

(2003) 05 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 21635 of 2001

Kottayam District Co-operative Bank

APPELLANT

Vs

Annie John

RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Citation : (2003) 3 KLT 416

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : M. Paul Varghese, for the Appellant; S. Sreekumar, for the Respondent

Judgement

R. Rajendra Babu, J.

The important question that had come up for consideration was regarding the rate of future interest allowable by the Arbitrator/Registrar of Co-operative Societies from the date of claim/suit till the date of realization of the debt.

2. The District Co-operative Bank and the other banks constituted under the Cooperative Societies Act (for short the Act), which were advancing loans to its members and public, filed claims/suits before the Registrar/Arbitrator u/s 69 of the Act for settlement of the disputes. In all the cases the Arbitrators/Registrars passed awards allowing future interest at the contract rate including penal interest. The above awards had been challenged by the loanees/debtors before the Co-operative Tribunal. In some cases the Co-operative Tribunal modified the award and limited future interest from the date of the claim/suit at 6%. But in some cases the Tribunal did not interfere with the award and upheld the contract rate of interest awarded by the Arbitrator/Registrar. The Bank as well as the loanees challenged the above orders by filing Original Petitions.

3. Loans had been advanced by different co-operative banks for different purposes to its borrowers at different rates of interest. Certain banks advanced loans with interest at 12.5% and imposing a condition to recover 2% penal

interest in the case of default in making repayments in time. Some co-operative banks granted loans with interest at different rates ranging from 14.5% to 21% and also imposing condition to recover penal interest ranging from 2 to 3 percent in the case of default in making repayments in the scheduled time. Further there was provision in the agreement to capitalisation of interest on periodical rests. When there was default, the banks filed suits/claims before the Arbitrator/Registrar and in all cases awards were passed with future interest from the date of claim at the contract rate including the penal interest also. The loanees challenged the award before the Co-operative Tribunal mainly challenging the rate of future interest awarded by the Registrar. In some of the cases the Co-operative Tribunal reduced the rate of future interest from the contract rate to 6% placing reliance on the decision of the Supreme Court in N.M. Veerappa Vs. Canara Bank and Others, . The above order passed by the Tribunal had been challenged by the banks by filing different Original Petitions. But in some cases the Tribunal did not interfere, with the award passed by the Arbitrator allowing future interest at the contract rate and in such cases the loanees had challenged the same by filing different Original Petitions. As the question for consideration in all those Original Petitions filed by the banks and borrowers was common, all those Original Petitions are considered jointly and are disposed of by this common judgment.

4. The main argument advanced by the learned counsel appearing for the cooperative banks was that the decision of the Supreme Court in Veerappa's case (supra) cannot have any application in arbitration proceedings before the Arbitrator/Registrar of Co-operative Societies and the above decision would apply only to proceedings before the civil courts. In the case cited above the Canara Bank advanced loan and when the loanee defaulted in repaying the amount, a civil suit was allowed at 6% per annum. The Canara Bank challenged the suit before the civil court for a decree for realisation of the amount. As an equitable mortgage also had been created by the deposit of title deeds, the suit before the civil court was one under Order 34 CPC. The trial court after considering the evidence found that Order 34 Rule 11 would be applicable and accordingly future interest from the date of suit was allowed at 6% per annum. The Canara Bank challenged the above judgment and decree and in appeal the High Court modified the judgment and decree and allowed the contract rate of interest from the date of suit till realisation. The loanee challenged the above appellate decree before the Supreme Court. The Supreme Court set aside the judgment and decree of the High Court and restored the decree of the trial court granting interest at 6% from the date of suit till realisation. There the Supreme Court in paragraph 7 of the judgment held:

"Section 34 of the CPC applies to simple monies decrees and payment of interest pending such suits. Order 34, Rule 11, CPC deals with mortgage suits and payment of interest. It is obvious that so far as mortgage suits are concerned the special provision in Order 34, Rule 11 is applicable and not Section 34. This has been laid down in several decisions of this Court and also by the Karnataka High

Court in Thulasi Bhai's case."

5. Veerappa's case was a mortgage suit instituted by the Canara Bank before a civil court for realisation of the amount on the basis of the equitable mortgage created by deposit of title deeds. Order 34 of CPC would apply only to mortgage suits before the civil courts. The disputes between the Co-operative Societies/Co-operative Banks and its debtors/loanees are to be adjudicated by the Arbitration Courts/Arbitrators/Registrars in accordance with the provisions of the Act and the Rules framed under the Act. The procedure for settling the disputes between the parties before the Registrar also had been specified by the statute and the Rules made thereunder. The application of certain provisions of the CPC also had been specifically mentioned in Section 98 of the Act. Section 98 of the Act says that the provisions of the CPC shall have application in-

- (a) Summoning and enforcing the attendance of any person and examining him on oath,
- (b) Requiring the discovery and production of any document.
- (c) Receiving evidence on affidavits, and
- (d) Issuing commission for examination of witnesses.

