(1968) 12 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No 201 of 1959

The Punjab And Sindh Bank Ltd. APPELLANT

Vs

Roora Mal Sondhi and Another RESPONDENT

Date of Decision : 05-12-1968

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

Citation : (1968) 12 P&H CK 0024

Hon'ble Judges : Prem Chand Pandit, J;H.R. Sodhi, J

Bench : Division Bench

Advocate : D.N. Awasthy with Mr. Romesh Chander, for the Appellant; V.P. Prasher, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—The only point for decision in this appeal is whether the Court below was in error in not granting future interest at 10 per cent per annum from the the date of the institution of the suit till realization or actual payment of the mortgage debt.

2. The Punjab and Sind Bank Ltd., Amritsar, brought a suit against Roora Mal and the Jullundur Mercantile Co-operative Bank Ltd., Jullundur, defendants Nos. 1 and 2, for the recovery of Rs. 6610.12 naya paisa on account of principal and interest by sale of the mortgaged property. It was alleged by the plaintiff that defendant No. 1 had opened an overdraft account with the plaintiff-bank on 25th December, 1950. after creating an equitable mortgage of his house depositing its title deeds with the bank as a collateral security for the loan. On 25th of June, 1954, defendant No. 1 renewed the loan and executed a fresh pronote and other documents in connection therewith. Defendant No. 2 had been impleaded because defendant No. 1 was alleged to have mortgaged the house in dispute with them on 22nd August, 1956. According to the plaintiff, however, they had got a right to realise their debt by sale of the mortgaged property, because the equitable mortgage in their favour was prior in time than the mortgage created

in favour of defendant No. 2. In the plaint, the plaintiff had prayed for a decree for the recovery of Rs. 6,610.12 naya paise and this amount represented the principal amount and the interest calculated thereon at the agreed rate of 10 per cent per annum upto the date of the institution of the suit. It was also prayed that future interest at 10 per cent per annum from the date of the institution of the suit till realisation might also be allowed.

3. Since in the written statement, defendant No. 1 had said that the plaintiff had added compound interest at the rate of 10 per cent with monthly rests, which was against the contractual rate as well as the legal rate allowable and had further objected to the prayer of the plaintiff for the grant of future interest, an issue was framed by the Court below dealing with this matter. That issue was No. 5 and was in these terms :

Whether the agreed rate of interest and the rate on which the interest is claimed are excessive and to what effect ?

The finding of the Court below on this issue was in favour of the plaintiff, because it had not been shown by the defendant as to how the rate of interest charged by the plaintiff was excessive. After deciding the other issues framed in the case in favour of the plaintiff, the trial Judges on 31st March, 1959, under issue No. 9, relating to relief, observed as under :

As a result of the above discussion a preliminary decree for Rs. 6610.12 nP. by sale of the mortgaged property in suit is passed in plaintiff''s favour with costs against the defendants. In case the sale proceeds of the mortgaged property are not sufficient, defendant No. 1 shall be personally liable also for the remaining amount. Time for making payment is given till 31st July, 1959.

4. Against this decision, the present first appeal has been filed by the plaintiff and the only relief claimed is that the Court below should have allowed interest subsequent to the date of the suit till realisation of the amount due.

5. Learned counsel for the appellant contended that the learned Senior Subordinate Judge, who tried the case, had erred in not allowing interest subsequent to the date of the suit. While deciding issue No. 9, he had overlooked the provisions of Order 34 rule 11, Civil Procedure Code, regarding payment of interest. He had not recorded any reasons as to why future interest had not been allowed. In fact, interest from the date of the suit up to the date fixed for payment of the amount decreed and in case of default, interest till the date of realisation, should have been allowed. Otherwise also, the present being a case of a banker and his customer, future interest should not have been withheld.

6. The provision of law dealing with this point is contained in Order 34 rule 11, Civil Procedure Code, the relevant part of which reads as under :-

In any decree passed in a 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 mortgagee-at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,

(ii)...

(iii)...

(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.

It is needless to discuss the various authorities on the subject, because their gist has been given in Volume II of the CPC by '' D.F. Mulla 13th Edition at page 1474. There it is stated.

Summarising the decisions under the Transfer of Property Act and under Order 34, it may be said that in a suit on a mortgage the Court awarded

(1)...

(2) interest on the principal from the date of the suit up to the date fixed by the Court for payment of the mortgage-debt, also at the rate provided by the mortgage... unless the rate is penal, in which case the Court may award interest at such rate as it deems proper, or the interest is excessive and the transaction was substantially unfair in which case also the Court may reduce it.

(3) interest on the aggregate amount of principal, interest and costs, from the date fixed for the payment of the mortgage-debt up to the date of realization or actual payment, at such rate as the Court deems proper. It may be allowed at the Court rate, that is, 6 per cent per annum, or at any other rate...

Many authorities have been cited in support of the passage quoted above. Reference may also be made to a Bench decision of Patna High Court given by Harries C.J. and Chatterji J. in Sukhraj Rai v. Ratinath Panjiara AIR 1942 Patna 102, where it was also held

Even if the plaintiff cannot recover interest before date of suit by virtue of provisions of Bihar Money-lenders Act, the Court is bound to grant under Order 34, rules 2 and 4, Civil Procedure Code, pendente lite interest, as that Act does not deal with interest payable after suit and this power of the Court is not affected by rule 11 under which the Court has a discretion in the matter of awarding such interest but not to refuse it. In the matter of awarding pendente lite interest, ordinarily the contractual rate ought to be allowed unless it appears to be penal or excessive.

7. In the instant case, as I have already mentioned above, the finding by the

Court below was that the contractual rate of interest was not excessive. It had also not been found that the rate of interest Was penal. Keeping the principles of law laid down in the authorities, mentioned above, it would be seen that the plaintiff was entitled to interest at the contractual rate of 10 percent per annum on the amount decreed from the date of the suit up to 31st of July, 1959, which was the date fixed by the Court for payment of the mortgage-debt. The Plaintiff is also entitled to interest at the rate of 6 percent per annum on the aggregate amount of principal, interest and costs from the 31st of July, 1959, up to the date of realisation or actual payment.

8. In view of what I have said above, the appeal is accepted to the extent indicated above. The parties will, however, bear their own costs in this Court.