

(1996) 12 KAR CK 0030

In the Karnataka High Court

Case No : Regular First Appeal No. 691 of 1996

South Indian Bank Limited, Mangalore

APPELLANT

Vs

Dr. Manjayya Shetty and Another

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1997) 2 KarLJ 86

Hon'ble Judges : Chidananda Ullal, J

Judgement

1. This appeal is directed against the judgment and decree dated 31-7-1996 in O.S. No. 116 of 1993 on the file of the Principal Civil Judge, Mangalore, whereby the learned Judge while decreeing the suit had granted interest at the reduced rate of 6% p.a. as against the contractual rate of interest at the rate of 17.25% p.a. plus 2% p.a. as penal interest in the event of default.

2. The matter had come up for admission on 13-11-1996 and the respondent 1 having entered caveat is also represented by his Counsel. The subject-matter in the instant appeal is limited to the grant of interest from the date of the suit till the date of realisation of the decretal amount. By consent of parties, I have taken up the matter for final disposal. Accordingly, I heard the Counsel of the respective side.

3. Having heard both sides, the matter was reserved for judgment. But at that stage, it was found out that defendant 2 was not served with notice, and therefore, the matter could not be finally disposed of by this Court. Thereafter, the matter was posted before the Court for being spoken to on 20-11-1996. On that day, the learned Counsel appearing for respondent 1 had undertaken to file power of attorney for the respondent 2 also. However, when the matter had come up before the Court again on 29-11-1996, it was submitted to the Court that respondent 2 since died, his L.Rs. to be either brought on record or impleaded. Thereafter, the matter was posted before the Court on 11-12-1996 for admission. On that day, an I.A. was filed under Order 1, Rule 10 read with

Section 151 of Code of Civil Procedure was before the Court on the ground that respondent 2 died on 3-12-1995 during the pendency of the suit and that his L.Rs. respondents 2(a) to 2(c) be impleaded. The said application had since been allowed and the L.Rs. of the deceased respondent 2 had since been impleaded.

4. The facts in brief relevant for the purpose of disposal of the instant appeal are as follows:

That the respondent 1, the principal debtor, had taken an agricultural secured loan of Rs. 1,00,000/- from the appellant-Bank. The respondent 2 stood as the guarantor and both the respondents by executing D.P. Notes for different sums on different dates have received the loan amount of Rs. 1,00,000.00 from the appellant-Bank. At the time of borrowing the loan by the respondents, the interest rate was 12.5% with half yearly rest, but subsequently with the revision of the interest rate to 17.25% p.a., the interest rate stood enhanced to that rate of 17.25% p.a. together 2% p.a. penal interest on the default amount. The respondent 2 herein had also deposited the title deeds in respect of the immovable properties with intention to create equitable mortgage in favour of the appellant-Bank as security to the loan. That the respondent 1 had failed in making the payment of the loan amount and that the appellant-Bank therefore had issued legal notice on 5-4-1993 demanding the sum due as on that date and that on 25-5-1993 a sum of Rs. 1,39,904.60 was due by the respondents to the appellant-Bank as per the loan ledger together with interest at 17.25% p.a. plus 2% p.a. as penal interest from 26-5-1993 till payment.

After issue of legal notice having found that the respondents responding thereto, the appellant-Bank had resorted to the suit in O.S. No. 116 of 1993 before the Court below for recovery of a sum of Rs. 1,39,904.60 together with the future interest at the rate of 17.25% plus 2% p.a. as penal interest from the date of the suit till the date of realisation.

Both the respondents having been served with notice by the Court below appeared before the Court below. However, the respondent 1 had filed a memo before the Court below to the effect that he had paid a sum of Rs. 1,00,000/- to the appellant-Bank on 6-3-1996 and the same be given deduction by the Court below, that the future interest be fixed by the Court, that loan was for agricultural purpose and hence reasonable interest be fixed and that he be granted three months time to pay the amount and further that the suit be decreed with proportionate costs.

That neither of the parties had adduced evidence before the Court below and by consent of parties the Court below had marked Ex. P-1 to Ex. P-13 and on hearing the parties the Court below was pleased to pass the impugned judgment and decree, whereby the Court below was pleased to decree the suit of the appellant-Bank for a sum of Rs. 1,39,904.60 with future interest at the rate of 6% p.a. from the date of the suit to the date of realisation of the sum due.

Having been aggrieved with the grant of interest at 6% from the date of the suit

to the date of realisation, the appellant-Bank had preferred the instant appeal before this Court.

The grievance of the appellant-Bank is limited to the grant of interest 6% p.a. from the date of the suit to the date of realisation. The case of the appellant-Bank in the appeal before this Court is that the Court below would have granted the future interest from 26-5-1993 till the date of realisation at the agreed rate of interest at 17.25% p.a. plus 2% p.a. as penal interest and instead of that the Court below had granted the interest at 6% p.a. by exercising the power under Section 34 of C.P.C. The grounds of the appeal are that in passing the impugned judgment the Court below had not given cogent reason for exercising the discretion to grant lesser interest at 6% p.a. and that the same is totally opposed to the ruling of a Division Bench of this Court in *Syndicate Bank, Moodabidri Branch v M. Jeevandar Kumar and Others*, 1995(1) Kar. L.J. 268.

