
(1998) 01 AP CK 0027
In the Andhra Pradesh High Court
Case No : AS No. 1524 of 1985

Union Bank of India, Eluru

APPELLANT

Vs

Vegunta Sarojini Devi and Others

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 3, 4
Banking Regulation Act, 1949 — Section 21

Citation : AIR 1998 AP 259 : (1998) 2 ALD 328 : (1998) 2 ALT 534 : (1998) 2 APLJ 9

Hon'ble Judges : A. Hanumathu, J

Bench : Single Bench

Advocate : Mr. E.S. Rama Chandra Murthy, for the Appellant; Mr. G. Krishna Murthy and Mr. P. Raja Rao, for the Respondent

Judgement

1. This is an appeal preferred by the plaintiff against the judgment and decree dated 15-1-1985 in OS No.185 of 1983 on the file of Subordinate Judge's Court, Eluru, in so far as the findings against the plaintiff. The respondents herein are the defendants in the suit.

2. The appellant-plaintiff, Union Bank of India, Eluru Branch filed the said suit for recovery of a sum of Rs. 95,332-35 due from the defendants with respect to an agricultural loan advanced to the first defendant. The plaintiff's case is as follows : The plaintiff is a nationalised Bank. The first defendant an agriculturist, approached the plaintiff bank along with the defendants 2 and 3 for a short term agricultural loan of Rs.25,000/- for investment in sugarcane crop and made an application on 13-6-1974 to the plaintiff. The plaintiff bank sanctioned the said loan amount of Rs.25,000/-. The first defendant executed a demand promissory note for Rs.25,000/- on 18-6-1974 agreeing to repay the same with interest at 5 per cent over the Reserve Bank of India Rate subject to a minimum of 12% per annum with half yearly rests. The first defendant also agreed to pay enhanced rate of interest as per the rules of the Reserve Bank of India which may be charged from time to time. As the security for repayment of the said loan amount, the

first defendant also created an equitable mortgage by depositing title deeds in favour of the plaintiff bank on 18-6-1974 and the defendants 2 and 3 stood as guarantors for the first defendant by executing an indemnity and guarantee bonds in favour of the plaintiff bank. The loan of Rs.25,000/- was disbursed to the first defendant. On 11-6-1977 the first defendant executed a renewal promissory note for Rs.36,723-05 in favour of the plaintiff bank acknowledging the liability of the loan amount due to the plaintiff bank and promised to repay the said loan amount with interest at the rate of 5% over the RBI interest rate subject to a minimum of 14% P. A. with half yearly rests. Subsequently, the first defendant executed a debt confirmation letter dated 10-7-1979 confirming the correctness of the balance of the loan amount of Rs.47,282-05. The first defendant also executed another renewal pronote dated 5-6-1980 for Rs.51,215-65 acknowledging the liability of loan amount due to the plaintiff bank and also agreed to repay the same with interest at 4.5 per cent over the RBI rate subject to a minimum of 13% per annum with half yearly rests. The first defendant again executed debt confirmation letter on 2-7-1982 for Rs.78,187-15 confirming the correctness of the balance of the loan amount due to the plaintiff bank by 31-8-1983 the defendants became liable to pay Rs. 95,332-35 towards the loan amount after giving credit for the amount of Rs.5,000/- paid by the first defendant on 23-6-1977. The plaintiff bank filed the suit for recovery of the said amount.

3. The defendants filed a written statement contending that they are agriculturists and that the first defendant borrowed a sum of Rs.25,000/- as agricultural loan for investment in agriculture. The interest claimed by the plaintiff bank is excessive, penal and usurious, that the plaintiff is not entitled to claim compound interest, that the provisions of Act 4 of 1938 are applicable to the nationalised banks and the plaintiff bank is not entitled to claim exemption u/s 4(c) of the Act 4 of 1938 and as such the suit debt has to be scaled down. The defendants also pleaded that the plaintiff bank is not entitled to claim incidental charges etc.

