(1990) 08 KL CK 0039

In the High Court Of Kerala

Case No : A.S. No. 241 of 1984

Y. Jameela Beevi and Another — APPELLANT

Vs

State Bank of Travancore — RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 21A
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 34

Citation : (1990) 2 KLJ 553

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : N. Viswanatha Iyer, for the Appellant; M. Pathrose Mathai and Joseph Vellappally, for the Respondent

Final Decision : Dismissed

Judgement

S. Padmanabhan, J.—One of the questions raised in this appeal filed by the defendants against a decree for realisation of money charged on immovable properties is that a decree for sale of all the properties is not necessary because the amount could be realised from some of the items alone. That is implied in the decree itself. How much of the properties will be necessary or sufficient to satisfy the decree could be considered in execution. So much of the properties sufficient to satisfy the claim alone will be sold.

2. The other question is regarding rate of interest. The award of interest u/s 34 of the CPC after the date of suit is entirely in the discretion of the court though the discretion has to be exercised on sound judicial principles. But, what is contained in Section 34 is the general provision regarding award of interest. It is trite law that a general provision applicable to general situations must give way to special provisions applicable to special situations when such situations are under consideration. What is contained in Order 34, Rule 11 of the CPC regarding award of interest is a special provision applicable to decrees passed in suits for foreclosure, sale or redemption. When such a decree is passed, the special

provision must prevail over the general provision contained in Section 34 as stated in Nafeesumnia v. Indian Overseas Bank [1974] KLT 853.

3. The only other question is whether the trial court was justified in awarding 16 per cent. interest or whether 11 per cent. alone ought to have been allowed. The loan was availed of on the basis of a packing credit facility granted for the purpose of enabling export of cashewnuts. The agreements provided that, if export is made within 180 days of availing of the loan, the rate of interest will be only 11 per cent. and, if the time is exceeded, the normal rate of 16 per cent. interest must be paid. The agreement is binding on the parties and it will have to be enforced so long as it is not opposed to law or does not operate as penalty which the court is bound to prevent in the interest of justice. No such contingency has arisen in this case. Eleven per cent. is a concessional rate and 16 per cent. is the normal rate. Both sides agreed that the concession is available only if export is made within 180 days and, if that limit is exceeded, the normal rate of 16 per cent. interest must be paid.

4. The object and purpose of the concession is to promote export in order to earn foreign exchange for the country by preventing the possible misuse of the money by diversion. Concessions in the matter of interest are given in obedience to circulars issued by the Reserve Bank of India from time to time. There may be possibilities of exporters availing of loans and entering into transactions other than export by which the export may be delayed. Circulars directing concessional rate of interest apply only in cases where export is within 180 days. In other cases, there is the authorisation to levy the normal rate of 16 per cent.

5. u/s 21 of the Banking Regulation Act, 1949, the Reserve Bank has got the power to control advances to be made by banking companies. When the Reserve Bank is satisfied that it is necessary or expedient in public interest or banking policy so to do, it can determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular. Banking companies are bound to follow the policy so determined. The Reserve Bank has also the power to give directions as to the rate of interest and other terms and conditions on which advances or other financial accommodations may be made or guarantees given. Every banking company shall be bound to comply with any direction given to it by the Reserve Bank u/s 21. The circulars issued by the Reserve Bank of India regulating the rate of interest chargeable on loans and the manner of charging interest are statutory circulars issued with a laudable purpose and are binding on the banks (Venkiteswara Rice Mill v. Union Bank of India [1988] 63 Comp Cas 483 and Thampan v. Dhanalakshmi Bank Ltd. [1989] 2 KLT 840 ; [1992] 73 Comp Cas 600 Section 21A of the Banking Regulation Act provides that the rates of interest charged by banking companies, accordingly, shall not be subjected to scrutiny by courts.

6. Appellants say that they were not able to export cashew kernels within 180 days because (1) the police registered a case against them and seized the stock of cashewnuts, and (2) the respondent also took custody of the stock and

stopped the key loan facility, since another exporter committed some fraud. These are matters on which there is absolutely no evidence. Therefore, a request for remand was made for adducing evidence. But the fact is that, though the case was posted several times for evidence, they did not want to adduce evidence and desired the matter only to be heard. If so, the request is not justified.

7. The appeal is dismissed without costs.

