
(1997) 12 AP CK 0046
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4456 of 1993

Syndicate Bank, Kurichedu, Prakasham Dist.

APPELLANT

Vs

Induri Guravareddy and Others

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Banking Regulation Act, 1949 — Section 25A
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 5
Constitution of India, 1950 — Article 13(1), 15(1)

Citation : (1998) 1 ALD 530 : (1998) 1 ALT 735 : (1998) 1 APLJ 50

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Mannava Venkat Rao, for the Appellant; Mr. V.R. Avula, for the Respondent

Judgement

1. The instant civil revision petition is filed by the plaintiff/decreed holder against the order dated: 6-8-1993 dismissing the petition filed under Order XXXIV Rule 5 of The Code of Civil Procedure. The petitioner herein having obtained the preliminary decree in O.S.No.33/89 filed I.A.No.1104/91 praying to pass final decree in terms of the preliminary decree and to direct to bring the petition schedule properties to sale for realisation of the decretal amount in the suit, in pursuance of the preliminary decree dated: 16-1-1991.

2. The petitioner herein filed O.S.No.33/89 basing on a simple mortgage and the trial Court passed preliminary decree on 16-1-1991 by granting six months time to the respondents/defendants for redumption of mortgage properly under the said decree. The respondents/defendants failed to pay any amount whatsoever to satisfy the decree. The petitioner left with no other alternative and in order to realise the decretal amount filed the application to pass final decree and to bring the mortgage property for sale and for realisation of the decretal amount.

3. The second respondent alone filed a counter and respondent Nos.4 to 7 filed a Memo adopting the counter of the second respondent. Respondent Nos.1 and 3

remained ex parts. In the counter affidavit the respondents took a plea that the principal amount borrowed was Rs. 16,400.00 and the suit is filed for recovery of Rs.21,712.20 including interest. It is their case that the interest is more than the principal amount and as such the interest over and above and beyond the principal amount is not payable and the Court cannot pass such a decree for recovery of the amount, where the interest is higher than the principal amount. The interest claimed, according to them, is usurious and excessive and the decretal amount is required to be reduced and in such a manner that the interest does not exceed the principal amount borrowed by them.

4. No evidence whatsoever was let in by any of the parties. The trial Court after elaborate consideration of the matter came to the conclusion that the petitioner herein is claiming the amount towards interest more than the principal amount and the claim is hit by the Rule of "Damdupat". Consequently the application filed by the petitioner has been dismissed without granting any relief!

5. In this civil revision petition, Sri Mannava Venkata Rao, learned Counsel for the petitioner submits that the Rule of Damdupat has no application whatsoever to any of the transactions in the State of Andhra Pradesh. It is submitted that its application is restricted to the City of Calcutta and the Presidency of Bombay. It is submitted that the Rule of Damdupat as envisaged under the ancient Hindu Law is not at all applicable in respect of the transactions by the Banking company. It is submitted that Section 25A of the Banking Companies Regulations Act provide that notwithstanding in any other law the Bank is entitled to the agreed rate of interest as modified from time to time, in accordance with the rules of the Reserve Bank of India, It is further submitted that at any rate the trial Court ought not to have dismissed the application filed by the petitioner-Bank in its entirety and, at least, the petitioner is entitled for the principal amount and the interest equal to that of the principal amount.

6. The learned Counsel for the respondents tried to justify the order passed by the trial Court by submitting that the Rule of Damdupat is an equitable Rule and is applicable even in respect of the transactions of the Banking company.

7. The short question that arises for consideration in this civil revision petition is as to whether the Rule of Damdupat as envisaged under ancient Hindu Law is applicable to any monetary transaction within the State of Andhra Pradesh? Whether the Rule is applicable even in the transactions of Banking Company ?

8. The Rule of Damdupat enunciated in the texts of Hindu Law is applicable to both unsecured and secured debts. The purport of the Rule is to prevent usury and operates as a restriction against the accumulation of interest. It "simply means that the creditor is not entitled to recover at any given time an amount by way of interest which is in excess of the amount of principal due at that time. The Rule of Damdupat is inapplicable in the Madras Presidency and in Bengal except in the town of Calcutta It has been held to be in force in the presidency of Bombay (See N.R. Raghavachariar's Hindu Law, 8th Edition Page 303.)

9. In Mulla Principles of Hindu Law (Fifteenth Edition) it is stated "the Rule of Damdupat is a branch of the Hindu law of Debts". According to this rule, the amount of interest recoverable at any one time cannot exceed the principal. It is further stated that where a suit has been instituted to recover a loan, the rule of Damdupat ceases to operate. The result is that though the Court is bound to apply the rule of Damdupat upto the date of the suit, it is free to award interest to the creditor at such rate as it thinks proper from the date of the suit up to the date of the decree or payment upon the total amount that may be found due to him after applying the rule. In the same text it is further stated that the Rule of Damdupat does not apply to interest recoverable in execution of a decree. The reason is that the rule ceases to operate after suit. It is further stated that the rule of Damdupat applies in the Bombay State. It applies also in the town of Calcutta, but not in any other part of Bengal. The rule is not given effect to in the State of Rajasthan or in any part of the Madras State or the Uttar Pradesh. Of course, there is no dispute that the Rule of Damdupat applies only where the original contracting-parties are Hindus. However the Bombay High Court appears to have taken the view that all that is necessary for the application of the Rule is that the original debtor should be a Hindu. (See Harilal v. Nagar (1897) 21 Bom. 38. It is true that the Bombay High Court held that the Rule of Damdupat applies not only to unsecured loans, but loans secured by a pledge of movable property and those secured by a mortgage of immovable property. (See Nathubhai v. Mulchand (1868) 5 Bom. HCAC 196, 198 and Narayan v. Satvaji (1872) 9 Bom. HC 83, (Referred to in Mulla Principles of Hindu Law (Fifteenth Edition.)

