

(1989) 11 MAD CK 0008
In the Madras High Court

M. Selvam and Others

APPELLANT

Vs

T.P. Kuppanna Mudaliar

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Trusts Act, 1882 — Section 23(e), 23(f)

Citation : (1990) 1 LW 14 : (1989) 2 MLJ 385

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—The plaintiffs in O.S. No. 110 of 1963, Sub Court, Cuddalore, which was later transferred to the Sub Court, Villupuram, and

renumbered as O.S. No. 9 of 1982, are the appellants in this second appeal. The appellants are the children of Manicka Mudaliar, who died on

17.11.1959, and Kuppulakshmi Ammal, who figured as the first defendant in the suit. Manicka Mudaliar was carrying on cloth trade in Bazar

Street, Villupuram, and at the time of his death, he had incurred certain debts and had also outstandings due to him as well as stock in-trade in his

business. At the time of death of Manicka Mudaliar, the appellants were young children and Kuppulakshmi Ammal was also in an advanced state

of pregnancy and the creditors of deceased Manicka Mudaliar wanted some arrangements to be made for the discharge of the debts due to them.

Thereupon, Kuppulakshmi Ammal, on behalf of the appellants and herself, executed a deed of trust in favour of the respondent herein and

defendants 3 to 8 in the suit on 28.11.1959 appointing the respondents and six others as trustees and agreeing to handover the entire stock-in-

trade and outstandings of deceased Manicka Mudaliar to the respondent and others in order to enable the realisation of the amounts due to

Manicka Mudaliar and for the payment of the debts due by him to others. Yet another document was also executed on 23.12.1959 by

Kuppulakshmi Ammal for herself and on behalf of the appellants as well as other trustees appointed under the deed of trust dated 28.11.1959 in

favour of the respondent herein constituting him the managing trustee of the trust. Prusuant to the documents so executed, the respondent herein

took over the stock-in-trade of deceased Manicka Mudaliar as well as his outstandings and realised large amounts, but did not carry out the

objects of the trust deed by clearing off the debts of Manicka Mudaliar, owing to that, several suits came to be filed against the appellants in O.S.

Nos. 474, 23 and 97 of 1960 by the creditors of deceased Manicka Mudaliar and"" the only residential property was also attached by the

creditors, which necessitated the discharge of the decree debts by the appellants and that, according to the appellants, was clear breach of trust by

the respondent. Besides, the appellants also claimed that a Co-operative Urban Bank also attempted to bring for sale the property owing to the

non-discharge of its debt by the respondent herein. Charging the respondent with breach of trust and the unjust retention of the trust funds in his

hands, the appellants instituted O.S. No. 110 of 1963, Sub Court, Cuddalore, praying for a preliminary decree against the respondent herein for

rendition of accounts among other reliefs. In the written statement filed by the respondent herein, several defences were raised and it is unnecessary

for purpose of this second appeal to notice the same. Suffice it to say that on 30-6-1976, a preliminary decree for rendition of accounts was

passed in favour of the appellants and against the respondent herein and certain other directions were also given. An appeal against that preliminary

decree in A.S. No. 474 of 1976, District Court, Cuddalore, was dismissed on 5.9.1980 and a further Second appeal in S.A. No. 214 of 1981

was also dismissed by me on 2.3.1981. Subsequently, an Advocate-Commissioner was appointed and after taking accounts, he submitted a

report according to which, the liability of the respondent herein as on 12.4.1960 was fixed at Rs. 41,312-31. At the instance of the respondent, a

second commissioner was also appointed and he submitted a report. Considering the reports so submitted as well as the several objections raised

by the respondent herein to the reports, on 18.10.1983, the Sub Court, Villupuram, to which the suit had by then stood transferred, passed a final

decree in favour of the appellants and against the respondent herein for Rs. 41,312-31 with compound interest thereon at 12% p.a from

12.4.1960 onwards with half-yearly rests. Thereupon, the respondent herein preferred A.S. No. 246 of 1983, District Court, South Arcot

Cuddalore. In the course of the appeal, the respondent agitated only the award of compound interest and the lower appellate court took the view

that Section 23(e) and (f) of the Indian Trusts Act, 1882 (hereinafter referred to as "the Act") would govern this case and in the absence of the

incorporation therein of the expression, "unless the court otherwise directs", the maximum rate of compound interest that could be awarded is only

6% p.a. The award of interest at that rate was also stated to be justified on the merits of the case. Ultimately, the lower appellate court modified

the decree passed by the trial court by directing the payment of compound interest at 6% p.a. instead of 12% p.a. with half-yearly rests and in

other respects, the decree of the trial court was confirmed. While in the second appeal the appellants have questioned the modification made by

the lower appellate court with reference to the rate of compound interest payable, the respondent, in his Memorandum of Cross-objections, has

challenged the award of compound interest at 6% p.a. with half-yearly rests on the ground that the granting of 6% p.a. simple interest would

suffice.

