

(2014) 04 AP CK 0166

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 1313 of 1998

Malladi Krishnayya

APPELLANT

Vs

Tadikenda Siva Surya Prakasa Rao

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Usurious Loans Act, 1918 — Section 3

Citation : (2015) 2 ALD 34 : (2014) 6 ALT 696

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : M. Bhaskara Lakshmi, Advocate for the Appellant; O. Manohar Reddy, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—The plaintiffs who filed the suit for Rs. 3,15,853.50 Ps. with subsequent interest against the sole defendant which is for recovery of Ex. A1-suit pro-note dated 09.01.1988 principal sum of Rs. 1,74,000/- with interest thereon @ 27% per annum simple from the date of pro-note till date of suit (the suit filed on 16.01.1991 in view of the intervening Pongal vacation to the Courts from 01.01.1991 to 15.01.1991 both days inclusive) which interest comes to Rs. 1,41,853.50, thus the suit claim is for Rs. 3,15,853.50 with subsequent interest thereon sought at @ 27% per annum and for costs; having been aggrieved by the trial Court's decree and judgment decreeing the suit claim in part for Rs. 1,00,000/- adjudged as principal sum and Rs. 1,97,253.97 as interest at 12% per annum on said principal sum from 09.01.1985 (as the Ex. A1-suit pro-note dated 09.01.1988 held renewal of Ex. A2 earlier pro-note dated 09.01.1985 for Rs. 1,00,000/-) and for proportionate costs Rs. 10,624.50; by impugning the same preferred the appeal.

2. The contest of plaintiffs/appellants in the grounds of appeal as well as the submission during course of hearing by counsel for the appellants that the trial

Court went wrong in not decreeing the suit as prayed for and also in reducing or scaling down rate of interest having held the Act No. 4 of 38 has no application and hence to allow the appeal decreeing the suit as prayed for before the trial Court, with costs.

3. The sole dependant T.S.S.P. Rao, as sole respondent in the appeal since died, and his sons by name Ram Kishore and Madan Kishore representing his estate being his legal representatives brought on record as per the orders in C.M.P. No. 5159 of 2000 dated 19.06.2000 as respondent Nos. 2 and 3 of the appeal who are contesting the appeal by engaging advocate.

4. It is the contention of the counsel for the respondents that there is nothing to interfere with the trial Court's decree and judgment in scaling down the rate of interest applying the usurious loans Act, for this Court while sitting in appeal and sought for dismissal of the appeal saying, the Ex. A1-suit pro-note is proved as renewal of earlier pro-note Ex. A2 and the charging of interest on interest does not arise as rightly concluded.

5. Now the points that arise for consideration to decide the appeal are:

1. Whether the suit transaction is a commercial or noncommercial transaction and whether the suit amount is to be scaled down applying the usurious loans Act or any debt relief law and if so what is the principal sum of the suit claim to adjudge u/s 34 C.P.C. from the pre-lite interest on original sum and then what is the principal sum as on the date of the suit for awarding pendent-lite interest till date of decree and what is the decree amount to award interest post-lite from the date of decree till realization?

2. To what result?

Point No. 1:

6. As per the material on record, there is no dispute on execution of suit pro-note for the amount of Rs. 1,74,000/- to repay with interest at 27% per annum simple and the defendant, a business man and the borrowal was not for any agricultural purposes, much less defendant an agriculturist; but for to say the suit pro-note is renewal of earlier pro-note principal sum of Rs. 1,00,000/- with interest fallen due after payments for the total Rs. 1,74,000/- and the rate of interest is usurious to scale down. Thus, the crux is to consider application of usurious loans Act and what is the proof regarding market rate at relevant dates to say 27% is excessive to scale down; so also to say any need to reopening of the suit pro-note transaction.

7. As per the evidence on record, the case of the plaintiffs before the trial Court as set out in the plaint was showing the avocation of the defendant as businessman besides the 1st plaintiff's avocation as advocate and of 2nd plaintiff as businessman. The plaint averments speak, having received consideration to discharge earlier pro-note executed by the defendant in favour of the plaintiffs at Vijayawada, the defendant executed the suit pro-note dated 09.01.1988 for Rs.

1,74,000/- to repay with interest @ 27% per annum to the plaintiffs or to their order on demand. The suit pro-note Ex. A1 speaks the same. The plaintiff averments speak further that the defendant was issued demand notice Ex. A3 dated 19.04.1989 to repay for which he gave a reply Ex. A4 dated 24.04.1989 with untenable contentions and failed to pay. It was also averred that the defendant is not entitled to the benefits of the Act No. 4 of 1938 (AP Andhra area) and Act No. 7 of 1977 (AP). It is because the defendant is a business man and not an agriculturist or artisan or the like.

