

(1992) 03 KAR CK 0035

In the Karnataka High Court

Case No : Regular First Appeal No. 443 of 1991

Syndicate Bank

APPELLANT

Vs

A.K. Ahmed Bawa

RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:

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

Citation : (1993) 77 CompCas 372 : (1992) ILR (Kar) 2016 : (1992) 2 KarLJ 498

Hon'ble Judges : L. Sreenivasa Reddy, J; K.A. Swami, J

Bench : Division Bench

Advocate : Thimmappaiah G.V, for the Appellant; M.B. Prabhakar, for the Respondent

Judgement

Swamy, J.—At the stage of admission the respondent is notified. Accordingly, he has put in appearance through a counsel. As the appeal involves a short question as to awarding of interest from the date of suit till the date of realisation and as that question can be decided on the basis of the finding recorded by the trial court, we do not consider it necessary to call for the records. Accordingly, the appeal is admitted. The production of paper books is dispensed with. The appeal is heard for final disposal.

2. The only point that arises for consideration is as to whether the trial court is justified in law and on facts in awarding interest at 6 per cent. on the sum of Rs. 10,09,691.70 from the date of the suit till the date of realisation.

3. The facts necessary for the purpose of deciding the aforesaid point are no more in dispute. The defendants-respondent raised a loan of Rs. 7,40,000 from the appellant-plaintiff bank on August 3, 1985, mortgaging the suit schedule properties for purchasing the coffee estate described in Schedule B to the plaint which is as follows :

"SCHEDULE B (Description of the properties mortgaged) All those pieces and parcels of Land-Coffee Estate situated in Chikmagalur Taluk, comprising the

following		survey		numbers		:	
-----		-----		-----		SI	Survey Kind
Extent	Asst.	No.	Number	A.G.	Rs.	Ps.	
-----		-----		-----		Pandaravalli	
village, Jagara Hobli 1.	240/old 86	Coffee	10.00	69.24	2. 89 "	4.07	27.00 3. 87 "
16.14	111.02	Hirekolale Village, Kasaba Hobli 4.	478 "	24.30	174.29		

Item No. 1. - Bounded on the east, north and south by Government land west by road leading to Pandaravalli.

Item No. 2. - Bounded on the east by north by Gomala, land west by estate of Kesarimal Mohanlal and south by estate of B. N. Nagabhushana.

Item No. 3. - Bounded on the west by road leading to Pandaravalli, west by Gomala land and Sannathota, north and south by road.

Item No. 4. - Bounded on the east by south by road, west by Government road and north by estate called Bharath Coffee Estate."

4. After purchasing the Schedule B property, the defendant mortgaged the same to the plaintiff-bank for the aforesaid sum of Rs. 7,40,000. As the defendant did not pay the amount according to the terms of the mortgage, the plaintiff-bank filed O.S. No. 107 of 1987 in the Court of the Civil Judge at Chikmagalur on June 24, 1987, for recovery of a sum of Rs. 10,41,122.55. The plaintiff claimed interest on the sum of Rs. 7,40,000 as per the terms of the mortgage deed which varied from 17.5 per cent. to 18.5 per cent. as and when the rate of interest went on increasing as per the circulars issued by the Reserve Bank of India from time to time. However, on consideration of several circulars issued by the Reserve Bank of India, the trial court came to the conclusion that the plaintiff was entitled to interest at the rate of 16.5 per cent. per annum from the date of suit till April 1, 1987, and at the rate of 18.5 per cent. per annum from April 1, 1987, till the date of filing of the suit, compounded annually. It also further held that the plaintiff was entitled to penal interest at the rate of 2.5 per cent. per annum. over and above the aforesaid rate of interest. Accordingly, it came to the conclusion that the defendant was liable to pay as on the date of suit a sum of Rs. 10,09,691.70 to the plaintiff. This amount is not disputed before us.

