(1983) 10 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 42 of 1983

State Bank of India APPELLANT

Vs

Neeru Plastics Works and Others RESPONDENT

Date of Decision : 27-10-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, Order 34 Rule 11, Order 34 Rule 5, Order 34 Rule 6

Citation : AIR 1984 P&H 209

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. The plaintiff, State Bank of India, filed the present suit for recovery of Rs. 93347.18 p. on account of amount due under the Cash Credit (Factory Type) account with interest up to 25th April, 1977 by sale of pledged goods and the machinery accepted as collateral security towards satisfaction of the aforesaid amount and also by sale of the property, the details of which were given in the plaint.

2. The suit was contented on behalf of the defendants-respondents. Ultimately, the trial Court decreed the plaintiff''s suit and passed a decree in the following terms:--

"In the light of my findings on the above issues the suit of t e plaintiff is decreed for Rs. 93,347.18 with interest @ 12% per annum from the date of the suit till realization of the amount. The plaintiff shall be at liberty to realise this amount by sale of the goods and the machinery belonging to the defendants and pledged with the plaintiff as collateral security and also by sale of the property No. B-XXI-837, Partap Nagar, Ludhiana, fully mentioned in the hand-note of the plaint, belonging to the defendants, the title deeds whereof are deposited with the bank by way of equitable mortgage as collateral security. However, if the defendants pay the decretal amount through installments of Rs. 1000/- per month, regularly, with interest @ 18% per annum starting from 15-4-1980, the plaintiff shall not sell the goods, machinery and the immovable property."

The plaintiff Bank was dissatisfied with the said decree of the trial Court as to the rate of interest allowed as well as the installments allowed by the trial Court and, therefore, filed appeal. No appeal or cross-objections were filed on behalf of the defendants. In appeal the learned Additional District Judge reduced the rate of interest from 12% to 6% though no cross-objections were filed on behalf of the defendants. However, as regards installments, the decree of the trial Court was modified to the extent that the plaintiff will pay the same in installments of Rs. 25,000/- per annum with 6% future interest on the principal amount of Rs. 80,000/- w.e.f. 29th February, 1980 till the realisation of the entire decretal amount. It was also ordered that in case of default of payment of any installments of due date, the remaining outstanding amount of decree would be realised by the Bank in lump sum through the sale of mmreab1e or immovable property belonging to the defendants. With these findings and observations, the appeal filed on behalf of the plaintiff-Bank was dismissed. Still dissatisfied with the decree passed by the lower appellate Court, the plaintiff has filed this second appeal in this Court.

3. The learned counsel for the appellant vehemently contended that the present suit was not a simple suit for the recovery of money but was a suit for the recovery of money by sale of the immovable or immovable property as contemplated under Order 34 of the Civi1 Procedure Code. Thus urged the learned counsel that the plaintiff was entitled to the rate of interest not u/s 34 of the Civi1 Procedure Code but under Order 34 Rule 11. thereof. It was also contended that the words in Order 34, Rule 11, "on the principal amount found or declared due on the mortgage" not only mean the principal amount but also the amount due on interest, which has become part of the principal. In support of this contention he referred to Jafar Husain Vs. Bishambhar Nath , Mangat Rai v. Babu Singh AIR 1927 Lah 445 : and Punjab and Sindh Bank Ltd. v. Roora Mal Sodhi (1969) 71 PLR 310.

4. The other contention raised on behalf of the appellant is that no installments would be allowed under order 20, Rule 11 of the Civi1 Procedure Code because that only applies to the simple money decrees whereas the present being a decree by sale of the property mortgaged and pledged, the question of installments as such did not arise. The plaintiff was entitled to the sale of the property under Order 34 Rule 5 on the failure of the defendants to pay the decretal amount by the period to be fixed by the Court. In support of this contention he referred to N. Shantilal Vs. A. Sankarasubha Mudaliar, , Basanta Kumar Mitra Vs. Chota Nagpur Banking Association, Ltd., , Mangat Rai v. Babu Ram AIR 1927 Lah 445 . On the other hand the learned counsel for the plaintiff-respondent cited (Machullathil) Chandukutty Nayar Vs. Kuruvathancheri Keezana Narayana Nayar and Others, and Ramaswamy Nayudu Vs. K.N.S. Subbaraya Thevar and Others, .

