the question of interest payable in mortgage suits filed in Civil Courts is governed by

Order 34, Rule 11 of the Code and not by Section 34 of the Code which may be applicable only to cases of personal decrees passed under

Order 34, Rule 6 of the Code. Therefore, interest would be payable on the principal amount due in accordance with the terms of the agreement

between the parties till the entire amount due was paid.

9. The decision reported in Soli Pestonji Majoo and Others Vs. Gangadhar Khomka, was followed by the Kerala High Court in Nafeesumma v.

Indian Overseas Bank, 1974 KLT 853 and the Lordships held thus:-

It is true that award of interest u/s 34 after the date of suit is entirely in the discretion of the court. The discretion must be exercised on sound

judicial principles. However this general provision regarding fixation of interest can have no application in the case of mortgage suits where there is

a particular provision in Order 34 regarding fixation of interest after date of suit. This may as in this case, differ from the general provision of

Section 34 of the Code. The particular avoids the general. Till the period of redemption has expired the matter remains in contract and the interest has to be paid at the rate and with the costs specified in the mortgage.

10. B. Shivananda Vs. Andhra Bank Ltd. and Another, is also a case where the suit was for recovery of amount advanced by a Bank. Their

Lordships allowed interest at the contract rate till date of decree. The loan advanced was for commercial purpose, i.e., for an construction of

cinema theatre, as in this case. In that case, their Lordships allowed interest at the contract rate upto date of decree and thereafter at the rate of 16

1/2 per annum simple interest till realisation. In the said decision, it was held thus:-

...the bank is entitled to claim interest in terms of the contract at 16 1/2 from the date of lending till the date of filing of the suit. However, the court

has discretion u/s 34, CPC to award interest. Admittedly, the loan was taken for construction of theatre. In other words, the loan was for a

commercial transaction. In the facts and circumstances of this case, we consider it just and proper that the appellant should pay simple interest at

the rate of 16 1/2 per annum on the principal amount claimed in this suit from the date of the decree till the date of realisation.

11. Learned counsel for the defendants cited the decision reported in D.S. Gowda Vs. Corporation Bank, . The question was, whether the Bank

was entitled to recover the amount calculating interest on monthly rests and also quarterly rests and whether such charge of interest is hit by the

provisions of Usurious Loans Act, The Karnataka High Court held against the Bank. It said that even though the directives of the Reserve Bank of

India have statutory force, the loan transaction entered into by the executives of banking institution in the usual course of their business are not

statutory agreements, and that they are just commercial transaction governed by the guidelines laid down by the Reserve Bank. Taking that view, it

was held that the Reserve Bank of India is entitled to claim excess interest. The said decision was taken on appeal by the Corporation Bank before

the Supreme Court. The decision of the Karnataka High Court was reversed, and the same is reported in Corporation Bank Vs. D.S. Gowda and

Another, and their Lordships have held thus:-

As under common law there is no right to charge even simple interest on

overdrafts, the claim for interest has to be supported on the ground of universal custom of bankers or on the basis of implied agreement. This would be so in a case where there is no agreement between the banker and the customer in regard to the payment of interest but where the loan or advance is made on certain terms reduced to writing, the parties would be governed by those terms- and there would be no question of falling back on practice or custom. Besides it has been the practice of bankers to debit accrued interest to borrower's account at regular periods, usually half-yearly. Under the Banking Regulation Act wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks. Sections 21 and 35A of the Banking Regulation Act enable it to issue directives in public interest to regulate the charging of interest on loans or advances made from time to time. It is in exercise of this power that it issued the circulars fixing the rates of interest to be charged from borrowers. These circulars/directives have statutory flavour. Any bank committing a breach of the directives is liable to be penalised u/s 47-A. A Bank can ignore, the directive on pain of being penalised. Therefore, before is suing guidelines or directives the Reserve Bank must be taken to have given serious thought to the nature of directives to be issued. The Reserve Bank Governor's letter dated 12.3.1976, shows that it was to bring about uniformity that the banks were advised to charge interest with quarterly rests (in case of commercial loans). It is also evident from the circulars of 13.3.1976, 28.2.1984 and 15.9.1984 that the Reserve Bank also provided the maximum rate of interest that could be charged. The Reserve Bank, therefore, not only desired to bring about uniformity but also controlled the rate of interest. It cannot, therefore, be said that no rational policy could be discerned from the aforesaid directives of the Reserve Bank. It cannot also be said that the Reserve Bank did not pay "adequate attention" to the question of rests or compounding of interest. While the universal banking practice is usually to charge interest with half-yearly rest, there is nothing to prevent the parties from agreeing to quarterly rest and such an agreement would be perfects valid unless it is shown to be opposed to public policy. The reason why it became necessary to enact the Usurious Loans Act, 1918, and similar State Legislations was to relieve the debtor from exploitation by empowering the courts to grant relief if the