4. On the basis of the above pleadings the trial Court settled the following issues for trial:

1. Whether the defendants are entitled to the benefits of Act 4 of 1938 ?

2.

5. On behalf of the plaintiff bank, its Field Officer was examined as PW1 and Exs.A1 to A17 were marked. PW1 stated both in his examination in chief as well as in his cross-examination, that the defendants are agriculturists that the loan was granted for agricultural purposes and that the interest has been charged at half yearly rests. He also deposed with respect to the suit transaction and execution of various documents, by defendant No.1. Ex.A17 is the copy of the account of the first defendant with plaintiff bank from 18-6-1974 to 31-8-1983. No evidence was adduced on behalf of the defendants. On an appraisal of the

oral and documentary evidence placed before him the learned Subordinate Judge, relying on the decision of this Court in *M Satyanarayana V. Andhra Bank Limited*, Eluru 1984 (2) APLJ 21 Short Notes of Recent Cases, held that the defendants who are agriculturists are entitled to the benefits of Act 4 of 1938 in respect of the suit debt due to the plaintiff bank and also that the suit debt is liable to be scaled down as per the provisions of the said Act. It is further held that the claiming interest by the plaintiff bank at half yearly compound is also penal usurious and excessive. Consequently, after scaling down interest as per the provisions of Act 4 of 1938 the trial Court passed a preliminary decree for Rs.41,135-63 with proportionate costs and with subsequent interest on Rs.22,921-00 at 6% P. A. till the date of realisation and granted three months time for redemption. Aggrieved by the judgment and decree the plaintiff bank has come up with this appeal.

6. Heard the learned Counsel on either side and also perused the impugned judgment and other documents on record.

7. The learned Counsel for the appellant plaintiff bank made two submissions. Firstly that after the introduction of Section 21A of Banking Regulation Act of 1949 by amending Act 1 of 1984, the Courts have no power to scale down the rate of interest in respect of debts including agricultural debts, due to the nationalised banks and as such the impugned judgment scaling down the interest as per Act 4 of 1938 on the ground that the defendants are agriculturists is liable to be set aside. The learned Counsel for the appellant bank further submits that the decision in 1984(2)APLJ 21 relied on by the trial Court has been overruled by a Full Bench decision of this Court in *State Bank of Hyderabad v. Advath Sakru*, 1993 (1) AWR 380. Secondly that the plaintiff bank is also entitled for compounding of interest with half yearly rests in respect of agricultural advancements as it is legal. The learned Counsel for the respondents-defendants, on the other hand, concedes on the first contention raised by the learned Counsel for the appellant in view of the Full Bench decision of this Court in 1993 (1) AWR 380, but vehemently contends with respect to the second contention raised by the appellant bank's Counsel, that compounding of interest with half yearly rests with respect to agricultural advances is illegal, being contrary to the circular/directives issued by the RBI and the law laid down by the Supreme Court in *Corporation Bank Vs. D.S. Gowda and Another*, .

8. The points for consideration, in the light of the rival contentions submitted by the Counsel on either side are:

(1) Whether the suit debt is liable to be scaled down as per Act 4 of 1938 on the ground that the defendants are agriculturists.

(2) Whether the appellant bank is justified in compounding interest with half yearly rests in respect of the agricultural loans advanced to the first defendant.

