
(2001) 06 KL CK 0019

In the High Court Of Kerala

Case No : A.S. No"s. 561 and 630 of 1992 and 637 of 1994

Veluswamy Gounder and Another

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 2001 Ker 366 : (2001) 3 ILR (Ker) 227

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.N. Krishnakutty Achan, for the Appellant; P.G. Parameswara Panicker and P. Gopal, for the Respondent

Judgement

Sankarasubban, J.—A.S. Nos. 561 and 630 of 1992 are filed against the preliminary decree, while A. S. No. 637 of 1994 is filed against the final decree. A.S. Nos. 561 of 1992 and 637 of 1994 are filed by the defendants, while A.S. No. 630 of 1992 is filed by the plaintiff. The suit, O.S. No. 410 of 1990 on the file of the Sub-Court, Palakkad was filed by the plaintiff-State Bank of India. According to the plaintiff, the first defendant applied for a term loan of Rs. 1,50,000/- for constructing a Cinema Theatre at Valayar and a loan of Rs. 88,500/- to equip the same with machinery. The 2nd defendant is the daughter of the first respondent. In anticipation of the loan, the defendants created equitable mortgage on the properties detailed in the schedule to the plaint, but deposited the title deeds thereto with the predecessor Bank, viz., Bank of Cochin. The defendants executed and delivered a memorandum of deposit of title deeds

2. On 21-7-1981, the Bank of Cochin granted a term loan of Rs. 1,50,000 to the first respondent on his agreeing to repay the same with interest at the rate of 15% per annum or such other rates fixed by the Bank from time to time with quarterly rests. The Bank also granted a guarantee to the tune of Rs. 38,500/- to M/s. Photofone Limited, Ernakulam for the supply of a brand new 35 mm Projector. The first defendant executed various documents for securing the

amount. On 8-12-1984, the first defendant executed a demand pronote for Rs. 2,44,482.01, which was the amount outstanding till then with interest at 18% per annum. The Bank of Cochin was taken over by the State Bank of India. It is further stated that on 14-10-1987, the defendants had signed and delivered a revival letter including the liability for the amount then due as on that date amounting to Rs. 2,44,482.01. Even though the first defendant promised to pay the amount, the amount has not been paid. The balance as on 30-6-1990 was Rs. 3,86,260.80 being the loan granted for agricultural activities. The plaintiff is entitled to recover the amount with future interest at 16.5% with quarterly rests. The suit is filed for Rs. 3,86,260.80 with interest thereon at 16.5% per annum from 30-6-1990. Thus, the total amount as on the date of suit is Rs. 4,03,547/- with future interest at 16.5%.

3. The defendants filed a written statement. Various contentions were raised. One of the contentions was with regard to interest payable pending suit. The defendants raised the contention that the plaintiff cannot demand interest at 16.5%. The Court below, after considering the entire matter, rejected the contentions of the defendants regarding his liability to repay the amount. Regarding the rate of interest. It took the view on the basis of the decision in *The Divisional Manager, L.I.C. of India Vs. Bhagavathy Amma and Others*, that the future interest is restricted to 6% per annum. Then a decree was given for Rs. 4,03,547/-. The defendants were directed to pay within six months the said amount with interest at 16.5% per annum from the date of suit till date of decree and at the rate of 6% per annum thereafter till deposit. It was also said that if the defendants fail to deposit the above amount, the plaintiff can apply for final decree. It is against the above judgment and decree that the two appeals, A.S Nos. 561 and 630 of 1992 have been filed.

4. At the time of argument of both the appeals, both the counsel restricted their arguments to the amount payable as interest. The defendants contended that the Court below should have granted interest only at 6% from the date of suit till date of realization. On the other hand, the plaintiff contended that the enhanced interest of 16.5% should have been granted. Learned counsel for the defendants contended that being a mortgage suit, the decree has to be passed in accordance with the provisions of Order 34 of the CPC (hereinafter, referred to as "CPC"), According to him, so far as the State of Kerala is concerned, as per notification No. D1-22480/85 dated 16-12-1989, an amendment has been made to Order 34 of CPC and a fresh set of Rules has been substituted. According to the learned counsel, originally, Order 34 Rule 11 of CPC applied to mortgage suits. But after the amendment, it is Order 34, Rule 3 that applies. There is substantial difference between the two Rules. Under Order 34, Rule 11 of CPC, where interest is legally recoverable, the Court may order payment of interest to the mortgagee up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage on the principal amount found or declared due on the mortgage, at the rate payable on the principal and subsequent to the

preliminary decree, at the rate agreed between the parties or falling such rate, at such rate not exceeding six per cent per annum, as the Court deems reasonable. Under the present Order 34, Rule 3 of CPC deals with decree of sale. It directs the Court to pass a decree to the effect mentioned in Clauses (a) and (b) (i) of Sub-rule (1) of Rule 2.

