
(1998) 03 AP CK 0033
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3541 of 1997

Valiseti Tirumala Purnachandra Rao

APPELLANT

Vs

Syndicate Bank and Another

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Usurious Loans Act, 1918 — Section 3

Citation : AIR 1998 AP 245 : (1998) 3 ALD 57 : (1998) 2 ALT 481 : (1998) 1 APLJ 364

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. T. Veerabhadrayya, for the Appellant;

Judgement

1. This revision-petition is filed being aggrieved by the judgment and decree of the Subordinate Judge, Machilipatnam dated 3-6-1997 passed in I.A.No.1419/1996 in O.S.No.63/1984. The petitioner is the auction purchaser in the Court auction. He filed petition for amendment of the decree under Sections 151 and 152 of Code of Civil Procedure. But that application is dismissed by the Court below by passing the impugned order. The learned Counsel for the petitioner strenuously contended that the impugned judgment and decree of the Court below are illegal and without jurisdiction. However, the learned Counsel for the respondents supported the judgment and decree.

2. I have to note few admitted facts of this case. The respondent No.1, the Syndicate Bank, Machilipatnam Branch filed a suit in O.S.No.63/1984 for recovery of an amount of Rs.3,01,755.97 ps. The defendants remained ex parte and consequently, an ex parte decree was passed on 23-12-1994. The impugned order has extracted the entire decree. But by filing the present petition, the petitioner has prayed for the amendment of the decree, so as to take the principal amount of Rs. 1,47,750/- for the purpose of awarding interest at the rate of 6 per cent instead of awarding 16 1/2 per cent per annum on

Rs.3,01,755-97 ps. In other words, the case of the petitioner before the Court below was that interest at the rate of 16 1/2 per cent could not have been granted on Rs.3,01,755,97 ps. from 3.4.1984, the date of the suit and till the date of payment. But the bank while filing the suit calculated the total loan at Rs.3,01,755.97 ps. by adding the interest, as on the date of the suit to the principal amount, i.e., Rs.1,47,750/- and also claimed future interest after filing of the suit in terms of the deed executed by the defendants. But the contention of the present petitioner is that interest during the pendency of the suit could be awarded only on original principal amount of Rs.1,47,750/-, but not on the aggregate amount arrived at by the bank by including the past interest on Rs.1,47,750/- The learned Counsel for the petitioner further submitted that in the judgment, this point is not made, whereas decree drawn provided interest on aggregate amount of Rs.3,01,755,97 ps. Therefore, the decree is not in conformity with judgment and accordingly, the decree requires to be modified. On the other hand, the Counsel for the respondents contended that the agreed rate of interest was at 16 1/2 per cent and the defendants remained ex parte and the Court below granted interest as prayed for at 16 1/2 per cent. In fact, there is no typographical mistake or any mistake similar to that. He further submitted that assuming for the sake of argument, the decree is wrong, nothing prevented the original defendants to prefer an appeal and get the decree set aside by the appellate Court. This, they have not done. They did not even file written statement challenging the allegations made in the plaint and ultimately they have suffered a decree and the same has become final. Therefore, the petitioner who claims to be the purchaser in Court auction from the Receiver cannot seek amendment of the decree and he cannot said to be the person aggrieved or a person interested in the decree.

3. There is substance in the argument of the respondents Counsel. The petitioner is the purchaser of the property for a consideration and he cannot go beyond his sale deed. He cannot also seek amendment of the decree, which the original judgment-debtors, perhaps could have done. But they have not done so. Hence, the petitioner being a purchaser in a Court auction, has no locus standi to file the present application for amendment of the decree. In fact, I put a specific question to the learned Counsel appearing for the petitioner as to the locus standi of the petitioner to seek the amendment of the decree. The learned Counsel for the petitioner relied upon the judgment of the Lahore High Court reported in *Jai Bhagwan Dass v. Om Prakash*, AIR 1939 Loh 255. But from going through the said judgment, I find that the person who sought for amendment of the decree was the purchaser of the decree itself. But in the instant case, the petitioner is not the purchaser of the decree, but he has purchased the property in the Court auction. In case of purchase of the decree like an assignee of a decree, one can infer that such purchaser enters the shoes of the decree-holder. But the person who has purchased the property in a Court auction, cannot said to be a person who entered the shoes of the decree-holder. In fact in the Court auction, if the property fetches more amount than that is required to satisfy the

decree, the judgment-debtor would be entitled to the same. From these facts, it is clear, that the petitioner being a purchaser of the property in a Court auction, which was in the possession of an Official Receiver, in an insolvency proceedings, in I.P.No.4/1983, cannot contend that he has got right similar to that of a decree-holder. In these circumstances, I have to hold that the petitioner has no locus standi to file an application for amendment of the decree. Even otherwise from a reading of the judgment in O.S.No.63/1984 (which is extracted in the impugned order), I find that the Court below awarded interest at the rate of 16 1/2 per cent per annum from the date of the suit i.e., 3-4-1984, till the date of realisation. From these circumstances, it is clear that the suit as prayed for has been decreed, both for past interest as well as for future interest, at the rate of 16 1/2 per cent per annum on Rs.3,01,755.97 ps. But the learned Counsel for the petitioner contended that awarding interest on the aggregate amount of Rs.3,01,75.597 ps. is illegal, since the original principal amount in the case is only Rs.1,47,750/-. He relied upon two judgments of this Court reported in Indian Bank, Rep. By The Zonal Manager, Hyderabad v. P. Venkata Satyavathi, 1993 (1) LS 221 and Bank of Baroda, Guntur v. Mr. Shaik Sardar Saheb, 1997 (1) Law Summary 427. But the Hon'ble Supreme Court in Corporation Bank Vs. D.S. Gowda and Another, held that so far as the commercial transactions are concerned, the interest accruing from time to time either on the basis of the quarterly rest or yearly rest etc., becomes the principal for the subsequent period and awarding interest on the basis of aggregate amount, which includes principal and interest is not illegal. However, the Supreme Court further observed that this principal would not apply in case of agricultural loans. But in the instant case, the loan in question is for non-agricultural purposes and it is a banking transaction. Moreover, the two judgments of this Court cited 2 and 3 supra, reveal that in those judgments it is the defendants who agitated the matter, but not a third party like the petitioner. From reading of those judgments it is further clear that the defendants filed a written statement opposing the rate of interest claimed by the plaintiff as illegal. But in the instant case, the original defendants being ex parte, they did not file any written statement, nor challenged the pleadings of the plaintiff claiming interest on the contractual rate from the date of the suit till the date of realisation. In these circumstances, the petitioner is not entitled to the benefit under these judgments. At any rate, as I have already stated above, the Hon'ble Supreme Court has held that awarding interest on the contractual rate so far as commercial transactions are concerned, is not barred by law. Hence, I do not find any merits in the revision-petition. The learned Counsel for the petitioner relied upon certain other judgments for the proposition that u/s 152 of Code of Civil Procedure, the Court has power to correct decree if there is typographical error either on an application filed in that behalf or by suo motu. This proposition cannot be disputed at all. But in the instant case, there is no such typographical mistake or error in terms of Section 152 of Code of Civil Procedure. Therefore, those judgments do not apply to the facts of this case. At any rate, if any interest is granted wrongly, it was for the original defendants, in the case, to prefer an appeal and challenge the same but that they have not

done so, as I have already stated above. For the above reasons, I do not find any merits in this revision petition. Accordingly, the same is dismissed without costs.