

(1995) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : Appeal No. 609 of 1983

Veeramachaneni Subba Rao (died) and Others

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 4
Banking Regulation Act, 1949 — Section 21A
Contract Act, 1872 — Section 60
Stamp Act, 1899 — Section 35
Transfer of Property Act, 1882 — Section 96
Usurious Loans Act, 1918 — Section 3

Citation : (1997) 4 ALT 112

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : A. Panduranga Rao, M. Srinivas Mohan and M.S. Prasad, for the Appellant; P. Suresh, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Saran Shrivastav, J.—The defendant in O.S. No. 67 of 1976 on the file of the Subordinate Judge at Gudivada is the appellant. A preliminary decree for recovery of Rs. 80,379-89 paise has been passed against him.

2. The respondent-Bank filed the suit O.S.No. 67 of 1976 for the recovery of Rs. 80,379-89 Paise alleging that on 4-6-1969 an overdraft to the extent of Rs. 50,000/- was sanctioned by the respondent-Bank in favour of the appellant-defendant who executed a pronote for Rs. 50,000/- as a collateral security. He also agreed to pay interest at the rate of 5% per annum over and above the rate of interest of Reserve Bank of India. On the same day, he opened his account with the respondent-Bank and borrowed a sum of Rs.10,000/-. He also executed a letter of continuity on the same day in favour of the respondent-Bank confirming the overdraft agreement arrived between them. On 9-6-1969, the appellant-defendant deposited his title deed in respect of the house in question

creating an equitable mortgage in favour of the respondent-Bank. He also issued a covering letter confirming the creation of equitable mortgage. He renewed the pronote on 21-8-1971 and again on 14-6-1973 and agreed to repay with interest as agreed. He also acknowledged his liability in writing vide pronotes dated 21-8-1971, 14-6-1973 and 6-8-1974. The repayments made by the appellant-defendant were appropriated by the respondent-Bank towards the interest due. The respondent-Bank is entitled to claim Rs. 80,379-89 paise including interest from the appellant-defendant because he has failed to pay the amount in spite of demands.

3. The appellant-defendant, through his written statement, denied to have created equitable mortgage of his house in question. He pleaded that the covering letter has not been registered through which the equitable mortgage was created and, therefore, it is inadmissible in evidence. Similarly, the letter of continuity is inadmissible in evidence because it is neither properly stamped nor registered. He is an agriculturist and, therefore, he is entitled to claim benefit under the provisions of the Madras Agriculturists Debt Relief Act (for short "M.A.R. Act"). The interest charged is usurious and, therefore, the appellant-defendant is entitled for reopening the account and scaling down the quantum of interest. Actually he was made to sign in routine way letters without telling him the rate of interest and the contents therein.

4. The lower Court framed eight issues. In answer to issue No. 1 the lower Court held that the respondent-Bank is a corporate body formed under an act of Parliament. In answer to issue No.2, the lower Court held that the letter of continuity is admissible in evidence. In answer to issue No. 3, the lower Court held that the appellant-defendant had validly created equitable mortgage in favour of the respondent-Bank and it is admissible in evidence. In answer to issue No. 4, the lower Court held that the appellant-defendant is not entitled for benefit under the M.A.R. Act. In answer to issue No. 5, the lower Court held that the interest claimed by the respondent-Bank is neither usurious nor exorbitant. In answer to issue No. 6, the lower Court held that the respondent-Bank was entitled to appropriate the repayments made by the appellant-defendant towards interest accrued by the date of the respective demands. In answer to issue No. 7, the lower Court held that the respondent-Bank's claim is not hit by the doctrine of "Damdupat" and, therefore, the respondent-Bank is entitled to claim interest at the agreed rate. In answer to issue No. 8, the lower Court decreed the suit as prayed for.

5. Feeling aggrieved by the impugned judgment and decree, the appellant-defendant has preferred this appeal.

6. I have heard Sri A. Panduranga Rao, the learned Counsel for the Appellants as well as Sri P. Suresh, the learned Counsel for the respondent-Bank. It has been urged on behalf of appellants that the lower Court has erred in holding that the letter Ex. A-4 dated 10-6-1969 is not compulsorily required to be registered because it evidences the creation of mortgage.

7. In *Rachpal Mahraj Vs. Bhagwandas Daruka and Others*, it is held as follows:

"When the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required u/s 59 as in other forms of mortgage. But, if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be sole evidence of its terms. In such a case the deposit and the document both form interegral part of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration u/s 17, Registration Act, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet not be registrable, or it may be delivered at a later date and nevertheless be registrable."

8. The case of *Rachpal Mahraj Vs. Bhagwandas Daruka and Others*, has been quoted with approval by the apex Court in the case of *United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others*, . In this case, the letter in question did not mention details of title deeds, which were to be deposited with the Bank and neither mentioned what was the principal amount borrowed or to be borrowed nor it referred to the rate of interest for the loan, the letter was not intended to be an integral part of the transaction between the parties and did not by itself operate to create an interest in the immovable property and, therefore, it did not require registration.

9. The said case of *Rachpal Mahraj Vs. Bhagwandas Daruka and Others*, has also been quoted with approval by the apex Court in the case of *Veeramachineni Gangadhara Rao Vs. The Andhra Bank Ltd. and Others*, and the Supreme Court has made the following observations:

"But if on its proper construction and from surrounding circumstances it is found that parties did not intend to do so, then there being no express bargain the contract to create mortgage by deposit of title deeds arises by implication of law from deposit itself and document being merely evidential does not require registration. Bar of Sees. 91 and 92 of Evidence Act does not apply to such document and correctness of recitals therein can be looked into."

