**(1984) 01 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No :** Appeal No. 148 of 1979

Sri Srinivasa Co. APPELLANT

Vs

Firm, Vitta Dodda Hanumanthappa Anjayya Setti RESPONDENT

**Date of Decision :** 17-01-1984

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 3, 4, 5

**Citation :** AIR 1985 AP 21

**Hon'ble Judges :** Ramaswamy, J

**Bench :** Single Bench

**Advocate :** N. Rama Mohanrao, for the Appellant;

## Judgement

Ramaswamy, J.—The appellant is the plaintiff. He filed the suit for recovery of certain amounts said to be due form the respondent-defendant. The trial Court decreed the suit. In so far as the principal amount is concerned, I am not concerned in this appeal. The appellant claimed interest on the basis of trade, custom and usage at the rate of 18% per annum on the amounts outstanding. The trial Court decreed the suit with interest at the rate of 12% per annum. Dissatisfied with the difference of the rate of interest at 6% the present appeal is filed.

2. It is contended for the appellant that having held that there is trade custom and usage the trial Court ought to have granted interest as prayed for. It is contended that the liability was incurred in connection with the business dealings. Therefore under proviso to S. 34 of the CPC the appellant is entitled to rate of interest charged by the nationalised banks on the money lent on commercial transactions. The rate of interest chargeable by the nationalised Banks is 18%. Therefore the appellant is entitled to 18% as claimed. A party is entitled to interest as agreed to between the parties to the contract. In its absence the Court is given power to order interest from the date of the suit till the date of decree at such rate as it deems reasonable to be paid on the principal

sum adjudged in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit. The Court is also empowered to order further interest at such rate not exceeding 6% per annum from the date of payment or to such earlier date as it thinks fit. The Legislature amended this provision and introduced proviso to S. 34 through the CPC (Amending ) Act (104 of 1976). The proviso reds thus:

"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."

It postulates that where liability in relation to the sum adjudged by the Court arose out of commercial transaction, then the Court is given power to order interest exceeding 6% per annum where there is no contractual rate, the rate at which the nationalised banks lent or advanced monies in relation to commercial transactions. Explanation II to the proviso says that the money adjudged could be construed to be commercial transaction when the liability its incurred in connection with the industry, trade or business of a party. Admittedly this is a case where the respondent in connection with the business transaction incurred the liability. But the question is, what is the rate of interest to which the nationalised banks charge on monies lent or advanced in relation to the commercial transactions.

3. The Interest Act (14 of 1978) also gives power to the Court in certain circumstances to charge interest on debts or damages in any proceedings in which a claim for interest in respect of any debt or damages already paid is made. S. 3 thereof empowers the Court to allow interest. Sub-section (1) of S. 3 adumbrates that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court, may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be "at a rate not exceeding the current rate of interest," for the whole or part for a period specified in clauses (a) and (b) thereunder S. (2)(b) defines "current rate of interest to mean the highest of the maximum rates at which interest may be paid to the different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions). By different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949.

4. Section 4 gives power notwithstanding anything contained in S. 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rules of law or usage having the force of law. Sub-section (2) further empowers that notwithstanding the power under sub-section (1) to allow interest in the cases enumerated in Clauses (a) to (d) thereunder, to the date of

 

institution of the proceedings at such rate as the Court may consider reasonable unless it is satisfied that there are special reasons that interest should not be allowed. S. 5 saves the power given to the Court under S. 34 of the Code of Civil Procedure.

5. The concept of "reasonableness" in the above provisions would clearly inhere interplay of discretionary power of the Court to order payment of interest on the sums adjudged from the date of the institution of the suit or till the date of payment, at varied rates. The proviso to S. 34 was introduced by the Legislature that in a case where the party entitled to money and its use thereof but was unjustly denied of its enjoyment, the person found responsible therefore be mulcted with that liability as a measure of compensation and interest at the rate at which the moneys were lent or advanced by the nationalised banks on the commercial transactions be the principal to assess the same. The industry, trade or business transactions in which the party incurred liability, was treated by Explanation II to proviso to S. 34 to be commercial transactions.

6. In this case, admittedly there is no contract to pay interest at a particular rate. Therefore, from the date when the liability arose the appellant claimed interest at 10% per annum as trade, custom and usage. There may exist trade, custom and usage to pay interest on undischarged debt. With a view to make avail of trade, custom or usage, it is incumbent on the appellant to adduce evidence as to what is the rate of interest prevalent as per the trade, custom and usage. No such attempt has been made. But is would not be left to a speculation as to what is the prevailing rate of interest as per the existing trade, custom and usage. In its absence the legislative mandate under the provisions referred to above would have their play. Then the party is entitled to make avail thereof. Even in that area the party is not relieved of his duty to adduce acceptable evidence of current rate of interest on deposit is in nationalised banks or rate of interest charged on moneys lent or advanced on commercial transactions by the nationalised banks. Court may take judicial notice of the rates prescribed by Reserve Bank. But it is neither uniform nor fixed for all times to come. It is fluctuating and variable. In such situation, it is not proper for the Court to take judicial notice and order interest on the basis thereof. Where it is a source of definite evidence available but the party did not adduce the evidence in that regard. The question is would it be prudent to allow discretion of the Court to speculate as to the said rate of interest and to exercise it whimsically or capriciously I have given my anxious consideration to the contentions advanced by the learned counsel for appellant. In my view, it would be unwise to allow such temptuous whim tending to arbitrary exercise of power to order interest depending upon the whim and caprice of the Court and it would be salutary to pin the parties down to adduce relevant evidence to show that is the current rate of interest at the relevant time being charged by the nationalised banks on the moneys lent or advanced on commercial transactions. But unfortunately the appellant has denied himself of the benefit of the legislative provisions referred to above. Since S. 5 of the Interest Act has expressly saved the power of the

 

Court under S. 34 C.P.C. the Court in exercise of its discretion ordered interest at 12% per annum on the outstanding amount from the due date. In the absence of any material evidence placed on record, it cannot be characterised that the view of the lower Court is unreasonable, arbitrary or capricious. Accordingly I hold that the rate of interest at 12% awarded by the lower Court is reasonable and it does not warrant interference in this appeal.

7. The appeal is accordingly dismissed. Since the respondent is not appearing either through counsel or in person, there shall be no order as to costs.

8. Appeal dismissed.

 