Point No. 1 :

It is not disputed that the suit transaction relates to advancement of agricultural loan to the first defendant for raising sugarcane and the defendants 2 and 3 stood as guarantors. PW1 is the Field Officer of the plaintiff bank and he has categorically stated both in his examination in chief as well as in cross-examination that the defendants are agriculturists and that the loan advanced to the first defendants is an agricultural loan. While decreeing the suit the trial Court scaled down the interest as per Act 4 of 1938 on the ground that the defendants are agriculturists. It is the settled position that after introduction of Section 21A of the Banking Regulation Act, 1949 by amending Act 1 of 1984, Courts have no power to scale down the interest in respect of debts including agricultural debts due to the bank. A Full Bench of this Court in *State Bank of Hyderabad v. Advath Sakru and others* 1993 (1) AWR 380 equivalent to 1993 ALT 608, considered this question elaborately and held that Section 21A of the Banking Regulation Act 1949 applies to all transactions entered into between the Banking company and its debtors whether the transaction was entered into prior to its commencement or after and that Section 21A applies to the pending appeals irrespective of the fact whether a decree was passed giving relief to the debtor or not. It was also held further that Section 21A makes no distinction between an advance made for agricultural purposes or for commercial purposes and it equally applies to both. It was further held that the provisions of Usurious Loans Act as amended by Usurious Loans (Madras Amendment) Act 8 of 1936 and Section 3 of Madras Agricultural Debt Relief Act, 1938 (Act 4 of 1938) are not applicable to the advances made by banks to the agriculturists, in view of the said Full Bench judgment of this Court, it has to be held on point No. 1 that the interest is not liable to be scale down u/s 3 of the Act 4 of 1938. Thus the point is decided in favour of the appellant plaintiff bank.

Point No.2:

It is admitted by the learned Counsel on either side that the suit claim is based on Ex.A17 an extract of statement of account relating to the suit debt borrowed by the first defendant and for which the defendants 2 and 3 stood as guarantors. As earlier stated, the suit debt relates to agricultural loan advanced to the first defendant who is an agriculturist. The Field Officer of the plaintiff bank examined as PW1 also admitted that interest is claimed with half yearly rests. Further as seen from Ex.A17 the statement of account, interest was charged on the suit debt with half yearly rests, at 11.5% from 18-6-1974 to 14-3-1976, at 14.5% P.A. from 15-3-1976 to 29-2-1978 at 13% from 1-3-1978 to 30-6-1980, at 14.5% P.A. from 1-7-1980 to 1-3-1981, at 15% P.A. from 1-3-1981 to 31-3-1983 at 14% from 1-4-1983 till 31-8-1983. Further, penal interest at 2% was also charged. Further, the Counsel on either side did not dispute the applicability of the above stated rates of interest to agricultural loans also. The learned Counsel for the respondents-defendants relied on the decision of our High Court in *Kolli Venkata Apparao and Another Vs. State Bank of India*, wherein my learned brother D. Reddappa Reddi, J, relying on the earlier decisions of Karnataka High Court in *H.P. Krishna Reddy Vs. Canara Bank, Bangalore*, and *Bank of India Vs.*

Karnam Ranga Rao and Others, and the decision of the Supreme Court in 1994 (5) SCC 230: held that "the respondent bank is totally unjustified in compounding interest with half yearly rests but it would be entitled to compound the same with yearly rests. The facts in that case are also similar to the facts in this case. In that case also the suit was filed on the foot of hypothecation deed executed by the first appellant as borrower and the second appellant as guarantor infavour of the State Bank of India and the Bank had charged compounding interest at half yearly rests. In H.P. Krishna Reddy Vs. Canara Bank, Bangalore, , it has been held thus :

"If it is proved that the interest charged by the banks on loans is not in conformity with the rate prescribed by the RBI then the Courts should disallow the excess interest and give relief to the party notwithstanding the provisions of Section 21A. The banks are bound to follow the directive or circulars issued by the RBI prescribing the structure of interest to be charged on loans and any interest charged by the banks in excess of the prescribed limits should be illegal and void and banks cannot charge compound interest with quarterly rests on agricultural advances."

This has been reiterated once again by the Karnataka High Court in Bank of India Vs. Karnam Ranga Rao and Others, , wherein it is held that-

"the circulars/directives of the RBI direct that agricultural advances should not be treated on par with commercial loan in the matter of application of the system of compounding of interest. 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 once a year. They are therefore not 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 shall not also charge interest with monthly, quarterly or half yearly rests on overdue loans. Perhaps it may not be illegal to charge interest with yearly rests.""