5. The trial court has awarded interest at the rate of 6 per cent. per annum on the sum of Rs. 10,09,691.70 from the date of the suit till the date of realisation on the ground that the loan raised was for agricultural purposes. Therefore, it fell within item H of annexure IV to the Reserve Bank of India Circular dated March 16, 1984, which was produced as exhibit P-47. The trial court also relied upon a decision of this court in Canara Bank Vs. K.S. Kushalappa and Others, The trial court was also of the view that the case fell within the scope of section 34 of the Code of Civil Procedure. We will now consider whether these reasons given by the learned trial judge are valid in law.

6. At the outset we may mention that the defendant did not enter the witness

box, did not adduce any evidence as to his financial position. Therefore, we have to proceed on the basis that no extenuating circumstances were either pleaded or proved before the trial court to enable it to exercise its discretion in favour of the defendant for awarding reduced rate of interest.

7. As already pointed out, it is not in dispute that the loan was raised for the purpose of purchasing the coffee estate, which was subsequently mortgaged for the security of the said loan.

8. It is contended that the loan raised for purchasing the coffee estate amounts to raising or advancing a loan for agricultural purposes. Therefore, it comes under the priority sector, hence the interest to be awarded from the date of suit should be less than the interest agreed to be paid under the mortgage deed. As for as annexure IV to the circular issued by the Reserve Bank of India dated March 16, 1984 is concerned, it is not possible to agree with the learned trial judge that the loan was raised for the purpose of development of agriculture. Annexure IV to the Reserve Bank of India Circular dated March 16, 1984, which has been marked as exhibit P-47 in the suit does not support such a reasoning. For the purpose of immediate reference, we reproduce the entire annexure IV.

"List of items included in different segments of priority sector :

1. Agriculture :

I. Direct finance to farmers for agricultural purposes :

(i) Short-term loans for raising crops, i.e., for crop loans. In addition to advances up to Rs. 5,000 to farmers against pledge/hypothecation of agricultural produce (including warehouse receipts) for a period not exceeding three months, where the farmers were given crop loans for raising the produce.

(ii) Medium and long-term loans : (Provided directly to farmers for financing production and development needs).

(A) Purchase of agricultural implements and machinery :

(a) Purchase of agricultural implements :

Iron ploughs, harrows, hose, land-levellers, landformers, hand-tools, sprayers, dusters, hay-press, sugarcane crushers, thresher machines, etc.

(b) Purchase of farm machinery, tractors, trailers, power tillers, tractor accessories, viz., disc ploughs, etc.

(c) Purchase of trucks, bullock carts and other transport equipment, etc., to assist the transport of agricultural inputs and farm products.

(d) Purchase of plough animals.

(B) Development of irrigation potential through :

(a) Construction of shallow and deep tube wells, tanks, etc., and purchase of

drilling units.

(b) Constructing, deepening, clearing of surface wells, boring of wells, electrification of wells, purchase of oil engines and installation of electric motor and pumps.

(c) Purchase and installation of turbines, pumps, construction of field channels (open as well as underground), etc.

(d) Construction of lift irrigation project.

(e) Installation of sprinkler irrigation system.

(C) Reclamation and Land Development Schemes : Bunding of farm lands, levelling of land, terracing conversion of dry paddy lands into wet irrigable paddy lands, development of farm drainage, reclamation of soil lands and prevention of salinisation, reclamation of ravine lands, purchase of bulldozers, etc.

(D) Construction of farm buildings and structures, etc. : Bullock sheds, implement sheds, tractor and truck sheds, farm stores, etc.

(E) Construction of running of storage facilities : Construction and running of warehouse, godowns, silos and cold storages.

(F) Production and processing of hybrid seeds of crops.

(G) Payment of irrigation charges, etc. Charges for hired water from wells and tubewells, canal water charges, maintenance and upkeep of oil engines and electric motors, payment of labour charges, electricity charges, marketing charges, service charges to custom service units, payment of development cess, etc.

(H) Other types of direct finance to farmers :

(i) Short-term loans.

(a) To non-traditional plantations and horticulture.

