(1990) 07 OHC CK 0050

In the Orissa High Court

Case No : F.A. No. 5 of 1980

State Bank of India — APPELLANT

Vs

Sridhar Prasad Kar — RESPONDENT

Date of Decision : 13-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, 34
Orissa Money Lenders Act, 1939 — Section 13, 3

Citation : (1990) 07 OHC CK 0050

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Plaintiff is the Appellant against the judgment and decree of the learned Subordinate Judge, Bhadrak, who by the impugned Judgment though decreed the suit but refused to grant interest pendente lite and future and also permitted the Defendant to pay the amount by way of half-yearly instalments at the rate of Rs. 1000/-. The Plaintiff filed the suit alleging that the Defendant approached the Plaintiff and took Rs. 6000/- on executing a Demand promissory Note on 7-4-1970. The Defendant acknowledged his liability by executing revival letters on 4-4-1973 and 4-9-1973 in favour of the Plaintiff-Bank, but on his failure to pay the amount in spite of the notice being issued, the Plaintiff filed the suit. The Defendant in his written statement admitted the fact of incurring the loan but challenged only the interest assessed against him to be illegal and excessive. He also stated that in the event of a decree he may be permitted to pay the same in quarterly instalments. One these pleadings, five issues were framed and on the basis of Ext. 1 the Demand Promissory Note it was held that the said Promissory. Note is genuine and for consideration and he has taken the sum of Rs. 6000/- as contained in the Promissory Note. With regard to revival letters, Exts. 2 and 2/a, the learned Subordinate Judge found them to be genuine and valid documents. So far as the rate of interest claimed as well as the prayer for payment of decretal dues on instalments concerned, the learned trial Judge found that the provision of Section 13 of the Orissa Money Lenders Act providing for payment of decretal dues by way of instalments will note be applicable and as per the notification u/s 3 of the Act, the Act itself has no application to certain institutions including the Plaintiff. But it was held that the judgment-debtor can take shelter/under the provisions of Order 20, Rule 11 Code of Civil Procedure. So far as the question of interest is concerned, though the learned Subordinate Judge held that the interest calculated by the Plaintiff is not excessive but did not grant any interest either pendente lite or future and only decreed the sum claimed by the piaintiff in the plaint and he also held that the payment should be made by half-yearly instalments. The Bank has come up in appeal against the aforesaid judgment and decree of the learned Subominate Judge.

2. Mr. S.N. Sinha appearing for the Bank contends that the Court below committed an error in not awarding interest both pendente lite and future and this Court should grant the same. He also contended that the direction to pay the decretal dues in instalments is wholly inequitable and such a direction has been passed without any application of mind and the said direction should be suitably modified.

3. Coming to the question of Mr. Sinha it is contended that in case of commercial loans by any Bank or public financial institutions, the Court should usually grant interest at the contractual rate and to debar from the same should be an exception. In AIR 1981 Mad 94 (K. Apparao v. V.L. Vardaraj and Ors.) it was held that the general rule is that the rate of interest pendente lite should be at the contract rate, unless there are circumstances which should disentitle the Plaintiff to have the same. Applying Section 34 CPC it had been held by the learned Single Judge of Madhya Pradesh High Court in 1988 BJ 611 Vinodkumar s/o S.C. Vagle v. State Bank of Indore and Anr.) that from the date of decree till the date of realisation the interest need not be at a lower rate than the contractual rate and in the case the Court decides to grant interest at a lower rate or not to award any future intrest then reasons must be given for the same. u/s 34 CPC where a decree is for payment of money, Court may grant interest at such rate as it deems reasonable to be paid from the date of the suit till the date of the decree i.e. pendente lite and has also the discretion to direct payment of further interest at such rate not exceeding 6 per cent per annum as the Court deems reasonable from the date of decree till the date of payment. The proviso to Section 34 which was inserted by Amending Act, 1976 clearly stipulates that where the (sic) has 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 the money was lent or advanced by nationalised banks in relation to commercial transactions.

4. As has been stated earlier, in respect of commercial transactions unless the Court finds sufficient reason to award interest at a lower rate even for the period

subsequent to the decree till the date of realisation, there is no justification not to award interest at the agreed rate. In the permises as aforesaid, I find no justification for non-awarding of interest by the learned Subordinate Judge both pendente lite and future. Accepting Mr. Sinha''s contention, therefore, I would direct that the decretal amount shall carry interest a (the agreed rate from the date of the suit till the date of the decree and also from the date of the decree till realisation of the amount.

5. So far as the second conteution as to where the Court has jurisdiction to grant instalments while passing a decree is concerned, according to Mr. Sinha since the Money Lender''s Act has no application at all as Banks are exempted, the Court has no jurisdiction to grant instilments for payment of decretal dues. It is true that the Money Lender''s Act has no application, but under Rule 11 of Order 20, CPC a Court has the discretion to postpone the payment of the amount decreed or to direct that the same shall be paid by instalments, notwithstanding anything contained in the contract under which money is payable. Thus the rule gives the Court a discretion but the discretion should not be exercised in such a way which would amount to virtually denial of the decree-holder''s right and grounds must be given for grant of instalments. In the case of Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others, a Division Bench of Gujarat High Court held that where the public financial institution advance money, granting of instalments is ruled out because that would frustrate the very purpose of taking security. But I am unable to accept the aforesaid extreme view in view of the specific provision contained in the CPC referred to earlier, and at the same time I am of the opinion that the Court should exercise judicial discretion and in fixing the instalments all germane considerations should be borne in mind. In my opinion, the germane considerations would be the means and circumstances of the debtor as well as that of the creditor, the total sum to be paid and what would be the reasonable period within which the judgment debtor should be required to pay the same and all other relevant factors which would be brought to the notice of the Court by the person seeking instalments. The onus would be on the Defendant to show that he is entitled to the indulgence provided under the rule. The fact that the debt is due to a Bank is also a circumstance of which notice must be taken while considering the prayer for instalments. So far as the present case is concerned, the period during which the instalments were required to be paid being over the order docs not require any modification, but as Mr. Sinha contended that there is no decision on the point, I have considered the point advanced and have answered the same so that it could be considered by the lower Courts in future.

6. In the net result, therefore, this appeal is allowed to the extent already indicated and the Appellant is entitled entitled to the interest both pendente lite and future at the contraetual rate. In the circumstances there will be no order as to costs.

