
(1993) 08 MAD CK 0029
In the Madras High Court
Case No : Appeal No. 34 of 1984

Union Bank of India

APPELLANT

Vs

C. Arumugha Moopanar and others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Banking Regulation Act, 1949 — Section 21A
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1996) 86 CompCas 54 : (1994) 1 LW 377 : (1994) 1 LW 37

Hon'ble Judges : Thangamani, J;M. Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan J.

1. The Union Bank of India, Thanjavur (the appellant herein), lent a sum of Rs. 57,800 to the first defendant (first respondent) on a promissory note dated May 16, 1975, which is marked as exhibit A-1. The second respondent (second defendant) is the father of the first defendant and the third respondent (the third defendant) is the younger brother of the first defendant. They executed a letter, of guarantee on the same day in favour of the bank. An agreement of hypothecation of agricultural implements was also executed by defendants Nos. 2 and 3 on the same day. The said documents are marked as exhibits A-3 and A-2, respectively. A mortgage of agricultural lands was created by depositing the title deeds on the same day and the memorandum of title deeds is marked as exhibit A-4. The bank gave acknowledgment of receipt of documents under exhibit A-5 immediately.

2. The first defendant paid a sum of Rs. 20,012.85 and there was a balance of Rs. 89,102 as on October 21, 1980. It should be mentioned here

that the rate of interest as per the documents was 15 per cent. per annurn with half-yearly rests. The first defendant confirmed the correctness of

the balance on July 2, 1975, May 8, 1976, July 12, 1976, January 18, 1977, June 30, 1977, June 30, 1978, and June 30, 1979, and sent the

necessary acknowledgments. In spite of repeated demands made orally and in writing, the defendant did not discharge the loan. Hence, the bank

filed the suit after issuing a lawyer's notice by registered post on February 9, 1980, demanding payment. The suit was filed on October 21, 1980.

In the plaint, a preliminary decree is prayed for for a sum of Rs. 89,102 with future interest at 15 per cent. per annum till the date of realisation.

Consequential prayers for passing a final decree and also for personal decrees against the defendants were made.

3. In the written statement, the defendants contended that the interest claimed is usurious and the suit is barred by limitation as against defendants

Nos. 2 and 3. It was also prayed that the plaintiff should proceed against the A schedule property and if it was found insufficient, then it should

proceed against the B schedule property. However, in paragraph 9 of the written statement, it was stated as follows :

The defendants confess judgment for the principal amount with interest at 9 per cent. per annum less the amounts paid and a charge decree may

be passed against A and B schedules properties to be proceeded against first against A schedule and then against B schedule properties with pre-

costs and with lawyer's fees on confessional scale. The defendants pray that the suit for personal decree against defendants Nos. 2 and 3 may be

dismissed with costs."

4. The trial court held that the suit was not barred by limitation as there were several acknowledgments by the first defendant under exhibits A-11

to A-17. However, the trial court held that defendants Nos. 2 and 3 were not personally liable as they did not receive any money and they did not

join the execution of exhibit A-1. The court also held that the interest charged by the bank was usurious and the defendants being agriculturists

were entitled to claim 15 per cent. Simple interest from the date of grant of loan. Consequently, a preliminary decree was passed by the trial court

for Rs. 81,138 with proportionate costs and interest at 6 per cent. per annum from the date of decree till the date of realisation. Aggrieved by the

said decree, the bank has preferred this appeal.

5. We find that the view taken by the trial court on the question of limitation is correct and the suit is not barred by limitation.

6. As regards the grant of personal decree against defendants Nos. 2 and 3, the trial court is in error in refusing to pass a decree against them. No

doubt they have not received money or joined the execution of exhibit A-1. But they have personally executed a guarantee deed on the same day

be exhibit A-1. They have agreed that the indemnity and guarantee given by them in favour of the bank is absolute and in addition and independent

of and not in substitution of any security, guarantee or indemnity the bank may have taken or may take from the borrower or any other person.

Thus, defendants Nos. 2 and 3 have made themselves personally liable for the amount borrowed by the first defendant. The decree of the trial

court dismissing the suit as against defendants Nos. 2 and 3 with respect to passing of personal decree is set aside and there will be a personal

decree against defendants Nos. 2 and 3 also.

7. The rate of interest charged by the bank under the agreement is 15 per cent. per annum with half-yearly rests. There is no doubt that the

defendants are agriculturists and the loan has been taken for agricultural purposes. Learned counsel for the appellant places reliance on section

21A of the Banking Regulation Act. The section was brought into force by an amendment in 1984, long after the present transaction took place

and the suit was filed. It has been held by a Division Bench of the Andhra Pradesh High Court in *Yogendranath Raj v. State Bank of India* [1988]

63 Comp Cas 405 that the section is not retrospective in operation. In the view we are taking in this case, it is not necessary for us to consider the

question.

