(1995) 06 KL CK 0029

In the High Court Of Kerala

Case No : A.S. No. 530 of 1994

Vysya Bank Ltd., Ernakulam — APPELLANT

Vs

Kalapurakal Industries and Others — RESPONDENT

Date of Decision : 14-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, Order 34 Rule 3, Order 34 Rule 5

Citation : AIR 1996 Ker 117 : (1995) 2 CivCC 185

Hon'ble Judges : K.T. Thomas, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.C. John and K.K. John, for the Appellant; P. Radhakrishnan, Meera K. and Madhu Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishnan, J.—The appellant, the Vysya Bank Ltd., the original plaintiff, has preferred this appeal against the judgment and decree of the trial Court in so far as the trial Court has granted relief of payment of decree amount in instalments. The question raised is whether the trial Court has jurisdiction to grant a decree for payment of the decree amount in instalments invoking Order 20, Rule 11, C.P.C. in the case of a mortgage decree.

2. The plaintiff-bank has instituted the suit for realisation of an amount of Rs.43,62,919/- together with interest from the defendants jointly and severally and also by sale of plaint schedule properties, which included immovable properties. When the suit came up for final hearing before the trial Court on 18-6-1994, the defendants filed a statement withdrawing their contentions and agreed to decree the suit. But they requested the trial Court for payment of the decree debt in instalments. It was stated by the defendants that since the first defendant is a small scale industrial unit having 30 employees, and the liability is huge, unless the payment is allowed to be effected in instalments, it will cause serious prejudice to them. The prayer for payment of the amount in instalments

was, however, opposed by the plaintiff-bank. The trial Court, however, decreed the suit for Rs. 43,62,919/- against the defendants with costs. The plaintiff was allowed to realise future interest at 24% for the amount from the date of suit till realisation. The trial Court, however, directed the defendants to pay the amount in instalments at Rs. 50,000/- per month commencing from August, 1994. It was further ordered that in default of payment of two consecutive instalments, the plaintiff is at liberty to realise the entire balance by applying for sale of plaint schedule properties, bring them to sale, and appropriate the sale proceeds and to realise the balance, if any, from the defendants personally and against their other assets. Aggrieved by the aforesaid directions of paying the amount by way of instalments, the plaintiff has come up in appeal.

3. The main contention urged by senior counsel for the plaintiff-bank, Sri K. C. John, is that the suit being one for realisation of amount due on enforcement of a mortgage, the trial Court should not have granted the prayers for payment of the amount decreed in instalments. It was further contended that the provisions of Order 20, Rule 11 have no application in the case of a suit for recovery of money by sale of mortgaged properties. It is the case of the bank that the present being a decree by sale of the property mortgaged and pledged, the question of paying the decree amount in instalments does not arise. The plaintiff was entitled to sale of the property under Order 34, C.P.C. on the failure of the defendants to pay the decretal amount by the period fixed by the Court. In support of his contentions, learned senior counsel relied on three Division Bench decisions, reported in Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others, ; United Bank of India Vs. The New Glencoe Tea Co. Ltd., ; and G. Marappa v. State Bank of Mysore, (1982) 1 KLJ 320; and also the decision of the Gauhati High Court in Sher Alam Vs. United Bank of India, and an unreported decision of this Court in A. S. No. 256 of 1987.

4. Learned counsel appearing for the defendants, Sri P. Radhakrishnan, on the other hand, contended that since the suit has been instituted u/s 26, Order 7, Rule 1, C.P.C. as a simple suit for money, the provisions of Order 20, Rule 11 of the C.P.C. are applicable and the Court has got jurisdiction to postpone the payment of amount decreed or allow the, payment of the decree amount in instalments. Learned counsel also contended that even if the suit relates to mortgage of immovable properties, the Court has power under Order 34, Rule 5 to postpone the date fixed for payment upon good cause shown and upon such terms, if any, as it thinks fit. Counsel further contended that the expression ''as it thinks fit'' confers wide jurisdiction on the Court to enlarge the time for payment of the decree amount in instalments. In support of his contentions, learned counsel relied upon the decision of the Supreme Court in Babulal Nagar and Others Vs. Shree Synthetics Ltd. and Others, .

5. We have carefully considered the rival contentions put forward.

6. Order 20, Rule 11 of the Code has its application only to simple money decrees and not to decrees for sale of property for realisation of money due.

Order 20, Rule 11 reads as follows:

"11. Decree may direct payment by instalments :--(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason incorporate in "the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) Order, after decree for payment by instalments.-- After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, on the taking of security from him, or otherwise, as it thinks fit."

The provisions on their terms can have no application to a mortgage suit, be it a suit of mortgage in respect of immovable property, or a suit of mortgage in respect of movable property.

7. It may be remembered that commercial leans by the banks and public financial institutions are given on securities of immovable properties or movable properties or on personal guarantees of other solvent persons. While giving such guarantees, they must be solvent to that extent, and for this the bank has to accept the personal guarantees. If instalments were to be granted, in such secured commercial transactions with public financial institutions, the object of securing the advances would be defeated. These securities are taken with a view to see that the dues can be recovered from all securities taken. Even when the principal debtor is a small scale industrial unit, the liability is joint, several and co-extensive. In such circumstances, the decree for settlement of the amount in instalments cannot be justified.

8. It is always open to the plaintiff in a mortgage suit to permit the judgment-debtor to pay the decree amount in instalments. This is entirely a matter for the decree-holder to decide. With regard to applicability of Order XXXIV, Rule 5, the Court can postpone the date of payment. Order XXXIV itself has fixed a particular period within which the defendants shall pay the amount determined to the plaintiff. The decree should specifically refer to the time and direct the defendant to pay the amount determined within such period. The payment of money in instalments is beyond the scope of Order XXXIV, Rule 5. A decree under Order XXXIV, Rule 3 is not a decree for payment of money, but it is a decree for recovery of money by sale of the mortgaged property. Such a decree which is passed in conformity with the provisions of Order XXXIV must be regarded as a decree passed on a mortgage and not a decree for money simpliciter. Therefore, the provisions of Order XX, Rule 11, C.P.C. cannot enable the benefit of instalment by passing a decree for enforcing a mortgage. We are in

respectful agreement with the decisions of the Division Bench reported in Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others, , United Bank of India Vs. The New Glencoe Tea Co. Ltd., ; and State Bank of India Vs. Neeru Plastics Works and Others, The decision of the Supreme Court in Babulal Nagar and Others Vs. Shree Synthetics Ltd. and Others, relied on by the learned counsel for the respondents deals with an entirely different situation and the applicability of Order XX, Rule 11, C.P.C. has never been an issue there.

9. For the aforesaid reasons, the appeal succeeds and is allowed, and the judgment and decree of the trial Court are set aside in so far as they direct payment of the decree amount in instalments. In the circumstances of the case, there will be no order as to costs.