interest charged is excessive rendering the transaction substantially unfair. Such laws would not have been necessary if an agreement providing for

excessive rate of interest was per se violative of Section 23 of the Contract Act. Besides, it is difficult to say that the Reserve Bank did not pay

adequate attention to the question of "rests" when it is evident from the directives referred to earlier that it was the precise question of bringing

about uniformity in that behalf to which the Reserve Bank addressed itself. Unless the directives laying down the said policy are declared illegal and

unenforceable, banks would be bound to follow them for otherwise they would be penalised.

The newly added Section 21-A restricts the court from reopening a transaction between a banking company and its debtor on the ground that the

rate of interest charged is excessive the Usurious Loans Act or any other similar State Act notwithstanding. However, in the present appeals

neither Parliament's competence to enact Section 21-A nor its constitutional validity based on Article 14 has been challenged. It is, therefore, not

necessary to go into those questions.

The real question, therefore, is whether the charging of interest at 16.5% per annum with quarterly rests in case of commercial loan (viz house-

building loan in C.A. No. 4214 of 1982) is so excessive as would attract the provisions of the Usurious Loans Act, in this case the Mysore Act,

before the court can direct reopening of the transaction u/s 3(1) of the Mysore Act it must have reason to believe that the transaction is

substantially unfair as the interest charged is excessive. If compound interest is charged from an agriculturist a presumption of the transaction being

unfair can arise which can be rebutted. The term ""excessive"" is relative term; what may be excessive in one case may be so in another, Much will

depend on the circumstances obtaining at the material date. If the Reserve Bank, keeping in view the economic scenario of the country and the

impact that interest rates would have on the economy, fixes the minimum and the maximum interest rates that banks can charge on loans/advances,

the same cannot be termed to be unreasonable or excessive and would, in any case, amount to a "special circumstances" within the meaning of the

Explanation to Section 3(1) of the Mysore Act. The guidelines issued by the Reserve Bank permitted a maximum interest rate of 16.5% per annum

with quarterly rests. Their Lordships upheld the contention of the Corporation Bank and allowed it to recover interest at the contract rate. In that

case, the contract rate of interest was 16.5% with quarterly rests. Their Lordships modified the judgment of the High Court and increased the rate

of interest. The High Court granted only 10.5% It was interested by the Supreme Court at 16.5% with quarterly rests.

12. In view of the said declaration by the Supreme Court, nothing remains in this case except to reject the contention of the defendants that the rate

of interest claimed by the Bank is excessive. After all the Court has the discretion as to the rate of interest to be awarded pending suit and

thereafter. The Court need not follow the contract rate.

13. It is averred in the plaint that till 3.7.1991, the plaintiff has calculated interest at 9.5% per annum with quarterly rests, which is the contract rate

of interest. From 3.7.1991 till date of plaint, i.e., 10.9.1991, interest has been claimed at 25% per annum with quarterly rests. Being a Bank

governed and supervised by the Reserve Bank of India, naturally the plaintiff is also bound to obey the directives issued by the Reserve Bank of

India, as any bank committing a breach of the directives is liable to be penalised u/s 47-A of the Banking Regulation Act as said by the Supreme

Court in the decision cited supra.

14. Based on the calculation at the rate of 95% per annum with quarterly rests upto 8.7.1991 and thereafter at 25% per annum with quarterly rests

till the date of suit, the quantum of interest claimed by the plaintiff-Bank is not disputed by the defendant. As stated earlier, they question only the

rate of interest.

15. In the result, I pass a decree allowing the plaintiff to recover a sum of Rs. 74,81,271-40p together with interest thereon at 12% per annum

from the date of suit till date of realisation and also costs of the suit by sale of the mortgage properties. In case the proceeds of sale are not

sufficient to satisfy the decree of the plaintiff, the plaintiff-Bank can recover the balance from the defendants personally. The defendants are given

three months time to settle the transaction. The suit is decreed with costs as indicated above.