(b) For allied activities such as dairying, fishery, piggery, poultry, bee-keeping, etc.

(ii) Medium and long-term loans :

(a) Development loans to all plantations, horticulture, forestry, etc.

(b) Development loans for allied activities :

(1) Development of dairying and animal husbandry in all its aspects.

(2) Development of fisheries in all its aspects : from fish catching to stage of export, financing of equipment necessary for deep sea fishing, rehabilitation of tanks (fresh water fishing), fish breeding, etc.

(3) Development of poultry, piggery, etc., in all its aspects including erection of

poultry houses, pig houses, bee-keeping, etc.

(4) Development and maintenance of stud farms, sericulture, etc. However, breeding of race horses cannot be classified here.

(5) Bio-gas plants.

II. Indirect finance to agriculture :

(1) Credit for financing the distribution of fertilizers, pesticides, seeds, etc.

(2) Loans to Electricity Boards for reimbursing the expenditure already incurred by them for providing low tension connections from step-down point to individual farmers for energising their wells.

(3) Loans to farmers through PACS, FSS, and LAMPS.

(4) Other types of indirect finance, such as

(i) Finance for hire-purchase schemes for distribution of agricultural machinery and implements.

(ii) Loans for constructions and running of storage facilities (Warehouse, market yards, godowns, silos and cold storages) in the producing areas. If the loans to the cold storages are covered by the guarantee of the Deposit Insurance and Credit Guarantee Corporation (DICGC), they should be classified under SSI advances.

(iii) Advances to custom service units managed by individuals, institutions, or organisations who maintain a fleet of tractors, bulldozers, well-boring equipment, threshers, combines, etc., and undertake work from farmers on contract basis. If these advances are covered by the guarantee of DICGC, they should be classified under SSI advances.

(iv) Loans to individuals, institutions or organisations who undertake spraying operations.

(v) Loans to co-operative marketing societies, co-operative banks for relending to co-operative marketing societies (provided a certificate from the State Co-operative Bank in favour of such loans is produced) for disposing of the produce of members.

(vi) Loans to co-operative banks of producers (e.g., Aarey Milk Colony Co-operative Bank, consisting of licence-cattle owners);

(vii) Financing the farmers indirectly through the co-operative system (otherwise than by subscription to bonds and debentures issues) provided a certificate from the State Co-operative Bank in favour of such loans is produced.

(viii) Advances to State-sponsored co-operatives for onward lending to weaker sections."

9. Annexure IV is the list of items included in different segments of the priority sector. The first item mentioned is agriculture. The present loan does not fall under Item No. 1, because it is not advanced for raising the crops, i.e., for crop loans. It also does not fall under sub-clause (A) of clause I, because it is not raised or advanced for purchase of agricultural implements and machinery. Similarly, it does not fall under sub-clauses (B), (C), (D), (E), (F) and (G), because they relate to (B) development of irrigation potential through : (A) construction of shallow and deep tube wells, etc. (C) reclamation and land development schemes, (D) construction of farm buildings and structures, etc., (E) construction and running of storage facilities, (F) production and processing of hybrid seeds of crops, and (G) payment of irrigation charges, etc., respectively. The last clause under the heading "Direct finance to farmers for agricultural purposes" is sub-clause (H). It relates to other types of direct finance to farmers. Under this clause, the items included are short-term loans to non-traditional plantations and horticulture and for allied activities such as dairying, fishery, piggery, poultry, bee-keeping, etc. The medium and long-term loans relate to development loans to all plantations horticulture, forestry, etc., and for allied activities. It is the contention of learned counsel for the defendant that advancing of a loan for purchasing a coffee estate falls within the items of the item of development loans to all plantations, horticulture, forestry, etc. This is also the reasoning given by the trial court, relying upon a decision of this court in *Canara Bank Vs. K.S. Kushalappa and Others*, We may at once point out that in the instant case, the loan was raised for purchasing the coffee estate. It was not raised for effecting developments in the coffee estate. In para 2 of the judgment in *Canara Bank Vs. K.S. Kushalappa and Others*, it was specifically stated that money was advanced to the defendants therein for development of their coffee estate. Therefore, it squarely fell within sub-clause (ii) of clause (H) relating to medium and long-term loans, advanced for development of plantations horticulture, forestry, etc. In the instant case, the loan was not for development of existing coffee estate, it was for purchasing the coffee estate. It is also the case of the defendant in the written statement that the loan was raised for purchasing the coffee estate. In other words, it was for the purpose of making a good asset. It cannot be treated as loan advanced for development works in the coffee estate owned by the person raising a loan or for effecting development in the existing coffee estate. Therefore, we are of the view that the loan in question does not fall in any one of the items mentioned in annexure IV to the circular letter of the Reserve Bank of India dated March 16, 1984. It is not necessary for us to refer to the second item in annexure IV relating to indirect finance for agriculture, because it is not the case of either of the parties that the loan in question was by way of indirect financing to the defendant.