The underlying principle in this decision has been approved by the Supreme Court in the case of Corporation Bank Vs. D.S. Gowda and Another, . It has been held by the Supreme Court in para 23 thus:

"In so far as civil appeal No.544/86 is concerned it relates to the bank's right to charge compound interest i.e. interest with periodical rests on agricultural advance. We have already referred to various circulars issued by the Reserve Bank from lime to time in exercise of power conferred by Section 21A of the Bank Regulation Act. We have pointed out that the said circulars/directives provide that the agricultural advances should not be treated on par with commercial loans in so far as the rate of interest thereon is concerned because the farmers do not have any regular source of income except- sale proceeds of their crops which income they get once a year. The question of recovery of interest with quarterly or six monthly rests from farmers is therefore not feasible. The fact that the farmers are fluid at a given point of time ever)" year

has to be kept in mind in determining the point of time when they should be expected to repay the loan or pay the instalments/interest on advances. Therefore to allow the banks to charge interest on quarterly or half yearly rests from farmers would tantamount to virtually compelling them to pay compound interest, since they would not be able to pay the interest except once in a year i.e. when they receive income from sale proceeds of their crops. The Reserve Bank has shown concern for the farmers by directing all banking institutions to so regulate the recovery of interest as to coincide with the point of time when the farmers are fluid. It has therefore been emphasised by the Reserve Bank that interest should be charged once in a year to coincide with point of time when the farmer is fluid and interest on current dues should to be compounded although it may be done when the advance/instalments become over due. Thus according to the circulars/directives so far as loans for agricultural purposes are concerned at best interest may be charged with yearly rests and may be compounded if the loan/ instalment becomes overdue. In the present case since the interest was charged with six monthly rests that was clearly in contravention of the Reserve Bank circulars/directives, compounding of interest on current dues on agricultural advances having been discouraged the bank was not entitled to charge interest with shorter periodical rests and compound the same. The bank would add interest outstanding to the principal and compound the interest when the crop loan or term loan becomes overdue having regard to the tenor of the circular dated 14-3-1972. The High Court was fully justified in coming to the conclusion that the bank was not entitled to charge interest with half year rests."

In the light of the above decision of the Supreme Court I have no hesitation to conclude that the appellant bank is not justified in compounding interest with half yearly rests on the suit debt advanced to the defendants who are agriculturists and the trial Court is justified in holding that charging of compounding of interest at half yearly rests is illegal. But I may add that the plaintiff bank is entitled to compound the interest with yearly rests. The point is thus answered.

9. In view of the above conclusions the judgment under appeal is set aside with respect to the scaling down of interest under the provisions of Act 4 of 1938 but confirmed with respect to the finding of the trial Court that compounding of interest with half yearly rests on the suit debt as illegal and that the plaintiff bank is entitled for compounding of interest at yearly rests.

10. In the result, the appeal is partly allowed and the suit shall stand decreed with proportionate cost in favour of the appellant-plaintiff bank and against the respondents-defendants for a sum of Rs.25,000/- together with interest thereon at the contract rate of interest per annum from 18-6-1974 till the date of institution of the suit compoundable with yearly rests after deducting the repayments made by the respondents-defendants from time to time and with future interest at 6% per annum on Rs. 25,000/- from the date of the institution of the suit till the date of redemption. The preliminary decree under appeal shall

stand accordingly modified.

11. The appellant-plaintiff bank as well as the respondents-defendants shall file statement of account prepared as per the above directions into The Registry within four weeks from today and the Registry shall prepare the decree within four weeks thereafter after giving notices to the Counsel on either side. Time for redemption is three months from the date of preparation of the decree.

12. The parties are directed to bear their costs in this appeal.