Regarding the filing of claims or suits and the manner of disposing of such claims or suits, separate procedure has been contemplated under Rule 67 of the Co-operative Societies Rules. When a separate procedure had been specifically prescribed in the statute, the same procedure has to be followed and the general provisions of the CPC applicable in courts cannot be made applicable to the proceedings before the Arbitrators/Registrars. A Division Bench of this Court in Kavy Rajan v. Cooperative Tribunal 1989 (2) KLT 895 had held that the Co-operative Tribunal is not a court and, therefore, the provisions of the Limitation Act are not applicable. In Thilakan v. Mankai Coir Vyavasaya Co-op. Society Ltd. 1978 KLT 256 a Division Bench of this Court held that the Assistant Registrar adjudicating the disputes u/s 69 of the Act was not a court. In view of the above decisions the Arbitration Courts/Arbitrators/Registrars deciding the disputes in accordance with the provisions of the Co-operative Societies Act cannot be treated as courts. Section 100 of the Act specifically bars the jurisdiction of the civil and revenue courts in respect of all matters which are to be decided by the provisions of the Act. Further Section 69 (1) of the Act also stipulates that the civil courts shall not have jurisdiction to decide the disputes to be settled u/s 69 of the Act. Hence the procedure contemplated by the Co-operative Societies Act and the Rules framed thereunder are to be followed in deciding the disputes mentioned in Section 69 of the Act and the procedure contemplated under CPC are not applicable to the proceedings for settlement of the disputes under the Act.

6. The learned counsel appearing for the Co-operative Banks further submitted that Order 34 of the CPC was not applicable so far as our State was concerned as our High Court had formulated a separate procedure and that had been notified

in the Gazette and the above procedure was followed by our courts. On 10.12.1973 the High Court had issued a notification amending Order 34 CPC. Subsequently 1976 amendment to the CPC had come into force. Meanwhile in *State Bank of Travancore v. Balakrishnan* 1990 (1) KLT 392 the High Court repealed 1973 notification. The High Court again issued notification amending Order 34 of CPC and published in the Kerala Gazette No. 46 dt. 20.8.1990 and the above notification is still in force. The amended provisions of Order 34 do not provide a Rule similar to Order 34, Rule 11 CPC. The amended Order 34, though provides for the grant of future interest, does not specify the rate of interest regarding future interest. A single Judge of this Court in *Div. Manager, LIC of India v. Bhagavathy Amma* 1991 (2) KLT 522 held that in view of the amended Order 34 applicable to this State, the court has to pass a decree in a mortgage suit, fixing the interest payable from the date of suit in accordance with Section 34 CPC. In *State Bank of India Vs. Yasangi Venkateswara Rao*, the Supreme Court has observed that the mortgaging of the property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged. In *Veerappa's* case the Supreme Court had considered Order 34 Rule 11 CPC and held that the future interest allowable was only at 6%. So far as our State is concerned, the above decision of the Supreme Court in *Veerappa's* case has no relevance as Order 34 Rule 11 CPC considered by the Supreme Court is not applicable in our State. Hence the decision of the Tribunal placing reliance on the Supreme Court in *Veerappa's* case (*supra*) cannot be upheld and the grant of interest at 6% placing reliance on the above decision cannot be upheld.

7. The learned counsel appearing for the Co-operative Banks further submitted that in view of the coming into force of the Recovery of Debts due to Banks and Financial Institutions Act (51/1993) all claims exceeding Rs. 10 lakhs due to the banks and financial institutions will have to be filed before the Debt Recovery Tribunal constituted under the above Act. The jurisdiction of civil court to entertain a claim exceeding Rs. 10 lakhs due to the above banks (the above banks do not include the banks established under the Co-operative Societies Act) and financial institutions has been taken away by Section 18 of the above Act and such claims are to be made before the Debt Recovery Tribunal. Section 19 of the above Act prescribes a separate procedure for the realisation of the amount. The above procedure is totally different and Order 34 CPC is not applicable so far as the Debt Recovery Tribunals are concerned. By subsequent legislation the application of Order 34 of CPC had been taken away in respect of claims due to the banks and financial institutions exceeding Rs. 10 lakhs even if the debt was secured by any mortgage. Thus Order 34 CPC cannot have any application in proceedings before the Debt Recovery Tribunals or the Arbitration Courts/ Arbitrators/Registrars or before the Tribunal constituted under the Co-operative Societies Act when a separate procedure had been prescribed by the statute for the realisation of the debts. Thus the decision of the Supreme Court in *Veerappa's* case can have application only in suits before the civil court. The approach made by the Tribunal modifying the award and limiting the interest at 6% placing

reliance on Veerappa's case was not in accordance with law and could not be upheld.