5. This question was considered by Marar, J. In *The Divisional Manager, L.I.C. of India Vs. Bhagavathy Amma and Others*, His Lordship following the decision in *State Bank of Travancore Vs. May C. George*, held that the provision in Order 34, Rule 2 of CPC is different from Order 34, Rule 11. The learned Judge took the view that interest is payable only at 6%, which is the maximum that can be awarded under Order 34 of CPC. In *State Bank of Travancore Vs. May C. George*, the same question came up for consideration before a Division Bench. At that time, the notification that came up for consideration was Notification No. 8441381/70 dated 10-12-1973. By that Notification, there is an amendment to Order 34 of CPC. As Marar, J. stated in *The Divisional Manager, L.I.C. of India Vs. Bhagavathy Amma and Others*, the amendment brought by the Notification dated 10-12-1973 is in pari materia with the amendment brought in 1990. Bhaskaran, J. (as he then was), in the decision in *State Bank of Travancore v. May C. George* 1976 KLT 205 : AIR 1977 Ker speaking for the Bench observed thus : "It is significant to note that the provision regarding payment of interest up to the date of redemption has, by the amendment undergone a substantial change inasmuch as the provision "at the rate payable on the principal" is not retained in the amended provision. The provision of Rule 2 of Order XXXIV, in its amended form, as is clear from Sub-rule (1) (a) (i) provides only for the interest on the mortgage, in the place of "Interest at the rate payable on the principal." Thus, his Lordship considered the question as to what interest should be awarded and held that the plaintiff was entitled to interest at 6% u/s 34 of CPC.

6. Learned counsel for the respondent brought to our notice two decisions of the Division Bench reported in *Indian Bank v. Abyson Rubber Industries* 1994(2) KLT 909 : (AIR 1994 Ker 60) and *Mrs. Rosy George Vs. State Bank of India and Others*, . In *Mrs. Rosy George Vs. State Bank of India and Others*, . Order 34 Rule 2 (1) (a) (i) in its amended form as applicable to Kerala was considered in Paragraphs 21 and 22 of the judgment. The Division Bench agreed with the decision in *State Bank of Travancore Vs. May C. George*, but held that under the amended Section 34, there is a discretion in so far as commercial contract is concerned to award contract rate. There, the interest awarded was at 14%. That was upheld by the Bench. In 1994 (2) KLT 909 :(AIR 1994 Ker 60) the question that was considered was the proviso to Section 34 and it was held that in commercial transaction, the Court can grant interest at more than 6%.

7. Thus, it is true that it is not Order 34, Rule 11 of CPC that is applicable, but Order 34 Rule 2 as amended is applicable to the case at hand. If that be so, it is not necessary to pass a preliminary decree and final decree. Under Order 34, Rule 3 a decree to be passed in case of sale. It says that the Court has to direct

a party to pay the amount within the date falling which the mortgaged property shall be sold and the proceed thereof shall be used for the payment of what is due to the plaintiff. It is not necessary to pass two decrees

8. The lower Court has awarded interest on the principal amount at the rate of 16.5% from the date of suit till date of decree and at the rate of 6% from the date of decree till date of realization. From the documents produced in this case, there is no dispute that the principal amount includes defaulted interest also. On the date of suit the principal amount as stated in the plaint is 4,03,547. The plaintiff has claimed future interest at 16.5% per annum. The contract rate was originally 15%. It was increased to 18%. DW1 in his evidence which was given on 22-2-1992 says that interest on that date was 24.75%.

9. The next question is what is the interest that should be granted to the plaintiff from the date of suit till date of realization. No doubt, the transaction involved in the suit is a commercial transaction. Originally, the contract rate was 15%. u/s 34 of PC, 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, 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. The plaintiff has not given evidence as to what is the rate of interest as prescribed by the Nationalised Bank during the pendency of the suit. It is not shown how the interest at the rate of 16.5% was arrived at. Further, we find, it is a case where defaulted interests are added to the principal amount. Hence, according to us, a uniform rate of interest of 9% from the date of suit till date of realisation will be reasonable.

10. In the above view of the matter, we modify the judgment and decree of the Court below with regard to A.S. Nos. 561 and 630 of 1992 as follows: The suit is decreed for Rs. 4,03,547- with interest thereon at 9% per annum from the date of suit till date of realisation. The appellants are given six months time from today to pay the amount. If the amount is not paid, as stated above, the plaintiff will be free to take steps for the sale of the property

A.S. No. 637 of 1994

11. We have taken the view that there is no scope for passing two decrees. Hence, the final decree is set aside in view of our findings in the other two cases. Hence, A.S. No. 637 of 1994 is allowed and the Judgment and decree of the Court below are set aside.