10. The next point for consideration is as to whether the defendant has made out a case for awarding lesser rate of interest than the one agreed to under the mortgage deed. Under Order 34, rule 11 of the Civil Procedure Code, there is no doubt that the court has discretion in awarding interest from the date of suit till

the date fixed for redemption. But this discretion has to be exercised judicially and not arbitrarily. For the purpose of exercising the discretion in favour of the defendant and awarding lesser rate of interest the defendant is required to place circumstances which enable the court to award lesser rate of interest. In the absence of any evidence adduced by the defendant as to his financial position or the difficulties faced by him, the court will be acting arbitrarily in awarding lesser rate of interest on the sum due under the mortgage from the date of suit till the date fixed for redemption. This court, in *Syndicate Bank Vs. Subhas Venkappa Savalker and others*, after referring to the decision of the Supreme Court in *Soli Pestonji Majoo and Others Vs. Gangadhar Khomka*,

"That discretion has to be exercised according to the well-settled judicial principal and not arbitrarily. There is no doubt that the circumstances that the defendants have suffered a loss in their business is relevant in determining the rate of interest to be awarded during the period from the date of filing of the suit till the date fixed for payment in the decree."

11. That was also a suit for recovery of the mortgaged money. Therefore, in the absence of any evidence adduced by the defendant as to his financial position, we are constrained to hold that there is no case made out by the defendant for awarding a reduced rate of interest from the date of suit till the date fixed for redemption. Therefore, the plaintiff is entitled to interest at the rate of 16.5 per cent. from the date of suit till the date fixed for redemption by the trial court.

12. The next point for consideration is as to the rate of interest from the date fixed redemption till the date of realisation. No doubt, as already pointed out there is no evidence with regard to the financial position of the defendant. But the interest from the date fixed for redemption up to the date of realisation on the aggregate of the principal sum also lies within the discretion of the court as per the provisions contained in clause (b) of rule 11 of Order 34 of the Civil Procedure Code. It is relevant to notice that the interest awarded till the date of suit is Rs. 2,69,671 and from the date of suit till the date fixed for redemption, it would be far more than the aforesaid amount as it would come to about Rs. 5 lakhs. Thus, as on the date fixed for redemption the interest would be more than the principal sum. Therefore, taking into consideration this aspect, we are of the view that in the ends of justice it would be just and proper if we award interest at the rate of 12 per cent. from the date fixed for redemption till the date of realisation on the sum of Rs. 10,09,671.70. Accordingly, we answer the point raised for determination.

13. For the reasons stated above, this appeal is allowed in part. The judgment and decree of the trial court decreeing the suit of the plaintiff for a sum of Rs. 10,09,671.70 are affirmed. However, the direction of the trial court that the aforesaid amount shall bear interest at 6 per cent. from the date of suit till the date of realisation is set aside and it is directed that the aforesaid amount shall bear interest at the rate of 16.5 per cent. from the date of suit till the dated fixed for redemption by the trial court and at 12 per cent. per annum from the date

fixed for redemption till the date of realisation with proportionate costs throughout.