8. The written statement and contest of the defendant in consonance with stand in Ex. A4 reply was that the Ex. A1-suit pro-note dated 09.01.1988 is the renewal of Ex. A2 earlier pro-note dated 09.01.1985 executed by the defendant and the amount in the suit pro-note out of Rs. 1,74,000/-, of Rs. 74,000/- represents balance interest accrued after adjustment of part payments under Ex. A5 dated 04.07.1985 and out of earlier pro-note of Rs. 1,00,000/- borrowed by the defendant from the plaintiffs on 09.01.1985 as endorsed, discharged on Ex. A2 under Ex. A6 dated 09.01.1988 and there is no agreement to pay compound interest under earlier pro-note dated 09.01.1985, that the defendant is liable only for simple interest to be calculated on Rs. 1,00,000/- from 09.01.1985, that interest rate is usurious, penal and excessive and the suit pro-note is thus not legal and receiving of Rs. 1,74,000/- as consideration is not true.

9. The trial Court from the pleading framed the following issues:

- 1) Whether the suit pro-note is renewal of earlier one dated 09.01.1985?
- 2) Whether the interest claimed is usurious, penal and excessive?
- 3) Whether the defendant is liable to pay simple interest on Rs. 1,00,000/- from 09.01.1985? and
- 4) To what result?

10. It is from the factum of no dispute on the passing of consideration so far as Rs. 1,00,000/- and the execution of original pro-note with interest @ 27% per annum on 09.01.1985 covered by Ex. A2 earlier pro-note the issues were rightly framed.

11. It is pursuant to the issues in controversy to resolve in deciding the lis, from the evidence of P.W. 1-1st plaintiff with reference to Exs. A1 to A6 supra and from the oral evidence of sole defendant as D.W. 1; the trial Court found that undisputedly there is nothing mentioned as cash consideration but for supported by consideration the Ex. A1 suit pro-note for Rs. 1,74,000/- from the respective evidence of P.W. 1 and D.W. 1; there is nothing to show except suit pro-note amount for the earlier note discharged one any other amount borrowed by defendant from plaintiffs and the purpose of borrower not even mentioned in the suit pro-note and it shows the principal amount lent originally under Ex. A2 pro-note dated 09.01.1985 was Rs. 1,00,000/- to repay with Interest agreed @ 27% per annum as claimed in the suit and the defendant alleges the interest as

usurious, penal and excessive. Thus defendant is liable to pay the amount at simple interest and for no evidence regarding entitlement of benefits Act No. 4 of 38, the same has no application to the transaction to reopen thereunder. However, what the plaintiffs contended and deposed of the suit pro-note transaction is for business purpose of the defendant is silent in the Ex. A1 suit pro-note and u/s 3 of usurious loans Act, the Court can reduce by and reopen if the rate of interest is excessive (to scale down). Though from the decision placed by the plaintiffs of 1986 (1) APU 353 there can be presumption to invoke the interest rate as not excessive and unfair in the absence of proof with reference to the time of granting the loan as to what was the rate of interest, where interest is unfair or not depends upon circumstances of the case and on the economy of the country in general and all the persons charged as a class and in a decision of 1993 (2) LS page No. 12 interest charged @ 13.5% per annum was held adequate, that the plaintiffs have to prove the rate of interest prevailing as on the date of the execution of pro-note at 27% and when not proved by examining any officials from the nationalized banks regarding the charging of interest, it can be held that the rate of interest charged is excessive as claimed by the defendant to reduce to 12% compound rate since banks are charging interest on compound rate quarterly rests, only on Rs. 1,00,000/- and from 09.01.1985.

12. Coming to the correctness of the findings detailed supra of the trial Court impugned in the appeal with respective contentions of the parties to the appeal supra; the law is well settled law, but for agricultural purpose charging compound interest per-se usurious to presume, in non-agricultural purposes, the burden is on the borrower to prove the rate of interest charged as usurious with reference to prevailing market lending rate. Here it is a private lending, it has to be shown the private lending market rate is if less than 27% per annum; to contest therefrom to reduce to the market prevailing rate. A Division Bench judgment of this Court in 1974 (2) Andhra Weekly Reporter page. 217 at page. 221 equal to 1974 (2) AP LJ-85 (DB) categorically held that there can be no presumption of rate of interest charging even at compound rate is usurious unless the borrower who has to discharge the debt is an agriculturist and the purpose is for agriculture. It was held that other than for agricultural (is for business and commercial transaction etc.) the rate of interest cannot be presumed usurious much less even from charging at compound rate. What the constitutional bench expression of the Apex Court in Central Bank of India vs. Ravindra 2002 (1) SCC 367 held referring to earlier expressions is that the penal interest can be presumed usurious and unsustainable for no penal interest can be charged on compound interest even compound interest can be charged. The same is also analogy from the larger bench of this Court in APSRTC vs. B. Vijaya 2002 (4) ALT 525. It is not the case of compound interest or penal interest herein even to consider. The defendant nowhere disputed that he is a businessman. It is not even mentioned for any agriculture purpose or the like said borrowal covered by Ex. A1 or A2. Explanation No. 2 of Section 34 C.P.C. speaks regarding proviso to sub Section 34 C.P.C. that a transaction is

commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

13. Before coming to discuss further on the facts, it is to be kept in mind that, interest is a premium paid for use of money vide decision in AIR 1959 AP 64. Loan is the amount that lent. Debit is the amount that is fallen due. Thus, loan is the principal sum and debt is inclusive of interest on such principal sum vide decisions in AIR 1968 SC 1042 & AIR 1972 Bombay 238. It is apt to say as laid down by the Apex court in *Dr. Shamlal Narula vs. C.I.T., Punjab* (1964) 7 SCR 668 that interest is paid for the deprivation of use of money and interest and compensation are some times used interchangeably. Interest in general terms is the return for use of retention by one person of some money owed to another. Thus, interest to mean the amount which one has contacted to pay for use of borrowed money. It is a compensation allowed by law (as per statutory provisions regarding interest) or fixed by parties (by virtue of the contract) or permitted by custom or usage for use of money belongs to another or for delay in paying money after it has become due and payable. The Constitution Bench of the Apex Court in *Secretary, Irrigation Department, Government of Orissa & Others vs. G.C. Roy* (1992) 1 SCC 508 held that a person deprived of the use of money to which he is legitimately entitled as a right to be compensated for the deprivation call it by any name like interest or compensation or damages. It may even be regarded as a profit he might have made if he had used of money or conversely the loss he suffered because he had not that use. It is further to mention that interest to be awarded is at 3 stages including from the wording of Section 34 C.P.C. of a simple money transaction like one covered by pro-note. The pre-lite interest is otherwise known as substantive interest and it is at such rate as per the contractual terms between the parties once there is a contract; in the absence of which, in commercial transaction or commercial lending as per the trade usage and custom to charge (though earlier it was also under law of equity, now not) and otherwise when there is no stipulation regarding payment of interest and no proof of trade usage and custom, it is as per the Interest Act, 1978 from the date of service of the demand notice for payment of interest at such rate on the amount due to discharge the debt. Here that difficulty does not arise as there is a stipulation regarding rate of interest @ 27% per annum in the Ex. A1-suit pro-note; so also in Ex. A2 earlier discharged pro-note covered by Ex. A6 endorsement. This pre-lite interest is substantive interest from the above. So far as pendent-lite and post-lite interest concerned, it is not a substantive interest much less as per contract rate invariably, but within the discretion of the Court in use of the word "may" in Section 34 C.P.C. viz., to award interest from the date of suit till date of decree (pendent-lite) in addition to the interest adjudged on such principal sum (suit amount). It can be even as per the contract rate. So far as post-lite interest from date of decree on such principal sum (adjudged) concerned, it cannot exceed 6% per annum unless the liability had arisen out of a commercial transaction to exceed 6% per annum but not to exceed the contractual rate of interest or where there is no contract rate at such

rate at which moneys lend or advance by nationalized bank in relation to commercial transaction. If the decree is silent in respect of payment of interest and on such principal sum from date of decree (post-lite) till payment, it shall be deemed to have refused by Court such interest.

14. Now from this background, coming to the factual matrix in this case as discussed supra, the defendant is a businessman and the lending is for said businessman. Thus, the trial Court categorically and rightly found that Act No. 4 of 38 has no application to scale down the rate of interest to 12% per annum simple. However, for holding the rate of interest as usurious and to scale down by the trial Court it went wrong, in saying plaintiffs not proved the rate of interest as not usurious; even the issue Nos. 1 and 2 formulated correctly by putting burden on the defendant for not an agricultural transaction, the burden is only on the defendant. The trial Court thus went wrong in ignoring this legal principle and in saying plaintiffs did not discharge the burden by saying the rate charged is as per bank lending rate though that is not criteria and it is for the defendant to establish the rate of interest charged is excessive to the market prevailing rate and thereby usurious as then only the Court has to consider to scale down even in commercial transaction or a business borrowal, though not an agricultural borrowal. When from the material on record, the defendant did not discharge that burden lies on him for impugning the rate of interest as penal and usurious, by showing it is above to the market lending rate prevailing as on the date of borrowal, the Court should not have scaled down the interest as the pre-lite interest is a substantial interest to be governed by the contract between the parties unless it is shown usurious to scale down from the provisions for which the burden lies on the defendant who seeks to scale down by so showing; which he did not in this case. Even the decision referred by the trial Court cited by the plaintiffs of 1986 (1) APU 353 speaks the same, however the trial Court having discussed supra the decision, also ignored the said principle of law and the same principle of law is also clear from the division bench expression of this Court referred supra of 1974 (2) AWR 217.