8. The learned counsel appearing for the Co-operative Banks further submitted that Rule 67 of the Co-operative Societies Rules permit the Arbitrator/Registrar to allow future interest at the contract rate. Sub-rule (10)2 of Rule 67 reads;

"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."

9. The above Rule says that the future interest shall not exceed the contract rate from the date of suit till the date of realisation of the amount. The law permits the Arbitrator/Registrar to allow interest up to the contract rate. The learned counsel appearing for the loanes submitted that the contract rate of interest did not include the penal interest and as such the award passed by the Arbitrator/Registrar allowing future interest adding penal interest was beyond the jurisdiction conferred under Rule 67(10)2. The Supreme Court in Central Bank of India Vs. Ravindra and Others, while considering whether penal interest can be added to the principal amount by capitalisation held in para 55 of the judgment:

"55. xxxx xxx xxx xxx Though interest can be capitalised on the analogy that the interest falls due on the acquired date and remaining unpaid, partakes the character if amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest, i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy."

The Supreme Court had taken the contract rate of interest as well as the penal interest on two different pedestals and the contract rate of interest was held to be different from the penal interest which was leviable in default of payment of the amount. The penal interest, in fact, does not form the contract rate of interest, but it is in the form of additional interest leviable in default in making the repayments. The words "shall not exceed the contract rate" in Rule 67(10)2 would impose a restriction on the Registrars in granting future interest exceeding the contract rate of interest. The maximum that the Registrar/Arbitrator can allow towards future interest has been limited by law to the contract rate and the Arbitrators/Registrars are to be authorised or empowered to grant future interest exceeding the contract rate of interest. As the penal interest does not form part of the contract rate of interest, the award granting penal interest also towards future interest cannot be said to be lawful or authorised by law and cannot be justified.

10. Rule 67(10)2 gives wide discretion to the Arbitrator/Registrar to grant future interest upto the contract rate of interest, but not exceeding the contract rate of

interest. The law does not insist that the future interest should always be the contract rate of interest. In appropriate cases the Arbitrator/Registrar can pass the award allowing future interest at a rate lower than the contract rate of interest also, and the Arbitrator/Registrar has the jurisdiction to grant interest at the rate lower than the contract rate.

11. Section 34 CPC was a general procedural provision and its application would depend upon the fact situation of each case. The Supreme Court in *Central Bank of India Vs. Ravindra and Others*, held:

"Section 34 of the CPC is general in its application to all money suits and if banking practise or banking contracts providing for capitalisation of interest charged on periodical rests were to be recognised it will mean that application of Section 34 would be different in suits filed by banks and in suits filed by creditors other than bankers, Section 34 is a general procedural provision and whether it would apply or not and if apply then to what extend would obviously depend of the fact situation of each case."

Section 34 is a general provision for the grant of interest which can be followed by the Arbitrator/Registrar dealing on arbitration proceedings, as Rule 67(10)2 does not specify the rate of future interest. The proviso to Section 34 CPC permits the Court to grant the contract rate of interest towards future interest. There also the wording was that the future interest shall not exceed the contract rate of interest. Hence the Arbitrator/Registrar can adopt the principle in Section 34 CPC in the grant of future interest. The Supreme Court in the above cited decision in *Central Bank of India Vs. Ravindra and Others*, had laid down certain guidelines in the grant of future interest. In para 55 of the judgment it was held:

"55. xxxx xxx xxx xxx 6. Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six monthly rests depending on the rotation of crops the area to which the agriculturist borrowers belong."

xxxx xxx xxx xxx (8) Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise, its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reason and not in an arbitrary or fanciful manner."

12. Though Section 34 applies to suits pending before courts, it has general application regarding grant of future interest in all proceedings before the Arbitrator as well as the Tribunals. A Division Bench of this Court in Writ Appeal 661/1998 had observed:

"Since the Arbitrator u/s 69 of the Act is entrusted with the resolution of disputes regarding rights of parties including monetary claims, we are of the view that the principles of Section 34 of the CPC could be applied. We must notice that Section 34 only recognises a general principle relating to claims for money which are adjudicated upon and only enables the award of future interest in claims involving money and involving interest. It is also to be noticed that Section 5 of the Interest Act, 1978 also saves the operation of Section 34 of the Code of Civil Procedure."

