

(2004) 10 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 23178/01 and 23364/04 etc.

Kerala State Co-operative Bank Ltd.

APPELLANT

Vs

Kerala Co-operative Tribunal

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2005) 1 KLT 572

Hon'ble Judges : K.K. Denesan, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair, T.R. Harikumar, V.G. Arun, Jaiby Paul, Thomas Antony, T.M. Abdul Latheef, D. Somasundaram, Sathish Ninan, Philip T. Varghese, P.C. Haridas, P. Ravindran, P.B. Suresh Kumar, P.J. Mathew, B. Suresh Kumar, P.N. Mohanan, Sunil Cyriac, Anchal C. Vijayan and V. Giri, for the Appellant; Rajeev V. Kurup, M. Narendra Kumar, Liji J. Vadakkedam, K.S. Babu, N.N. Elayath, Laly Thomas, S. Prasanth, B. Mohanlal, M.L. Sajeewan, Subhash Syriac, M.A. Joseph Manavalan, R. Santhosh Babu, S. Santhosh Kumar, B. Jayasurya, R. Partha Sarathy and M.A. Vaheeda Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. AbduI Gafoor, J.—These Writ Petitions have been referred for consideration by a Division Bench as the learned Single Judge felt that the matter regarding award of pendente lite interest in the disputes of monetary transaction raised under S .69 of the Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") requires further consideration.

2. Many of the Writ Petitions have been filed by the Co-operative Societies which advanced loans to the members or customers, as the case may be. The loans included agricultural loan, housing loan and commercial loan. In all these cases, there was default in repayment. This resulted in filing the claim petitions before the Arbitrator by the respective co-operative societies/banks u/s 69 of the Act. The Arbitrators passed awards directing the loanees to pay interest at contract

rate. That interest covered the post award period as well. Loanees went in Appeal/Revision either immediately after passing of the awards or when execution proceedings were initiated before the Co-operative Tribunal. It was contended, relying on the decisions reported in N.M. Veerappa Vs. Canara Bank and Others, and Central Bank of India Vs. Ravindra and Others, that applying Section 34 of the CPC (C.P.C) the Arbitrator ought not to have awarded the contract rate of interest including penal interest, that going by the decision in the Central Bank's case, the penal interest charged by the co-operative societies could not have been taken for capitalisation to claim interest on that capitalised amount. This contention weighed with the Co-operative Tribunal. Accordingly, Co-operative Tribunal applying the said decisions directed that only 6% interest can be awarded from the date of claim until the date of realisation.

3. In one case, namely, W.P.(C) No. 23364/04, the Arbitrator awarded interest at the contract rate during the period of the suit and future interest only at 6%. But in the Revision Petition filed by the loanee the total interest was reduced to 6% by the Tribunal. There is another case, namely O.P.No.32353/02 where the Tribunal had allowed the contract rate at 20% per annum without giving the benefit of the reduced rate of interest at 6% as granted in other cases.

4. It is contended in all these Writ Petitions by the respective co-operative societies or banks that the Tribunal did not apply its mind while reducing the interest to 6%. The Tribunal was mechanically applying the dictum laid down in Central Bank's case or in Veerappa 's case, without going into the contract between the parties at the time of transaction and without ascertaining the purpose of the loan. The Tribunal also did not advert to the fact that respective societies/banks had obtained loans from the Apex Bank or NABARD) at higher rate of interest than 6%. Therefore, the contract rate could not have been said to be excessive rate of interest. It is further submitted that the Tribunal did not advert to Note 2 under Rule 67(10) of the Kerala Co-operative Societies Rules (the Rules) which enables the Arbitrator to apply his discretion and to award pendente lite interest even at the contract rate. When the Arbitrator had awarded contract rate of interest for the adjudged amount, necessarily, the Tribunal ought to have examined whether the application of the discretion by the Arbitrator was just or not. Such an exercise was never done by the Tribunal. Therefore, a mere application of the judgment of the Supreme Court will not do justice to the parties in the light of the provision contained in Note 2 to Rule 67(10) of the Rules. The Tribunal ought to have found that Section 34 C.P.C. did not have any application and the discretion exercised by the Arbitrator to award contract rate of interest was not unjustified. Even the Tribunal did not examine each of the cases as to the excessive nature of interest claimed, as to whether the penal interest had been taken for capitalisation and as to whether the entire amount of the interest did not have any comparison with the principal amount claimed or availed as the loan at the original stage. Thus, it was without any material on record, the Tribunal arbitrarily reduced the interest to 6%. It is further contended that in the light of the provision contained in

Note 2 of R. 67(10) S. 34 C.P.C. did not have any application.

5. But at the same time, it is contended by the loanees that Section 34 of C.P.C. regarding charging of pendente lite interest or post decree interest is a general provision to be applied by any adjudicatory machinery in respect of monetary transaction. In this regard a Division Bench decision reported in *Vasumathy v. Vadavan* (sic) Co-operative Bank 2001 (2) KLT 35 Case No. 39) is brought to our notice. The Division Bench has held that since the Arbitrator u/s 69 of the Act is entrusted with resolution of disputes regarding rights of parties in monetary claims, the principle of Section 34 C.P.C. could be applied. It is further submitted that in *Central Bank's* case it was clearly held that the penal interest cannot be taken as contract rate of interest and therefore it cannot be made use of, for the purpose of capitalisation at the time of filing the claims. It is also submitted that going by the decision in *Kottayam District Co-operative Bank Vs. Annie John*, and also the decision of the Supreme Court in *Central Bank's* case, agricultural loans have to be taken on different footing to the commercial loans or housing loans. Therefore, there is nothing illegal in Tribunal's decision in reducing the interest to 6% which is the maximum provided for u/s 34 of C.P.C. so far as the post decree interest is concerned. "