15. Now coming to what is the principal sum at which the interest is to be charged pre-lite to date of suit. The plaint averments as well as the Ex. A3 notice and Ex. A6 endorsement on Ex. A2 earlier pro-note are crystal clear of the Ex. A1-suit pro-note is supported by consideration received by the defendant in discharge of the earlier pro-note (Ex. A2) amount due. When it is crystal clear of suit pro-note is supported by consideration what is the amount due under earlier pro-note which is covered by Ex. A6-endorsement on the Ex. A2 pro-note that was dated 09.01.1988 when the suit pro-note was executed (Ex. A1); thus Ex. A1 is not a mere renewal of Ex. A2 pro-note but for what the amount due under Ex. A2 pro-note was discharged under Ex. A6 endorsement of what was due after adjusting of the part payment under Ex. A5, for the balance paid i.e., covered by Ex. A6-endorsement; the Ex. A1 suit pro-note was executed. It is to say the suit pro-note is supported by consideration of Rs. 1,74,000/- and there is nothing to scale down to Rs. 1,00,000/- much less to say by solely relying upon Ex. A2 pro-

note earlier borrowed was for Rs. 1,00,000/- and after excluding the part payment under Ex. A5 with interest at 27%, the amount comes that was discharged under Ex. A6 tallied to Rs. 1,74,000/-. When such is the case, the principal amount borrowed under Ex. A1 suit pro-note as claimed under Ex. A3-legal notice is Rs. 1,74,000/- even earlier there was a transaction as repaid under Ex. A6 and also covered by Exs. A2 and 5 supra. Thus, the Ex. A4-reply and written statement contest of defendant with evidence as D.W. 1 to say it is a mere renewal is untenable to say the lower Court also went wrong in so concluding in answering the issue No. 1. Not only that, it also went wrong as detailed supra in wrongly putting burden on plaintiffs to prove rate of interest not usurious, though the burden is on defendant to prove as usurious.

16. Now coming to rate of interest on the suit pro-note dated 09.01.1988 pre-lite concerned which is the substantive interest under law from the contract rate undisputedly at 27% per annum and from there is no evidence adduced admittedly by the defendant including from cross-examination of P.W. 1 much less no whisper in his evidence as D.W. 1 or in the Ex. A4-reply or the written statement as to what was the prevailing market rate of interest as on suit pro-note-Ex. A1 borrowel dated 09.01.1988, though as discussed supra it is the burden on the defendant to establish the rate of interest is usurious and excessive to scale down. Thus, as the defendant failed to discharge the burden of showing the contract rate being the substantive rate is usurious; it has to prevail for nothing to scale down from said contract rate at 27% per annum even under the usurious loans Act; leave about the Act No. 4 of 1938 & Act No. 7 of 1977 have no application to the facts as concluded by the trial Court. Then the suit amount as on the date of the suit 16.01.1991 comes to Rs. 3,15,853.50 as claimed by the plaintiffs.

17. Once that is the case now coming to the pendent-lite and post-lite interest concerned; it is u/s 34 C.P.C. within the discretion of the Court as detailed supra and since the transaction is not agricultural but commercial within the meaning of Section 34 C.P.C. from what is discussed supra and the principal sum adjudged for purpose of charging pendent-lite and pre-lite concerned, it is not what is the principal amount borrowed under Ex. A1 pro-note dated 09.01.1985 of Rs. 1,74,000/- but the suit amount of Rs. 3,15,853.50 that can be rounded to Rs. 3,15,854/- to avoid fractions in calculation; the interest in commercial transaction as per the proviso to Section 34 C.P.C. can be exceeding 6% per annum post-lite and thereby and also taking consideration of subsequent steep fall in bank lending rate of interest for the recent past, as also laid down by the Apex Court in DDA vs. Joginder S. Monga where it is granted as 9%, it is just to award at 9% per annum simple on the suit amount which is the principal sum adjudged of Rs. 3,15,854/- as stated supra from the date of suit till realization. Accordingly, the point No. 1 is answered.

18. In the result, the appeal is allowed by modifying the decree of the trial Court (which granted suit claim for Rs. 1,97,254/- with interest @ 12% per annum on

Rs. 1,00,000/- from the date of suit (16.01.1991) till realization at 12% per annum compound rests) to the suit amount of Rs. 3,15,854/- with pendent and post-lite interest @ 9% per annum simple from date of suit till realization with full costs of the trial Court of Rs. 14,179/-; however, with no costs of the appeal in the peculiar facts and circumstances of the case as the plaintiffs were driven to the appeal lis from ill appreciation of the material on facts and law, rather contest of defendant; otherwise costs could follow the event. Miscellaneous petitions pending in this appeal, if any, shall stand closed.