5. After hearing the learned counsel for the parties, I am of the considered

opinion that there is merit in the contentions raised on behalf of the plaintiff appellant. Unfortunately the trial Court did not pass the decree keeping in view the provisions of Order 34 R. 4 C. P.-C. and therefore, no time as such was fixed for making the payment after the expiry of which the plaintiff could apply to the Court for sale of the property as provided under Order 34 Rr. 5 and 6 of C.P.C. In any case, Section 34 of the CPC has no applicability to the present suit as it was not a simple suit for the recovery of money but was a suit for the recovery of money by sale as provided under Order 34. For Payment of interest in such a suit R. 11 of O. 34 provides as under:--

"11. Payment of interest:

In any decree passed in n suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows: namely:--

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage:

(i) on the principal amount found or declared due on the mortgage at the rate payable on the principal, or, where no rate is fixed, at such rate as the Court deems reasonable, xxx xxx

and

(iii) on the amount adjudged due to the mortgage for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security up to the date of the preliminary decree and added to the mortgage-money, at the rate agreed between the parties, or failing such rate at such rate riot exceeding six per cent per annum as the court deems reasonable, and

(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in Clause (a) as calculated in accordance with that clause at such rate as the court deems reasonable."

The provisions of Order 34 Rule 11 were considered by a Division Bench of the Court in Punjab & Sindh Bank Ltd''s case (supra) and it was held therein that in the matter of awarding pendent lite interest ordinarily he contractual rate sought to be allowed unless it appears to be penal or excessive. It was further held that the plaintiff was entitled to interest on the aggregate amount of principal, interest and costs from the date fixed by the Court for payment to the mortgage debts up to the date of realisation or actual payment. In Mangat Rai''a case (supra) it was held that in passing a preliminary decree on a mortgage deed the Court has no power to award interest at a rate other than the contractual rate up to the date fixed for payment unless of course it is penal. It was further held therein that Section 39 of the CPC applies only to a decree for the payment of money and has no applicability to a suit brought to recover the amount due on the foot of the mortgage deed executed for the purpose. It was also held therein that a provision for charging compound interest at the same rate, on failure of the mortgagor to pay thc principal or interest on the due date in perfectly legal and cannot be relieved against on the mere ground of hardship. Thus keeping in view the dictum laid down by this Court, I am of the considered opinion that the plaintiff was entitled to the agreed rate of interest @ 18% per annum. It could not be held to be excessive in any manner keeping in view the present market position. Thus the plaintiff is entitled to this rate of interest on the decretal amount from the date of the mortgage till the payment of the decretal amount within six months thereof.

6. As regards the payments of amount by installments, the provisions of Order 20 Rule 11 C.P.C. are not attracted in such a ease. It was held in N. Shantilal Vs. A. Sankarasubha Mudaliar, that where a preliminary mortgage decree was obtained by the decree holder, an order allowing payment of decretal amount by installment was bad. The provisions of Order 21 Rule l1 C.P. C. could not apply as the decree was not e simple money decree nor they could supersede, the provision of O. 34, R. 4. Similarly, in Basanta Kumar Mitra Vs. Chota Nagpur Banking Association, Ltd., it was held that Order 20, Rule 11 applies to a money decree and not to a mortgage decree and hence in the case of mortgage deed the decretal amount cannot be made payable in installments under Order 20 Rule 11 C.P.C. No judgment taking the contrary view was cited at the bar. In view of these provisions of the statute, and the see law, the defendants were not entitled to any installments under Order 20, Rule 11 C.P.C.

7. As a result of the above discussion this appeal succeeds end is allowed with costs. The judgment and decree of thc lower appellate Court, are set aside and a preliminary decree for a sum of Rupees 93,347.18 p. is passed in favour of the plaintiff. As contemplated under O. 34, Rule 4, C.P.C. the defendants are allowed six months time from today to deposit or pay the decretal amount as provided under Order 34, Rule 4. The plaintiff will be entitled to the interest @ 18% on the decretal amount from the date of the suit till the date i. e. 26th April, 1984 which is being fixed by the Court for payment of the mortgage debts. After that date, the plaintiff will also be entitled to interest @ 12% per annum on the aggregate amount of principal interest and cost up to the date of realisation or actual payment. However, in case the defendants fall to comply with the said decree, the plaintiff will be entitled to move the Court for a final decree under Order 34, Rules 5 and 6 of the Civf1 Procedure Code.

8. Appeal allowed.