(1978) 06 OHC CK 0006

In the Orissa High Court

Case No : Miscellaneous Appeal No. 21 of 1977

Lokanath Gooda and Another APPELLANT

Vs

K. Satyanarayana RESPONDENT

Date of Decision : 20-06-1978

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1978) 46 CLT 145

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : B.L.N. Swamy, for Y.S.N. Murty, for the Appellant; C.V. Murty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Judgment-debtors in an execution case of a money decree are Appellants and they challenge the order of the learned Subordinate Judge the executing Court. dismissing their objection u/s 47 of the CPC as also a review application.

2. Decree-holder obtained a decree for Rs. 6.675/- in Money Suit No. 32 of 1971 on 11-7-1974 and levied execution for a sum of Rs. 8,448.77 including interest and expenses. The judgment-debtors filed the objection contending that the principal sum was Rs. 3.600/- but the decretal amount along with the pendente lite and future interest came to Rs. 7,453 80 paise which was in excess of double of the principal amount by Rs. 253.80 paise. Relying on the provisions of Clause 7(1), Proviso of the Orissa (Scheduled Areas) Money-lenders Regulations, 1967 (2 of 1968), the judgment-debtors contended that the money-lender-decree-holder was not entitled to recover towards interest an amount in excess of the amount of .the principal. The executing Court has rejected the application.

3. In appeal, Mr. Swamy for the judgment-debtors Court has failed to apply the legal provision contained in the proviso to Regulation 7(1). The Proviso reads

thus: Provided that no money-lender shall recover towards interest in respect of any loan advanced by him, an amount in excess of the amount of the principal.

Reliance is placed on the decision of a learned Single Judge of this Court in the case of Vysaraju Badreenarayana Moorty Raju Vs. Epari Venugopalam,

4. " Interest" has been defined in Regulation 2(vii) as follows:

''interest'' includes any amount by whatever name called, paid or payable to a money-lender in consideration of or otherwise in respect of a loan in excess of the principal, but does not include any sum lawfully charged by a money-lender in accordance with the provisions of this Regulation or any other la w for the time being in force for or on account of costs, charges or expenses.

In view of the definition, costs, charges and/or expenses do not come within the definition. The suit had been decreed for a sum of Rs. 6,675/-. At the time of levying execution, in view of the fact that the decree had allowed six per cent pendente lite as also future interest, the decree-holder added a sum of Rs. 778 80. Admittedly the principal amount was Rs. 3,600/-. The balance included in the decree represented interest. With the addition of Rs. 77880, the total amount claimed worked out at Rs. 7,453.80. The claim by way of interest thus exceeded twice of the principal by Rs. 253.80 paise. In view of the mandate given in the Proviso referred to above the excess amount of interest of Rs. 253.80 paise was not collectible. Mr. C. V. Murty for the decree-holder places reliance on Regulation 13 Which provides:

Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall, in respect of any loan whether advanced before or after the appointed date, pass a decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

There is no contradiction or conflict between the proviso in Regulation 7(1) and the provision in Regulation 13. Both are amenable to a harmonious construction. The net result of the two provisions is that no Court is entitled to allow interest at the time of decree of a sum greater than the principal of the loan and no money-lender is entitled to recover towards interest In respect of any loan advanced by him an amount in excess of the amount of the principal. The injunction is against the Court at the time of pasting of the decree as also against the money-lender (decree-holder) at the point of execution. It would, therefore, follow that the judgment-debtors stand was correct and the executing Court could not have allowed recovery of more than Rs. 3,600/- by way of interest. The claim of Rs. 253.80 paise being in excess of the statutory limit was not recoverable. To that extent the judgment-debtors'' application must succeed.

5. Relying on the Single Judge decision referred to above, Mr. Swamy for the judgment-debtors-Appellants also contended that the recovery of costs and other expenses as claimed in the execution petition was barred. The reported decision is not under the Regulation but under the Orissa Money-Lenders Act itself. The

definitions under the Act and the Regulation of the term ''interest'' being different, the Single Judge decision is no authority for the present purpose. It may be noted that the phrase or otherwise occurring in Section 2(h) of the Money-Lenders Act is not to be found in the definition of the term ''interest'' in the Regulation. As such, the ratio in the Single Judge decision cannot be pressed into service by the judgment-debtors for support of their stand that on payment of only Rs. 7,200/-, the judgment-debtors'' liability must be held to have been extinguished. The bar under the Regulation is only with reference to interest and not other charges. The contention of Mr. Swamy in regard to the other dues asked to be recovered under the decree, therefore, must fail.

6. The appeal stands allowed in part and it is directed that the judgment-debtors are liable to pay by way of interest in this case only Rs. 3,600/- and not more. The executing Court is directed to give effect this decision. So far as the claim 9? the judgment-debtors, not to permit execution for the other charges is concerned, their plea that the demand is in excess of double the principal amount must fail. Parties are directed to bear their own costs in this Court.

Appeal partly allowed.