**(2011) 04 MAD CK 0100**

**In the Madras High Court**

**Case No :** S.A. No. 462 of 2010 and M.P. No. 1 of 2010

S. Nallthambi APPELLANT

Vs

Jaya, Saraswathy and Thamarai Shankar RESPONDENT

**Date of Decision :** 12-04-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 34
Specific Relief Act, 1963 — Section 13(d)

**Citation :** (2011) 04 MAD CK 0100

**Hon'ble Judges :** G. Rajasuria, J

**Bench :** Single Bench

**Advocate :** D. Nellaiappan, for the Appellant; P.T. Asha, for Sarvabhauman Associates for R1, for the Respondent

**Final Decision :** Dismissed

## Judgement

G. Rajasuria, J.—This second appeal is filed by D1, inveighing the judgment and decree dated 31.12.2008 passed by the Principal District

Judge, Namakkal, confirming the judgment and decree dated 26.9.2006 passed by the Subordinate Judge, Namakkal, in O.S. No. 322 of 1998,

which was filed for recovery of money.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus:

(i) The first Respondent herein, as Plaintiff, filed the suit for recovery of a sum of Rs. 4,02,131/-.

(ii) Written statement was filed by the Defendant resisting the suit.

(iii) Whereupon issues were framed by the trial Court. On the Plaintiff''s side, the

 

Plaintiff examined herself as P.W.1 and marked Exs.A1 to A5.

The first Defendant examined himself as D.W.1 along with the second Defendant as D.W.2 and Exs.B1 to B7 were marked.

(iv) Ultimately, the trial Court decreed the suit mandating the Defendant to pay the suit amount with 12% interest per annum from the date of suit till

the date of decree and 6% per annum from the date of decree till the date of realization.

(v) As against the said judgment and decree of the trial Court, appeal was filed for nothing but to be dismissed by the first appellate Court,

confirming the judgment and decree of the trial Court.

4. Challenging and impugning the Judgments and decrees of the Courts below relating to the awarding of 12% interest pendente lite, so to say,

from the date of suit till the date of decree, this second appeal has been focussed by the first Defendant on various grounds and also suggesting the

following substantial question of law:

1. Whether the Courts below by granting interest (@ 18% p.a.) to the advance prior to the filing of the suit contrary to Section 13(d) of the

Specific Relief Act.

2. Whether the Courts below committed an error of law by granting interest @ 12% p.a. from the date of the suit till the date of the decree, in the

absence of any contract.

5. On hearing both sides, I am of the view that the following substantial question of law would arise for consideration:

Whether, in the absence of both the Courts below placing reliance on any strong reasons, the awarding of 12% interest per annum, pendente lite,

so to say from the date of suit till the date of decree, is tenable?

6. A bare perusal of the Judgments and decrees of the Courts below would demonstrate and dispslay that they simply felt as though awarding of

12% interest per annum from the date of suit till the date of decree was quite reasonable, but they did not cite any legal authority for awarding so.

7. I would like to take a cue from the following decisions of the Honourable Apex Court reported in 2009 (2) CTC 381 (C.K. Sasankan v. The

Dhanalakshmi Bank Ltd.). Certain excerpts from it would run thus:

3. The Appellant is the son of late C.V. Kunjikuttan, who was carrying on

business as a civil contractor. Said C.V. Kunjikuttan carried on business

of contracts in his individual capacity. He died on 8th September, 1989 and on his demise, the business was taken over by his legal heirs. While

C.V. Kunjikuttan was alive he had availed of certain facilities from Dhanalakshmi Bank Ltd., Cherthala Branch, Alappuzha District - Respondent

herein (for short the ""Bank""). The Respondent is a scheduled Bank and has its principal place of business at Thrissur in Kerala and Branches in

various other places. C.V. Kunjikuttan approached the Respondent-Bank in 1973 for sanction of an over draft financial facility. The Bank

sanctioned him an overdraft facility of Rs. 3 lakh. The overdraft facility allowed to C.V. Kunjikuttan was secured by security of immovable

property, which was collateral security. On 30.10.1980, the Bank granted an enhanced overdraft facility of Rs. 9 lakh which was secured by late

C.V. Kunjikuttan and his children including the Appellant herein.

7. In order to appreciate the aforesaid contention, we are required to consider the scope and ambit of Section 34 of the Code which get attracted

in the instant case. The provisions of Section 34 of the Code are reproduced here in below

34. Interest - (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the

Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest

adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per

annum as the court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the court

thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may

exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys

are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I. - In this Sub-section, ""Nationalised Bank"" means a corresponding new Bank as defined in the Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1970 (5 of 1970).

 

Explanation II. - For the purposes of this Section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of

the party incurring the liability.

(2). Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of

payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

8. The quantum and rate of interest which the Appellant in the present case is entitled to would be in accordance with the provisions of Section 34

of the Code. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It

is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and thereafter till realisation is

in the discretion of the Court as is confirmed by the use of the word ""may"" but such discretion has to be exercised by the Court properly,

reasonably and on sound legal principles and not arbitrarily and while doing so the Court is also to consider the parameter, scope and ambit of

Section 34 of Code.

9. The aforesaid scope and ambit of Section 34 of the Code has been the subject of discussion in many cases of this Court. We are inclined to

refer to the decision in Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, , where it was held by this Court that

the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the

force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully

withheld and there are equitable grounds therefore, for which a written demand is mandatory. It was further held that in absence of any agreement

or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of

totality of circumstances justifying exercise of such equitable equitable jurisdiction. It was also held that in ascertaining the rate of interest the Courts

of law can take judicial notice of both inflation as also fall in Bank rate of interest. The bank rate of interest both for commercial purposes and

other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the

decisions in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, (2) H.S. Ahammed Hussain and Another

Vs. Irfan Ahammed and Another, and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., and it was observed that

even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be

reasonable. Direction to pay such rate of interest is also found to be reasonable and fair as the Plaintiff was deprived to utilize and roll its money in

commercial transaction and kept out of it due to wrongful withholding of the same by the Defendant.

10. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is

exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable.

8. The above decision is subsequently followed by this Court in the decision reported in 2009 (4) CTC 337 -M.S. Muthukumar v. Skyline

Financial Services, Madras P. Ltd.,rep.by its Managing Director and another.

9. From a mere perusal of the aforesaid precedents, I am of the view that awarding 9% interest from the date of suit till the date of decree would

meet the ends of justice, instead of 12% per annum, and awarding of 6% interest per annum from the date of decree till the date of realisation is

incommensurate with Section 34 of Code of Civil Procedure

10. In the result, the second appeal stands allowed to the limited extent modifying the judgment and decree of the trial Court to the effect that the

first Defendant shall pay on the sum of Rs. 2,55,000/-with 9% interest per annum from the date of suit till the date of decree and 6% interest per

annum from the date of decree till the date of realisation on the suit amount. However there is no order as to costs. Consequently, connected

miscellaneous petition is closed.

11. The learned Counsel for the first Defendant would make an extempore submission that three months'' time may be granted for payment.

12. I am of the considered view that a months'' time could be granted from this date for payment and accordingly it is granted.

 