5. The learned Counsel for the appellant-Bank had vehemently argued that the respondents have not chosen to file written statement to make out a case for grant of lesser interest at 6% p.a. in exercise of the discretion of the Court below under Section 34 of C.P.C. and that in passing the impugned judgment the Court below had not assigned any reason for exercising its discretion to award lesser rate of interest at 6% p.a. from the date of the suit to the date of realisation. He had argued that the respondents have neither pleaded nor adduced any evidence to consider the grant of lesser rate of interest at 6% p.a. in exercise of jurisdiction of the Court below under Section 34 of C.P.C. and that the impugned judgment is therefore not just and proper and the same is called for to be interfered with.

6. Therefore, he prayed that the impugned judgment of the Court below be set aside in so far as the same related to the awarding of interest at 6% p.a. is concerned from the date of suit to the date of realisation and that this Court be pleased to grant interest at agreed rate of interest 17.25% p.a. plus 2% p.a. as penal interest from the date of suit to the date of realisation.

7. As against the above argument advanced by the learned Counsel for the appellant-Bank, the Counsel for the respondents 1 and 2(a) to 2(e) had counter-argued that the loan was for the agricultural purpose and respondent 1 herein had filed a memo before the Court below wherein he had requested the Court below that reasonable interest be fixed. According to him, the grant of future interest at 6% p.a. by the Court below in passing the impugned judgment was as per the prayer of respondent 1 and hence he submitted that it was just and proper on the part of the Court below to grant to interest at 6% p.a. from the date of suit to the date of realisation in exercise of discretion vested in the Court under Section 34 of C.P.C.

8. Therefore he submitted that it is not correct on the part of the Counsel for the appellant-Bank to argue that there was no pleading on the part of the respondents for awarding lesser rate of interest, nevertheless he fairly conceded

that there is no evidence led in by respondent 1. In this context he further submitted that the evidence was not tendered by the respondent 1 for the reason that by consent of parties no evidence was led in by either side and that by consent of parties Ex. P-1 to Ex. P-13 were marked and it is thereafter on hearing the parties the impugned judgment and decree was passed by the Court below.

9. Yet another point the learned Counsel for the respondents canvassed before me is that the appellant-Bank had also received a sum of Rs. 1,00,000/- as against the decretal amount in full and final settlement of the decretal amount of Rs. 1,39,904.60. According to him, the respondent 1 had paid the said sum of Rs. 1,00,000/- to the appellant-Bank on 18-10-1996 as shown in Annexure-A to the appeal memorandum. Sri Bhat, therefore questioned the very act of the appellant-Bank in preferring the instant appeal. He had cited before me a decision of the Supreme Court in *Lala Kapurchand Godha and Others v Mir Nawab Himayatalikhan Azamjah*, AIR 1963 SC 250. On the point that when payment is accepted on the condition on which it is offered, it is not open to the person receiving the payment to say, either in fact or in law, that they have accepted the money but not the condition. Therefore he prayed that the appeal be dismissed and the impugned judgment passed by the Court below be confirmed.

10. In the light of the above, the point for my consideration is:

(i) Whether the impugned judgment passed by the Court below is just and proper and that whether the impugned judgment passed by the Court below is called for to be interfered by this Court in so far as the same related to the grant of the future interest at 6% p.a. from the date of suit to the date of realisation;

(ii) Whether the appellant-Bank is entitled to for the future interest at the contractual rate of interest at 17.25% p.a. plus 2% p.a. towards penal interest from the date of suit to the date of realisation as prayed for in the instant appeal before this Court?

My answer to the first part of point No. (i) is in the negative and to the second part thereof in the affirmative and whereas my answer to the point No. (ii) is substantially in the affirmative for the following reasons:

11. Reg. point No. (i): It is pertinent to mention here that the respondents have not chosen to file their written statement as against the plaint averments of the appellant-Bank before the Court below and respondent 1 had filed just a memo as stated above and nothing beyond. He had not pleaded to make out a case for grant of lesser interest at 6% p.a. by the Court below in exercise of Court's discretion under Section 34 of C.P.C. Further he had not adduced any evidence thereof. The Division Bench of this Court in the above referred decision in *M. Jeevandar Kumar*, held in similar circumstances as follows:

"Court has discretion in awarding a lesser rate of interest in a given case, if the

circumstances so warrant and justify. In order, however, that the discretion vested in the Court should be exercised in his favour, the defendant-borrower has to bring on record before the Trial Court circumstances which warrant taking of a lenient view in regard to the payment of interest by him. Material showing the financial capacity of the borrower will have to be advanced by the borrower at the trial in order to justify the reduction in the contractual rate of interest. Again, the conduct of the borrower, his honesty and fair approach in his dealings with the lending Bank, will be relevant considerations for the Court to keep in view while examining the question whether a lesser rate of interest than contracted by the parties should be awarded. It is only on an objective consideration of these factors that the Court can interfere with the agreed rate of interest and award a lower rate. Discretion howsoever wide can never be exercised in a fanciful or whimsical manner. On the contrary, the wider the discretion and the greater the implications of its use one way or the other, the more cautious and sparing should be its use. Indeed one of the surest safeguards against arbitrariness in matters relating to exercise of discretion, is the disclosure of reasons for the exercise thereof whether for or against a party. Disclosure of reasons provides transparency to the thought process of the Court or authority exercising the discretion vested in it and enables an Appellate Court, to consider whether the same has been exercised along sound and judicial lines. Non-disclosure of reasons for taking a particular view on the contrary shrouds the exercise of discretionary power in suspicion of arbitrariness".

12. If we peruse the impugned judgment of the Court below it does not appear to me that the Court below had applied its mind to the issue, whether the respondents were to be given the benefit of lesser rate of interest at 6% p.a. from the date of suit to the date of realisation and that the Court below had given the above benefit to the respondents as a matter of course. In my considered view, the same is not permissible in law in view of the provision of Section 34 of C.P.C. and further in view of the Division Bench ruling of this Court cited above.

13. In the case in hand, the respondents did not plead by filing their written statement before the Court below and further making out a case for grant of lesser rate of interest than agreed upon and further that they did not lead any evidence thereto. Therefore, it appears to me that the impugned judgment and decree passed by the Court below in so far as same related to grant of lesser rate of interest at 6% p.a. instead of grant of the contractual rate of interest at 17.25% p.a. in exercise of the discretion under Section 34 of C.P.C. by the Court below is not sustainable in law and therefore liable to be set aside in the instant appeal.

14. Reg. point No. (ii): That the agreed rate of interest at the first instance was 12.5% p.a. But later the said interest was revised to 17.25% p.a. in view of the fact that the rate of interest at 12.5% p.a. was revised to 17.25% p.a. by the Reserve Bank of India and as per the agreement between the parties hereto the

revised rate of interest being binding, the Court below would have granted that interest at the agreed contractual rate of interest at 17.25% p.a.

15. The appellant-Bank in the instant appeal claimed in addition to the above rate of interest at 17.25% p.a., the penal interest at 2% p.a. but it should be observed here that the penal interest at 2% p.a. was agreed to be paid by the parties in the event of default in observing the terms and conditions of loan; obviously, that could be only earlier to suit and not subsequent to the suit before the Court below. Hence, in my view, the agreed rate of interest referable to the future interest from the date of suit to the date of realisation is limited to the agreed contractual rate of interest at 17.25% p.a. only and nothing beyond.

16. In that view of the matter, I hold that the rate of future interest, the appellant-Bank is entitled to from the date of suit to the date of realisation is at the agreed contractual rate of 17.25% p.a. only nevertheless at that rate the appellant-Bank is entitled to not on the decretal amount of Rs. 1,39,904.60 but on the principal amount as on the date of suit before the Court below i.e. 5-6-1993. The reason being that in case the appellant-Bank is entitled to the contractual rate of interest at 17.25% on the decretal amount, it tantamounts to grant of interest at 17.25% on the interest and the penal interest (both together at 19.25% p.a.) as the decretal amount of Rs. 1,39,904.60 includes interest at 17.25% p.a. and the penal interest at 2% p.a. on the principal amount due on the date of suit. Therefore, the appellant-Bank cannot be granted interest on interest in passing decree herein in this appeal.

In the result, I make the following:

ORDER

The appeal is allowed in part and the judgment and decree (preliminary) passed by the Court dated 31-1-1996 in O.S. No. 116 of 1993 on the file of the Principal Civil Judge, Mangalore, as against the respondents-defendants jointly and severally for Rs. 1,39,904.60 with proportionate cost less Rs. 1,00,000.00 paid during the pendency of the suit on 6-3-1996, in so far as the same related to awarding of future interest at 6% p.a. from the date of suit to the date of realisation is concerned is set aside and the appellant-Bank is held to be entitled to in the suit for payment of future interest at 17.25% p.a. on principal amount only, due by the respondents-defendants as on the date of suit on 5-6-1993 from the date of suit to the date of realisation of the entire decretal amount instead.

The appellant-Bank is also entitled to for proportionate cost of the instant appeal before this Court. The decree on the above terms shall be drawn by the Registry after securing the records from the Court below as the appeal records now before the Court do not disclose as to what is the principal sum the respondents-defendants were due as on the date of suit. The Registry immediately after drawing the decree as well may return the records thus secured for the purpose to the Court below.