10. A Full-Bench of Rajasthan High Court in Sheokaransingh v. Daulatmm AIR 1955 Raj 201 held that the Rule Damdupat as recognised by Hindu Law, in the absence of any statute is no longer of binding force and cannot be given effect to in the State of Rajasthan. It is further held that "though Damdupat in text books of Hindu Law, is a rule of Hindu Law of debts, it is not in force in any part of India now as a principle of Hindu Law. The reason is that Hindu Law, as now enforced by Courts of law, is confined only to matters of personal law, while the question of interest is not a matter of personal law, but of civil law generally. Wherever therefore the rule of Damdupat is applicable, it is applied by virtue of a statute or custom, and not as a branch of Hindu Law. It is further held that:

"In enforcing the rule of Damdupat, therefore, as between Hindus or at any rate, in cases where the debtor is a Hindu the State will clearly be discriminating against non-Hindus on the ground of their religion. The rule of Damdupat, therefore as known to Hindu Law, is now clearly-hit by Article 15(1) of the Constitution, and as such would be void under Article 13(1).

It follows, therefore, that the Courts cannot now enforce the rule of Damdupat as recognised by Hindu Law in any part of this State in the absence of any statute. The question whether even a statute could be enforced which made such a discriminating provision is another matter which need not be considered at present. But the rule of Damdupat, as it was in force in the former State of

Marwar, cannot now have any binding force and cannot be applied by Courts in view of the provisions of Article 15(1)."

However, the trial court placed reliance upon the decision of the Apex Court in *Mhadagonda Ramgonda Patil and Others Vs. Shripal Balwant Rainade and Others*, . In the above cases, the Apex Court observed that the Rule of Damdupat is an equitable rule debarring the creditor to recover at any given time the amount of interest which is in excess of the principal amount due at that time. It is also held that the Rule is applicable not only to a simple loan transaction, but to transaction of mortgage also. The Apex Court observed that:

"We may now consider the second question as to whether the rule of Damdupat is applicable to a mortgage transaction. Admittedly it is an equitable rule debarring the creditor to recover at any given time the amount of interest which is in excess of the principal amount due at that time. It is urged by the learned Counsel appearing on behalf of the appellants that the rule is applicable only to a simple loan transaction and not to a transaction of mortgage. We are unable to appreciate this contention. In every mortgage there are two aspects, namely, (i) loan and (ii) transfer of interest in immovable property. As mortgage is principally a loan transaction, we do not find any reason why the rule of Damdupat which is an equitable rule should not apply also to mortgage."

11. The trial Court following the said decision came to the conclusion that the Rule of Damdupat since applicable to transactions of mortgage also, the petitioner cannot be allowed to proceed further in the matter, as admittedly, the total amount of interest is much more than the amount of principal amount. But, the trial court failed to appreciate that in the very same decision, the Apex Court held "admittedly, the rule of Damdupat was never applicable to Madras," The Apex Court Judgment is not an authority for the proposition that the Rule of Damdupat is applicable through out India, including the State of Andhra Pradesh. On the other hand, it is held in categorical terms that the rule of Damdupat was never applicable to Madras. It is true the Apex Court held that the law was not correctly laid down in *Madhwa Sidhanta Onahini Nidhi v. Venkatammanjulu Naidu* (1903) ILR 26 Mad. 662. The observation of the Apex Court about *Madhwa Sidhanta* case (supra) are required to be understood in its context. The Apex Court was dealing with the question as to whether the rule of Damdupat is applicable only to simple loan transaction or even to transaction of mortgage. The Madras High Court in *Madhwa Sidhanta* case (supra) took the view that the Rule is not applicable in cases of mortgage transaction, but applicable only in cases of simple loan transaction. But, it is required to notice that even the Madras High Court in *Madhwa Sidhanta* case (supra) held that the Rule of Damdupat is not applicable to Madras province. Having held so, there was no need for the Madras High Court to proceed further and decide as to whether the Rule of Damdupat is applicable in cases of Mortgage transaction. Under those circumstances, the Apex Court observed that the law in *Madhwa Sidhanta* case (supra) was not correctly laid down and consequently held that the Rule of

Damdapat applies even in cases of mortgage transaction also. Only to that extent, the Apex Court held that the Madras High Court did not correctly lay down the law. It is required to notice that neither the Madras High Court in Madhwa Sidhanta case (supra) nor the Apex Court in M.R.Patil case (supra) laid down any law holding that the Rule of Damdapat is applicable to the province of Madras. All that the Apex Court held in M.R.Patil case (supra) is that that the Rule of Damdapat is equally applicable in cases of mortgage transaction also as in the cases of simple monetary transaction. Therefore neither the decision in Madhwa Sidhanta case (supra) (since overruled by the Apex Court) nor the decision in M.R.Patil case (supra) lay down any law to the effect that the Rule of Damdapat is applicable to Madras province.

12. Under those circumstances and in view of the authoritative statement of principle in N.R. Raghavachariar's Hindu Law (Eighth Edition) and Mulla Principles of Hindu Law (Fifteenth Edition), I have no hesitation to hold that the Rule of Damdapat, which no doubt enunciates equitable Rule, has no application whatsoever to the State of Andhra Pradesh. The Rule cannot be applied either in case of simple loan transaction or in cases of mortgage transaction. The Rule has no application whatsoever in the transactions entered into by the Banking Company. The submissions made by the learned Counsel for the petitioner are upheld.

13. Accordingly the impugned order is set aside and the Civil Revision Petition is allowed. No costs.

14. The assistance rendered by Sri T.S.Anand, learned Counsel appearing as amicus curie is appreciated by the Court and the same is put on record.