(1988) 03 AP CK 0030

In the Andhra Pradesh High Court

Case No : Appeal No. 722 of 1981

Union Bank of India APPELLANT

Vs

P. Krishnaiah and Another RESPONDENT

Date of Decision : 03-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 34, 34(1)
Negotiable Instruments Act, 1881 (NI) — Section 79

Citation : AIR 1989 AP 211

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : T.S. Haranath, for the Appellant; R.V. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramaswamy, J.—The appellant-Bank lent to the respondents a sum of Rs. 35,000/- on the foot of a promissory note, Ex. A-1 dated September 18, 1975, a letter of guarantee Ex. A-2 of the even date executed by the 2nd defendant and an equitable mortgage executed by the 1st defendant by depositing of title deeds, Exs. A-4 and A-5 dated July 19, 1967 and July 14, 1973 respectively. The trial Court granted a money decree against both the defendants for Rs. 35,000/- with 12% simple interest thereon per annum from the date of the suit till date of realisation. The contracted rate is 16 1/2%. The appellant is aggrieved against the rate of interest scaled down by the trial Court from the contractual rate. Sri Harnath, learned counsel for the appellant, has realised on Section 79 of the Negotiable Instruments Act, 26 of 1881 (for short the Act) which postulates thus :

"When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realisation of such amount, or until such date after the institution of a suit to recover such amount as the Court directs."

The learned counsel contends that in a suit on negotiable instrument Court is given power u/s 79 of the Act to fix outer date from which the rate of interest is to be charged but not power to reduce the contractual rate of interest Till a date after the suit is fixed the contractual rate of interest shall be chargeable and the appellant is entitled to the contractual rate of interest. Any other construction would fly in the face of mandatory language of Section 79. He further contends that Section 79 of the Act prevails over Section 34 of the Code of Civil Procedure, 1908 (for short the Code). The first question therefore is whether Section 79 of the Act prevails over Section 34 of the Code. Both are Central Acts covering the same field, viz., the power of discretion given to the Court to fix a date for payment of interest pendente lite. In addition Section 34 of the Code does give power to fix rate of interest also. Section 34(1) of the Code reads that-

"34(1). Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit."

A reading thereof clearly indicates that the Court is given discretion to award rate of interest -

(i) if there is a contractual rate of interest, interest on the principal sum so adjudged as directed between the parties till date of suit;

(ii) from the date of the suit till the date of the decree the discretion to given to award interest on the principal sum so adjudged at such rate as the Court deems reasonable; and

(iii) from the date of the decree till the date of realisation at such rate not exceeding 6% per annum or till such earlier date as the Court thinks fit."

Section 34(1) engrafts language taking within its ambit not only the money due on a negotiable instrument but also any claim for payment of money. The Act is of 1881 whereas the Code is of 1908. Further it was amended from time to time up to the Act of 1976, The Legislature is aware of the existence of Section 79 of the Act, but no exception has been engrafted in Section 34(1) of the Code with regard to the rate of interest in respect of the claims based on negotiable instruments. Therefore the latter act prevails over the earlier Act. Moreover Section 34 prescribes not only in respect of period but also rate of interest. Accordingly Section 34 also applies to the claims based on negotiable instruments as well. No exception by judicial interpretation could be engrafted. The second contention is rejected.

2. It is next contended that Section 79 applies to the negotiable instruments and

the rate of interest shall be charged till the rate of interest shall be charged till the date of realisation or until such date after the institution of the suit as fixed by the Court Therefore the Court ought to grant interest at the contractual rate. I express my inability to accept the contention of the learned counsel. It is undoubtedly true that Section 79 operates in respect of rate of interest on the principal sum due under negotiable instruments and it empowers interest when rate is specified from the date of the institution until the amount is tendered or realised or until such date so fixed after the institution of the suit to recover the amount, the subject-matter of the suit; Section 34 of the Code equally gives power to the Court in respect of all money claimes. It was already held that money claims include claims based on negotiable instruments. In those circumstances Section 79 of the Act and Section 34(1) of the Code are to be harmoniously construed. What is the meaning of the clause ''until such date of the institution of a suit? Any date from the date of the institution of a suit is the intendment Section 79. If they are so harmoniously construed, it may be construed to be the date of the suit and the rate of interest charged on a negotiable instrument shall be from the date of the institution of the suit pendente lite. The reason is that both Section 79 and Section 34(1) gives discretion to Court to award such rate from a date and such rate as is reasonable depending upon the facts and circumstances obtainable in a given case. Otherwise, the Legislature would have expressly made an express proviso in Section 34(1) itself in regard to the rate of interest pertaining to the claims based on negotiable instruments. The Legislature having left the discretion to the Civil Court, it cannot be construed that the power is by implication taken away as contended by Mr. Harnath.

3. It is no doubt true that in Utsav Lal Gupta Vs. Firm Mohan Brothers and Others, the learned Judge has held that Section 79 of the Act prevails over Section 34 of the Code, but with all due respect to the learned Judge I express my inability to agree with the ratio. If Section 79 of the Act is strictly construed and applied, then to that extent it amounts to judicial legislation of cutting down the operation of Section 34 relating to claims on negotiable instruments which are advised not engrafted In Piara Lal Khanna Vs. S. Herchand Singh Jaiji, the bench has held that Section 34 of the Code applies for fixation of rate of interest pendente lite. With due respect, I agree with the ratio in the above case. Though the ratio in Lehru Narain Vs. Kanhaiyalal, was relied upon by Sri Harinath with regard to the power of the Court to grant rate of interest even higher than the contractual rate of interest, with great respect, I express my inability to accede to the ratio laid in the above case. The Court cannot grant higher rate of interest than what was contracted between the panics even pendente lite. The area is covered by contract or statute. Section 34(1), C.P.C. regulates the gray area. By implication it is either contractual rate or less, but not in excess thereof. Accordingly I hold that the grant of rate of interest at 12% from the date of institution till the date of realisation is in consonance with Section 34 of the Code. In fact the rate of interest at 12% from date of decree till date of

realisation is contrary to Section 34(1) of the Code. But no appeal or cross-objections were filed by the respondent. Therefore it does not warrant interference.

4. The appeal is accordingly dismissed, but in the circumstances. I direct each party to bear their own costs.