10. The position of law appears to be that the test to be applied to conclude whether a letter written to a creditor at the time of the deposit of title deeds or subsequent to the title deeds requires registration or not depends on the matter contained in that letter and if it recites that through this letter the mortgage was created then only it would require registration otherwise not.

11. A plain reading of the letter Ex. A-4 dated 10-6-1969 reveals that through

this letter it was confirmed that the appellant-defendant had deposited the title deed with the respondent-Bank with the intention of creating an equitable mortgage in respect of the house in question by way of collateral security for the amounts that may fall due to the respondent-bank. There is no whisper in this letter that through this letter only equitable mortgage has been created. It only confirms what had been done on 4-6-1964, that is to say, prior to the execution of the letter.

12. Even otherwise, there is evidence on record which has been accepted by the trial Court that after the deposit of title deed on 6-6-1969 the same was scrutinized and was accepted as collateral security on 9-8-1969. The title deed was deposited earlier to the execution of the letter Ex. A-4.

13. From what is stated above, it is crystal clear that through the letter Ex. A-4 equitable mortgage was not created but it only confirmed the act of deposit of title deed by the appellant-defendant with the respondent-Bank and, therefore, agreeing with the lower Court, I hold that the document Ex. A-4 does not require registration and it is admissible in evidence.

14. There is ample evidence on record which establishes that a house had been constructed on an open plot, which has been purchased through sale deed Ex. A-1 dated 29-1-1960 and, therefore, it cannot be said that only open plot was mortgaged with the respondent-Bank. Even if it is assumed for the sake of arguments that the house was constructed subsequent to the deposit of title deed, it does not effect the right of the respondent-Bank to recover the loan amount from the house in question because any construction raised on a mortgaged property will automatically be deemed to have been mortgaged with the creditor.

15. The learned Counsel of the appellant-defendant could not demonstrate that the letter of continuity is inadmissible in evidence because it is under stamped. A perusal of letter Ex. A-3 dated 4-6-1969 shows that it only confirms the overdraft arrangement between the appellant-defendant and the respondent-Bank and, therefore, it does not require to be registered. It would not be out of place to mention that at the time when the document Ex. A-3 was proved and marked no objection was raised on behalf of the appellant-defendant and, therefore, the appellant cannot be heard to say that the document is inadmissible in evidence at the appellate stage.

16. It is settled law that in the absence of any specific direction from a debtor, the creditor is entitled to appropriate the repayment against the interest first. There is no material on record to hold that while making repayments, the appellant-defendant had directed the respondent-Bank to adjust the repayment against the principal amount and, therefore, the respondent-Bank was entitled to adjust the repayments against the interest that had accrued by that time.

17. It is not disputed before me that the mortgaged property in question is situated within the limits of Municipality and, therefore, the provisions of Section

4 (d) and (e) of M.A.R. Act are not at all attracted.

18. It has been held in State Bank of Hyderabad and Vs. Advath Sakru and another, as follows:

"The language of Section 21A of Banking Regulation Act indicates clearly that intention of the Parliament that whatever may be the stage of the suit or even the date of the transaction, the moment the aid of the Court is sought to reopen the transaction between the banking company and its debtor under the provisions of Section 3 of the Usurious Loans Act, the injunction/prohibition against reopening contained in Section 21A of Regulation Act, 1949 comes into play. It is well established principle of law that an appeal is nothing but a continuation of the suit or re-hearing of the suit and is a stage in the suit and that suit, appeal, second appeal etc., are but stage in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings. It, therefore, follows that the injunction/prohibition or the bar directed by Section 21A to any Court comes into play irrespective of the fact that the transaction between the banking company and its debtor is prior to the coming into force of Section 21A of Regulation Act, 1949. The bar will apply at all stages of the suit, viz., suit, appeal or second appeal etc., and to any Court, trial Court, appellate Court or second appellate Court until the suit is finally disposed of by a final Court of appeal, which decree alone is the decree in the suit. The question is not whether the provision is prospective or retrospective, but as and when the matter comes before the Court, whether in a suit, appeal or second appeal etc., so long as the proceeding is pending in any Court as on the date of coming into force of Section 21A of Regulation Act, 1949, the prohibition automatically comes into play and the Court is bound to apply the same and refuse to reopen the transaction in view of the mandate contained in Section 21A."

It has been further held that the provisions of M.A.R. Act do not apply to the transaction between Nationalised Bank and its agriculturist debtor because the Nationalised Bank falls within the exemption enumerated in Section 4 (c) of the M.A. R. Act.

19. On the authority of the case of State Bank of Hyderabad v. Advath Sakru (4 supra) I hold that the appellant-defendant is not entitled to claim benefit u/s 4(c) and (e) of the M.A.R., Act and by virtue of Section 21A of the Banking Regulation Act, 1949 the transaction between the appellant-defendant and the respondent-Bank under the Usurious Loans Act cannot be reopened. Therefore, the contention of the learned Counsel of the appellant-defendant cannot be accepted that the amount of interest on amount borrowed by the respondent-Bank is usurious or exorbitant and it cannot be recovered by the respondent-Bank.

20. For the foregoing reasons, agreeing with the learned lower Court, I reach the conclusion that the respondent-Bank is entitled for a preliminary decree as prayed for.

21. In result, the appeal fails and is hereby dismissed. However, in the

circumstances of the case, I leave the parties to bear their own costs.