As Rule 67(10)2 does not prescribe the rate of future interest, the principles u/s 34 CPC has to be applied in awarding future interest by the Arbitrator/Registrar. The future interest so far as agricultural borrowings are concerned should be treated differently from borrowings for commercial purposes. So far as loans granted for commercial purposes, the proviso to Section 34 allow the granting of future interest not exceeding the contract rate.

13. The Co-operative Banks are functioning with the deposits received from depositors or loans obtained from other financial institutions by paying higher rate of interest than the interest paid by the scheduled banks on deposits. Naturally cooperative banks will have to realise higher rate of interest from its borrowers while advancing loans. There was much difference in the rate of interest charged by different banks on different loans. It was averred in O.P. 38447/01 that the petitioner, the Pampady Housing Co-operative Society was receiving loans from the Kerala State Co-operative Housing Federation at 14.5% interest and was advancing the above amount to the borrowers at 15.5% interest and the society was receiving only a very narrow margin of interest of 1%. In such cases if interest at 6% alone was allowed the very existence of the society would be in peril. Many of the co-operative banks cannot exit unless they are permitted to have the contract rate of interest from the date of suit till realisation. If 6% of interest is awarded in a uniform manner as decided by the Tribunal, the very existence of co-operative banks would be in peril. When the loans were granted for commercial or for business purpose, the contract rate of interest (excluding penal interest) can be awarded towards future interest. But so far as the agricultural loans are concerned the rate of interest need not always be the contract rate of interest and the Arbitrator/Registrar shall have the option to pass an award allowing future interest at a rate lower than the contractual rate of interest. In a case where the contract rate of interest appears to be exorbitant or unconscionable, the Arbitrator/Registrar can award interest at a rate lower than the contract rate. Likewise, in cases where the principal sum adjudged on the date of suit, the component of interest appears to be disproportionate with the principal sum advanced the Arbitrator/Registrar can award future interest at a rate lower than the contract rate and the Arbitrator/Registrar shall have the authority/jurisdiction to fix the rate of interest in accordance with the facts and circumstances of the case. The Arbitrator/Registrar has to examine the facts and circumstances of the case and fix the future interest in a just and fair manner on sound judicial principles. As the awards by

the Arbitrator/Registrar allowing contract rate of interest was inclusive of the penal interest, the above awards are to be set aside. Likewise the awards passed by the Tribunal fixing interest at 6% placing reliance on the decision of the Supreme Court in Veerappa's case also are liable to be set aside and all the cases are to be remanded to the respective Arbitrator/Registrar for fresh disposal in accordance with law. Thus the following principles are laid down:

(1) Rules 67(10)2 does not confer jurisdiction on the Arbitrator/Registrar to grant penal interest towards future interest from the date of suit.

(2) The penal interest cannot be included with the contract rate of interest for awarding future interest from the date of suit. The contract rate of interest as contemplated under Rule 67(10)2 does not include the penal interest though the agreement would authorise the bank to realise penal interest.

(3) The decision of the Supreme Court in N.M. Veerappa Vs. Canara Bank and Others, does not apply to the proceedings for settlement of disputes under the Co-operative Societies Act before the Arbitrators/Registrars.

(4) The Arbitrators/Registrars shall have jurisdiction to award interest at the contract rate from the date of suit till realisation. In commercial transactions the future interest can normally be the contract rate of interest, but in agricultural loans the Arbitrators/Registrars shall be at liberty to allow interest at a rate lower than the contract rate of interest.

(5) In the case of the principal sum adjudged on the date of suit, if the component of interest appears to be disproportionate with the component of principal sum actually advanced, the Arbitrators/Registrars shall be at liberty to allow future interest at a rate lower than the contract rate. The rate of such future interest has to be fixed considering the facts and circumstances of each case.

(6) In cases where the contract rate of interest appears to be exorbitant or unconscionable, the Arbitrators/Registrars shall be at liberty to allow interest at a rate below the contract rate and such future interest can be at the discretion of the Arbitrator/Registrar which has to be exercised fairly, judicially and for reasons and not in an arbitrary or fanciful manner.

In view of the above principles, the awards passed in all the above cases by the Arbitrators/Registrars allowing future interest including the penal interest also at contract rate of interest are set aside. Likewise, all the impugned judgments passed by the Co-operative Tribunal reducing the interest at 6% from the date of suit and upholding the grant of contract rate of interest including the penal interest are set aside. This order setting aside the order shall be in respect of the grant of future interest alone. Accordingly all the cases are remanded to the respective Arbitrators/Registrars for fresh disposal for fixing the future interest from the date of suit in accordance with the principles mentioned above. The Arbitrators/Registrars shall pass fresh orders in accordance with the above

guidelines within one month from the date of production of a copy of this judgment. It is made further clear that the remand of the cases shall be for the limited purpose of determination of the future interest only.