6. Section 34 C.P.C. contains general provision regarding grant of pendente lite interest as well as post decree interest. The main part of Section 34 C.P.C. provides that post decree interest will be at 6% and proviso thereto describes that in case of commercial loans, interest can extend beyond 6% but only upto contract rate of interest. Even while, the Division Bench of this Court in *Vasumathi's* case held that principles of Section 34 C.P.C. could be applied to proceedings u/s 69 of the Co-operative Societies Act, it has been taken note of that under Rule 67(7)(b) of the Co-operative Societies Rules, the Arbitrator has power to award future interest on the amount decreed but not exceeding the contract rate of interest. The Supreme Court in *Central Bank's* case has also made , it clear that Section 3 C.P.C. is a general procedural provision and whether it would apply or not and if apply then to what extent would obviously depend on the fact situation of each case". Thus, that Section 34 C.P.C. contains the general principles regarding award of pendente lite interest as well as post decree interest cannot any more be doubted.

7. So far as the cases on hand are concerned, the question to be decided is how far it can be applied.

8. This Court in *Vasumathi's* case has held as follows:--

"Under Rule 67(7)(b) of the Co-operative Societies Rules, the Arbitrator has power to award future interest on the amount decreed, but not exceeding the contract rate of interest."

It is also held that

"The Arbitrator has a power to award interest subsequent to the date of the

award, and that such power is transferable under Rule 67(7)(b) of the Co-operative Societies Rules."

Rule 67(7)(b) is the provision as it stood prior to the amendment. Now that provision finds place as Note 2 under Sub-rule 10 of Rule 67 which reads as follows:

"Note 2:- The Co-operative Arbitration Court or the Registrar or such other persons deciding the dispute or the Arbitrator shall have power to direct any party to the dispute to pay the costs of the other party with interest in appropriate cases and the interest awarded on the amounts decreed shall not exceed the contract rate from the date of the suit to the date of realisation of the amount."

If this provision had not been there, one can easily say that Section 34 C.P.C. will have its play with regard to the award of interest by the Arbitrator or by the Tribunal as the case may be, at the respective stage. When special provision as contained in Rule 67(7)(b) as it then stood or in Note 2 to Rule 67(10) as it now stands was/is on the statute book, necessarily, Section 34 C.P.C shall have to be understood as indicated by the Supreme Court in applying that provision to the facts of the cases on hand.

9. Section 34 C.P.C provides that there shall be only one rate of interest pendente lite and that future interest shall not exceed 6% so far as the agricultural loan is concerned. Thus future interest shall not exceed in any case beyond 6%. But the proviso makes it clear that in case of commercial transaction other than commercial ones, Civil Court cannot grant future interest at a rate more than 6%. It will have a discretion to award interest only upto 6% in such cases. But, in respect of commercial transaction that discretion can be applied to award future interest even beyond 6% and upto contract rate of interest.

10. But, so far as Note 2 to Rule 67(10) of the Act mentioned above is concerned, there is no difference between pendente lite interest and the future interest. What is provided in Note 2 is interest to be awarded from the date of the suit till the realisation of the amount. Interest sought to be granted in terms of the said provision shall not exceed the contract rate of interest. That does not mean that Arbitrator shall always award the contract rate of interest. An Arbitrator shall have the discretion to fix the rate of interest payable subsequent to the institution of the claim.

11. This discretion shall necessarily be exercised by the Arbitrator depending upon varied circumstances like the nature of transaction, the purpose for which the loan was obtained, the reason for default, the rate of interest payable by the bank or the societies, as the case may be to obtain amounts for disbursement as loan, the conduct of the loanee in repaying the loan amount, the total amount outstanding, proportionality of interest accrued and the principal amount and other related and exceptional aspects. While doing so, it is also possible for an Arbitrator, in the case of agricultural loans or loans obtained by artisans or in the

case of loans other than commercial loans apply the principle contained in main part of Section 34 C.P.C. approximately without offending the provision contained in Note 2 to Rule 67(10) of the Act mentioned above.

12. From the impugned orders passed by the Tribunal, we see that the Tribunal had not adverted to these aspects or any other specific case pleaded by the parties concerned. It is also not seen that any material has been placed before the Tribunal. It is also not seen that the Tribunal had examined whether the application of discretion of the matter of award of interest by the Arbitrator was justified or arbitrary, as the case may be. The Tribunal mechanically applied Veerappan's case or Central Bank's case to adopt a uniform rate of 6% in respect of all the loanees. Such a stand adopted by the Tribunal cannot be stated to be justified and therefore cannot be accepted.

13. Consequently we set aside the orders passed by the Tribunal and remand the appeals or revisions, as the case may be, back to the Tribunal for fresh consideration in the light of the observations in para 10 above with respect to the pendente lite/post award interest depending upon the facts and circumstances pleaded and proved and as to the justification or otherwise in exercising the discretion, if any, in granting such interest by the Arbitrator and to pass fresh orders after affording opportunity to the parties, in accordance with law.

14. The Writ Petitions are accordingly allowed, The parties shall appear before the Tribunal below on 6.12.2004 and the Tribunal shall dispose of the appeals, as the matters are pending since long, expeditiously.