8. Learned counsel for the appellant draws our attention to our judgment in *N. Savithri v. United Commercial Bank* [1993] 1 LW 655; [1996]

Comp Cas 34. It is seen from the report that the parties therein not agriculturists and there was no such plea. We have also pointed out that the

defendant therein was an industrialist owning textile mills. Hence, we held in that case that the defendant was not entitled to claim the benefit of the

Usurious Loans Act.

9. A Division Bench of the Karnataka High Court has considered this question in

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referring to the circulars issued by the Reserve Bank of India in the matter of loans granted to agriculturists, the resultant position is summed up by

the Bench as follows (at page 491) :

To sum up the above discussion : the circulars/directives of the Reserve Bank direct that agricultural advances should not be treated on par with

commercial loans in the matter of application of the system of compounding interest. That the farmers do not have any regular source of income

other than sale proceeds of their crops is an acknowledged fact. They get income generally only once a year. They are, therefore, in a position to pay

interest at usual fixed intervals like monthly, quarterly and half-yearly. Banks should not compound interest on current dues. Banks should not also

charge interest with monthly, quarterly or halfyearly rests on overdue loans. Perhaps, it may not be illegal to charge interest with yearly rests.

10. With respect we agree with the observations made by the Bench and the proposition laid down by them. Even as per the circulars issued by

the Reserve Bank of India, the bank is not entitled to charge compound interest or interest with monthly, quarterly or half-yearly rests on overdue

loans in the case of agriculturists. It is seen from the report of the judgment that there was a circular issued by the Reserve Bank on October 5,

1974, by which the Reserve Bank of India reiterated that the interest on current dues in respect of agricultural advances should not be

compounded and all the banking institutions were directed to suitably advise their branches to follow the instructions given under notification dated

March 14, 1972. It is also seen therefrom that the interest rate at the time when the loan was given to the defendants was about 15.5 per cent. per

annum and it was reduced later to 15 per cent. per annum. In any event it is clear that the banks are directed by the Reserve Bank expressly that

they should not charge compound interest as against agriculturists. The plaintiff-bank acted against the circulars of the Reserve Bank in stipulating

interest with half-yearly rests.

11. In the circumstances, we hold that the view taken by the court below that the bank cannot claim such compound interest, is just and proper.

The Interest charged by the bank with half-yearly rests as against the defendants who are admittedly agriculturists is unenforceable. Consequently,

the decree granting 15 per cent. Simple interest from the date of loan is affirmed.

12. Learned counsel for the appellant contends that in any event the court below is in error in reducing the interest to 6 per cent. per annum from

the date of decree till the date of realisation. Order 34, rule 11 of the Civil Procedure Code, 1908, provides for payment of interest in suits on

mortgages. The rule enables the court to fix the interest at such rate as the court deems reasonable. Under clause (iii) of rule 11(a), the maximum is

prescribed as 6 per cent. per annum. But that relates to amounts due on a mortgage for costs, charges and expenses properly incurred by the

mortgagee and added to the mortgage money due under the decree. Clause (b) also leaves it to the court to fix the interest at a reasonable rate.

Section 34 of the Civil Procedure Code, 1908, gives a guidance with respect to the rate of interest. That section relates to decrees for payment of

money. No doubt Order 34, rule 11 of the Civil Procedure Code, 1908, is a special provision relating to suits on mortgages. But, it cannot be

denied that decrees passed in mortgaged suits also direct payment of money and only in default of payment, sales of properties are directed.

Learned counsel for the respondents submits that section 34 of the Civil Procedure Code, 1908, is a substantive provision and Order 34, rule 11

of the Civil Procedure Code, 1908, is only a procedural provision for payment of interest. In so far as rule 11 is concerned, that is a substantive

provision enabling the court to fix the interest. It is quite possible to contend that Order 34, rule 11 is a special provision with respect to mortgages,

while section 34 is a general provision. But, there is nothing to prevent the court from having the guidance from the provisions of section 34 of the

Civil Procedure Code, 1908, in the matter of granting interest in a suit on a mortgage also though section 34 will not control Order 34, rule 11 of

the Civil Procedure Code, 1908.

13. In the present case, the transaction is not a commercial one and it is purely a transaction between the bank and agriculturists. We are of the

opinion that in the circumstances of the case, the grant of interest at 6 per cent. per annum from the date of decree till the date of payment, by the

court below is reasonable. We do not find any justification to interfere with the same.

14. Consequently, the appeal is allowed to the extent of granting a personal

decree as against defendants Nos. 2 and 3 and modifying the decree of the trial court only on that extent. In all other respects, the decree of the trial court is confirmed and the appeal is dismissed. There will be no order as to costs.