2. Mr.M.R. Narayanaswami, learned Counsel for the appellants inviting attention to Section 23(e) and (f) of the Act, submitted that even in cases

falling u/s 23(e) and (f) of the Act, a trustee found guilty of breach of trust would be liable to account for compound interest at rates in excess of

6% p.a., though the expression, "unless the court otherwise directs" does not occur in Section 23(e) and (f) of the Act. Learned Counsel further

submitted that a discretion was vested in the court to award a higher rate of compound interest depending upon the facts and circumstances of the

case and referred in this connection to the decisions reported in Syed Abdul Wajid Sahib v. Oosman Abdul Rubb 56 L.W. 42 and Jagannath

Sowcar Vs. S.V. Sripathibabu Naidu, . On the other hand, Mr.G. Subramaniam, learned Counsel for the respondent/Cross Objector, contended

that on a proper interpretation of Se.23(e) and (f) of the Act, the award of 6% p.a. compound interest by the Court below was itself excessive and

that the award of simple interest at 6% p.a.would meet the ends of justice.

3. Before proceeding to consider these submissions, it would be necessary to make a brief reference to the unchallenged findings of the courts

below. The respondent had been carrying on cloth business and the amounts from the books of deceased Manicka Mudaliar had been transferred

to the accounts of the partnership firm of the respondent. These amounts had been transferred after the respondent was appointed as the managing

trustee. After the transfer of the amounts of deceased Manicka Mudaliar to the accounts of the firm, of which the respondent was a partner, the

dealings were continued by the debtors, as the business was continued by the respondent. The respondent had also transferred the trust amounts

into his own accounts and the amounts realised by the respondent had been kept with him and also employed in the partnership business. The trust

funds had also been divided among the partners, as admitted by the respondent himself and his auditor. The respondent had also failed to produce

the accounts despite numerous requests by the Commissioner to make available the account books and had admitted to maintain proper accounts

with a view to defraud the beneficiaries. Above all, the appellants had to discharge the amounts due under the decrees, when their residential house

was brought to sale in execution of the decrees obtained by the creditors, it is in the aforesaid background and in the light of the provisions in

Section 23(e) and (f) of the Act, the rate of interest awardable to the appellants should be considered.

4. u/s 23 of the Act, in the event of the trustee committing a breach of trust, he is liable to make good the loss which the trust property or the

beneficiary had thereby sustained, unless the trustee was induced to commit the breach of trust by the fraud induced by the beneficiary of the

beneficiary concurred in the breach or acquiesced therein with full knowledge of the facts and rights against the trustee, without coercion or undue

influence having been brought to bear on him. In the light of the findings referred to earlier, it is obvious that the respondent had committed breach

of trust and he is, therefore, liable to make good the loss, the beneficiaries of the trust property had thereby sustained. The further provision u/s 23

of the Act is to the effect that such a trustee committing a breach of trust is not liable to pay interest except in the cases enumerated under Clauses

(a) to (f). Even as per this provision, three different categories have been contemplated, viz., (i) the actual receipt of interest with a liability to account for such interest actually received; (ii) to account for simple interest at the rate of 6% p.a., unless the court otherwise directs, in cases where the breach consists in unreasonable delay in paying trust money to the beneficiary or where the trustee ought to have received interest, but has not done so, or where the trustee may be fairly presumed to have received interest; and (iii) to account for compound interest (with half-yearly rests) at the same rate, where the breach consists in failure to invest trust money and to accumulate the interest or dividends thereon or where the breach consists in the employment of trust property or the proceeds thereof in trade or business, at the option of the beneficiary either for compound interest (with half-yearly-rests) at the same rate, or for the net profits made by such employment.

5. It is thus seen that though generally a trustee committing breach of trust is not liable to pay interest excepting in the cases provided for u/s 23(a)

to (f) of the Act, even amongst those cases where he is liable to pay interest, a distinction is made as provided in Section 23(a) of the Act to

account for the interest actually received and in cases falling u/s 23(b), (c) and (d) of the Act to account for simple interest at the rate of 6% p.a.

unless the court otherwise directs. Regarding the cases falling u/s 23(e) and (f) of the Act, where provision is made for the liability of the trustee for

payment of compound interest for breach of trust, it is significant that the rate of interest is not specified, but the expression used is "at the same

rate". In order to ascertain the meaning of the expression "at the same rate" occurring in Section 23(e) and (f) of the Act, necessarily the rate

specified earlier has to be taken into account. With reference to the cases falling u/s 23(b), (c) and (d) of the Act, the rate of interest provided is

simple interest at 6% p.a, unless the court otherwise directs. The expression "at the same rate" occurring in Section 23(e) and (f) of the Act has,

therefore to be read, in order to ascertain the rate of compound interest provided for therein, in the light of the rate of interest, though simple,

provided for under cases falling u/s 23(b) to (d) of the Act. The words "unless the court otherwise directs" applicable to cases falling u/s 23(b) to

