

(1968) 11 MP CK 0019
In the Madhya Pradesh High Court
Case No : F. A. No. 23 of 1965

Laxmi Chand

APPELLANT

Vs

Brijbhushan Das

RESPONDENT

Date of Decision : 27-11-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11

Citation : (1969) MPLJ 256

Hon'ble Judges : Shiv Dayal, J; S. M. N. Raina, J

Bench : Division Bench

Advocate : A. R. Naoker, for the Appellant; J. R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

The appellant's suit for sale against the respondents was in respect of mortgaged property on foot of a mortgage dated September 2, 1956, for Rs. 17,000, and another mortgage dated July 6, 1947, for Rs. 5,000. The agreed rate of interest under the former was 10 annas per cent per month and under the latter 12 annas per cent per month. The suit was instituted on April 19, 1957. The defendants resisted the suit. The trial Court passed a preliminary decree for sale for the entire claim of the plaintiff i.e. principal sum Rs- 22,000 and interest at the stipulated rates from the date of the execution of the mortgage to the date of the institution of the suit. But from the date of the institution of the suit to the date of preliminary decree it allowed 3 per cent per annum (4 annas per cent per month).

In this appeal the plaintiff's grievance is that there was no justification for not allowing interest pendente lite at the contractual rates as it was mandatory under Order 34, rule 11, Civil Procedure Code. Alternatively, it is argued that discretion has been exercised arbitrarily. Under Order 34, rule 11 of the CPC a Court may order payment of interest upto the date on which payment of the amount found due or declared under the preliminary decree is to be made by the mortgagor at the rate payable on the principal.

The provisions now contained in Order 34, rule 11, CPC were enacted by the CPC Amendment Act No. 21 of 1929, Earlier, in AIR 1927 1 (Privy Council) , the suit was to enforce by sale a mortgage bond which provided for interest at 12% per annum with quarterly rests. The Subordinate Judge passed a decree in favour of the plaintiff and allowed interest at 9% per annum until the date of the institution of the suit and 6% per annum from that date until payment. The plaintiffs appealed as to the interest allowed. The High Court allowed the appeal and made a decree for interest at 12% per annum with quarterly rests, as stipulated in the bond, to the date fixed by the decree for payment, and thereafter at 6% per annum. The Privy Council took the view that 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 rests specified in the contract of mortgage-

After the decision of the Privy Council the present rule 11 in Order 34 of the CPC was enacted by Act No. 21 of 1929. This Rule makes a clear distinction between two periods: (i) from the date of the suit upto the date of redemption and (ii) from the date of redemption to the date of realisation. For the former, the Court may allow interest on the principal amount at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable. For the latter period the question has been left in the discretion of the Court and interest may be allowed on the total amount due. In respect of interest pendente lite it is in the discretion of the Court whether to allow or not the contractual rate of interest.

Sulaiman J., speaking for the Court observed in AIR 1940 20 (Federal Court) , thus:-

This special provision, which removes any conflict that there might have been between section 34 and Order 34, Rules 2 and 4, gives a certain amount of discretion to the Court, so far as interest pendente lite and subsequent interest are concerned. It is no longer absolutely obligatory on the Courts to decree interest at the contractual rate upto the date of redemption in all circumstances, if there be no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918.

His Lordship further observed:-

Of course, whether the Court would or would not give relief in respect of interest in excess of nine per centum simple per annum, and if so to what extent, will depend on the special circumstances of each case.

Their Lordships emphasised that the use of the word "may" indicates that the Court has a discretion and rejected the contention that the word "may" should be read as "shall". in that case the suit was to enforce simple mortgage debts carrying interest at Rs. 1-1-0 per cent per mensem compound every year. In the opinion of the High Court compound interest at Rs. 1-1-0 per cent per mensem with yearly rests was quite prudent one. The question arose before the Federal Court whether the Court was bound to allow the contractual rate of interest

pendente lite. Their Lordships allowed interest at 12% per annum simple from the date of the institution of the suit to the date fixed for payment in the revised decree to be passed by the High Court. Interest was allowed at 6% per annum after that date on the aggregate amount of principal, interest and costs upto the date of realisation.

Thus, it is settled law that under Order 34, rule 11, CPC the Court is not bound to allow contractual rate of interest for the period from the date of the suit to the date fixed for payment in the preliminary decree and the matter is discretionary with the Court. But, the discretion can not be exercised arbitrarily or capriciously. In exercising its discretion the Court has to bear in mind that it must be exercised judicially as any other discretion. This means that all the circumstances of the case must be present to the mind of the Court. No hard and fast rules can be formulated. Where interest claimed is penal or extortionate or is contrary to the provisions of any law the rate must be reduced. The Court can have regard to the length of litigation, the nature of the loan and other circumstances of the particular case. Where rate of interest is fixed as one of the terms of the mortgage, the discretion must be exercised on sound principles. In the exercise of such discretion the Court should ask itself whether there is any reason for not allowing the contractual rate of interest. If it finds that the rate is penal, excessive, or unconscionable, it would not allow that rate, but would reduce it to a reasonable extent. A variety of circumstances may weigh before the Court when in exercise of its discretion it does not allow interest pendente lite at the contractual rate, even if the rate of interest is not penal or unconscionable or otherwise excessive. If a Judge proceeds on a wrong principle in a matter within his discretion his order may be set aside by an appellate Court. See *Watson v. Rodwell* (1876) 3 Ch. D 380.

In the present case the suit was instituted as back as on April 19, 1957. The plaintiff has not yet been able to reap the fruits of his decree. Shri Naoker has shown us from the record that the respondent was himself a prior mortgagee that a decree for redemption was passed and the mortgagor was ordered to pay Rs. 35,152-15-0, that when he deposited the amount in the trial Court in pursuance of the decree for redemption the appellant made an application for attachment of that amount, but by raising all sorts of objections the defendant has not permitted the plaintiff to withdraw that amount. Even during the pendency of this appeal an application was made by the appellant that he should be permitted to withdraw that amount but the respondent opposed it.

While the contractual rate was 10 annas and 12 annas per cent per month the trial Court allowed only 4 annas per cent per month with the following observations:-

In view of the fact that plaintiff Brijbhushandas has no other means of livelihood, except the rents of the houses under mortgages, I allow -4/- per cent per month interest on the decretal amount, from the date of the institution of the suit till the realisation of the decretal amount, and proportionate costs.

The trial Court is not right when it says that at the time when the mortgage was executed the maximum rate of interest allowable on the mortgage was only 6% per annum. On September 2, 1946, and July 6, 1947, the Gwalior Interest Act was in force under which the maximum rate of interest allowable on the secured debts was Rs. 12% per annum. That Act was repealed by the Madhya Bharat Interest Act, 1956, which came in force on August 18, 1956.

That the defendant is earning rents of houses under the mortgages was a ground to be considered against him rather than as one in his favour. Under the Madhya Pradesh Money Lenders Act, the Usurious Loans Act, the Madhya Bharat Interest Act interest can be charged at the rate of 6% per annum on the secured debts. We are of the opinion that having regard to the circumstances of the case the plaintiff should be allowed interest from the date of the suit to the date of realisation at the rate of Rs. 5% per annum on the principal amount i.e. Rs. 22,000.

The appeal is partly allowed. The judgment and decree of the trial Court are modified only to this extent that the plaintiff shall get interest on Rs. 22,000 at Rs. 5% per annum from the date of the institution of the suit till realisation. The rest of the decree of the trial Court is maintained. Parties shall bear their own costs in this appeal.