(d) of the Act allow a discretion in the court to grant a higher rate of interest, if it considers proper to do so. In other words, even in a case falling

u/s 23(b) to (d) of the Act, it would be open to the Court to award interest, though simple, in excess of 6% p.a. and the award of interest in that

manner would be in accordance with the direction of the court otherwise. When there is discretion in the court to award interest in excess of 6%

p.a. even in a case where simple interest is payable u/s 23(b) to (d) of the Act, the compound interest payable u/s 23(e) and (f) of the Act at the

same rate would enable the court to fix compound interest also in excess of 6% p.a. Thus, the compound interest "" at the same rate

contemplated in Section 23(e) and (f) of the Act, may be 6% p.a. compound interest or even such rate, as may be fixed by the court, in the

exercise of its discretion. We had earlier pointed out that there is no specification of any particular rate of compound interest, in cases where such

compound interest is allowable and the enumeration of cases where a trustee is liable to pay interest at 6% p.a., unless the court otherwise directs

and providing for payment of compound interest u/s 23(e) and (f) of the Act at the same rate, would enable the court to award even compound

interest in cases falling u/s 23(e) and (f) of the Act at rates higher than 6% p.a. The absence of the expression ""unless the court otherwise directs

in Section 23(e) and (f) of the Act cannot be understood as precluding the court from awarding compound interest in excess of 6% p.a., especially

when u/s 23(e) and (f) of the Act, there is no specification of the rate of compound interest payable, but such rate is described to be the same rate,

which in turn would mean 6% p.a., unless otherwise directed by the court, we may now refer to the decisions in Syed Abdul Wajid Sahib v.

Oosman Abdul Rubb 56 L.W. 42 and Jagannath Sowcar Vs. S.V. Sripathibabu Naidu, relied on by learned Counsel for the appellants. In the first

of these cases in setting out Section 23(e), the court has proceeded on the assumption that there is a provision for payment of compound interest at

6% p.a., unless the court otherwise directs. As we have pointed out earlier, with reference to Clauses (e) and (f) falling u/s 23 of the Act, there is

no specification of the rate of compound interest, but it is stated that such interest would be at the same rate and that would enable the court to

award compound interest in excess of 6% p.a. Therefore, the decision in Syed Abdul Waji Sahib v. Oosman Abdul Rubb 56 L.W. 42 is not of

much assistance to the construction of Section 23(e) and (f) of the Act, except to the limited extent that there is a discretion left in the court to grant

higher rate of interest, if it considers proper to do so. Therefore, none of the decisions relied on by learned Counsel for the appellants is of any

assistance in the interpretation of the words ""at the same rate"" occurring in Section 23(e) and (f) of the Act. Even so, as a matter of construction of

the provisions, as they stand, it has earlier been held that the court has a discretion in fixing the rate of compound interest at a figure higher than 6%

p.a. In this case, the trial court awarded 12% p.a. compound interest with half-yearly rests, which was modified by the lower appellate court to

6% p.a. with half-yearly rests. Ordinarily, the appellate court ought to be slow to interfere with the exercise of discretion by the trial court in the

award of interest u/s 23(e) and (f) of the Act. The unchallenged findings of the courts below have already been referred to. The respondent has

been found to be guilty of a direct breach of trust by employing the trust funds in his own business and also dividing the trust funds amongst his

partners. Several years have also rolled by since the respondent had committed the breach and there has been a total absence of an attempt of the

part of the respondent to repair the breach or perform the trust till actually the suit was instituted. Twenty seven long years have rolled by since the

suit itself was instituted and during the time consumed by the pendency of the litigation the respondent had the benefit of employing the trust funds

in his own business and he had derived benefit. If the amounts payable to the beneficiaries had been paid by the respondent in time, they might

have invested those amounts in some business or other productive enterprise and reaped benefits therefrom. Even that had been lost to them so

that the award of compound interest, in the aforesaid circumstances, at 12% p.a. with half-yearly rests appears to be just and reasonable,

especially when, on the facts, Section 23(f) of the Act stood attracted and the appellants have not exercised an option for payment of the net

profits made by the respondent by the employment of the trust funds. Considering the facts and circumstances of the case in the light of Section

23(f) of the Act, we hold that the award of compound interest at 12% p.a. with half-yearly rests by the Trial Court was just, fair and proper and

that the lower appellate court was in error in modifying the rate of compound interest to 6% p.a. with half-yearly rests. The second appeal is,

therefore, allowed with costs, while the Memorandum of Cross-objections will stand dismissed with costs.