

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2014
Delivered on : 23.12.2014

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.19864 of 2014

&

M.P.No.1 of 2014

1.M/s.S.S.P.Polymers,
Rep. By its Partner
S.Ponnusamy,
2/198 C.Mudalipalayam Pirivu,
Muthugoundenpudur Post,
Coimbatore - 641 406.

2.S.Ponnusamy

3.S.Senniappan Petitioners

Vs.

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Senior Branch Manager,
Punjab National Bank,
Cross Cut Road branch,
No.1035, Cross Cut Road,
Gandhipuram,
Coimbatore - 641 012.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records relating to the order dated 15.07.2014 passed in R.A.No.65 of 2012 on the file of the first respondent and quash the same.

For Petitioners : Mr.S.Saravanan

For Respondents : Mr.V.Girish Kumar for R2

ORDER

P.R.SHIVAKUMAR, J.

This writ petition has been filed for a Writ of Certiorari to quash the order of the Debts Recovery Appellate Tribunal, Chennai dated 15.07.2014 made in R.A.No.65 of 2012 on the file of the first respondent.

2. The first petitioner M/s. S.P.Polymers is a partnership firm of which petitioners 2 and 3 are partners. They availed term loan, cash credit facility and cheque discount facility with Nedungadi Bank Limited, Gandhipuram branch, Cross Cut Road, Coimbatore. K.Senniappan, the father of petitioners 2 and 3 stood as a guarantor and he created an equitable mortgage by deposit of title deeds.

3. Due to the default committed in repayment of loan and regularizing the loan account, the creditor bank, namely Nedungadi Bank Limited, filed an application O.A.No.96 of 2002 under Section 19 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 on the file of Debts Recovery Tribunal, Coimbatore for recovery of a sum of Rs.12,80,645.25 with further interest from the date of application and costs.

4. After the filing of the Original Application, the original applicant bank, namely Nedungadi Bank Limited got amalgamated with Punjab National Bank as per the scheme of amalgamation framed in the year 2002 which was confirmed by the Ministry of Finance and Company Affairs Department of Economic Affairs (Banking Division) by notification dated 01.02.2003. By virtue of the scheme of amalgamation, the Punjab National Bank took over the assets and liabilities of Nedungadi Bank Limited. Accordingly, pursuant to a memo filed by the Punjab National Bank on 27.03.2003 which was not opposed, the original application was amended by substituting Punjab National Bank for Nedungadi Bank Limited in June 2003. After Punjab National Bank came into the picture as the applicant in the Original Application, the writ petitioners approached the Bank with a proposal for one time settlement. A consensus was arrived at and the Bank agreed to receive a sum of Rs.16 Lakhs in full quit as one time settlement. Such a settlement was reported to the Debts Recovery Tribunal on 27.04.2007. As per the one time settlement offer, the Bank agreed to receive Rs.16 Lakhs in full quit of its claim, provided the said amount was paid on or before 14.05.2007. Pursuant to the one time settlement offer, the writ petitioners paid only a sum of Rs.2,50,796/- before the expiry of the date for making payment under the one time settlement offer. Since the balance amount was not paid within the time stipulated for one time settlement, the said proposal stood cancelled. However, subsequently six more payments were made, the details of which are as under:

Date	Amount (in Rs.)
20.06.2007	40,000/-
24.12.2007	1,00,000/-
13.03.2008	1,10,000/-
21.04.2008	1,00,000/-
25.05.2009	5,00,000/-
29.12.2009	50,000/-

Total	9,00,000/-

5. Thus, after the filing of the Original Application, the writ petitioners had paid a total sum of Rs.11,50,976/- till 29.12.2009. Thereafter, no payment was made. Meanwhile, the Bank initiated SARFAESI proceedings by issuing a notice under Section 13(2) of the SARFAESI Act followed by Section 13(4) notice. As no amount was paid pursuant to the issue of the said notice, auction sale notice was issued on 24.04.2009 and the same was challenged before the Debts Recovery Tribunal, Coimbatore under Section 17 (1) of the SARFAESI Act in S.A.No.61 of 2009. The property was sold in public auction on 26.07.2010 for a sum of Rs.31.05 lakhs.

6. As against the sale notice and the auction sale, parallel proceedings were conducted in S.A.No.61 of 2009. S.A.No.61 of 2009 came to be dismissed when the writ petitioners failed to comply with the conditional order directing them to deposit Rs.10 lakhs by an order dated 15.05.2009. Again, taking note of the fact that, after the creation of mortgage in favour of the first respondent Bank, the writ petitioners obtained a settlement deed from their father K.Senniappan and on the basis of the settlement deed created a mortgage in respect of the very same property in favour of Indian Overseas Bank and obtained a loan and the further fact that the writ petitioners were not able to state how much was still outstanding to be paid to the Indian Overseas Bank, the Debts Recovery Tribunal, Coimbatore directed the writ petitioners to show their bonafide by depositing a sum of Rs.48.50 Lakhs with further simple interest at the rate of 12% per annum from the date of the said order within 15 days thereafter by order dated 14.03.2012. Since the said condition was not complied with, S.A.No.61 of 2009 came to be dismissed by order dated 04.04.2012. We are not concerned with the said order in this writ petition since the same was made the subject of challenge in W.P.No.19865 of 2014, which came to be disposed of by order dated 27.10.2014.

7. The parallel proceedings initiated by the Bank by filing original application O.A.No.96 of 2012 for recovery of the amount due to the first respondent Bank was continued and the said original application came to be disposed of by the Debts Recovery Tribunal, Coimbatore quantifying the liability of the writ petitioners towards

the first respondent bank at Rs.12,80,645.25 as on the date of filing of the Original Application and awarding future interest at the rate of 14% (simple interest) calculated on reduced balance. The Debts Recovery Tribunal also awarded a sum of Rs.35,000/- as costs and issued a Recovery Certificate to the said effect. The above said order of the Debts Recovery Tribunal was made on 19.04.2012.

8. As against the said order quantifying the liability as on the date of filling of the original application, awarding subsequent interest at the rate of 14% (simple) on reduced balance and imposing a cost of Rs.35,000/-, the writ petitioners did not file any appeal. On the other hand, the creditor bank, namely the first respondent Bank alone chose to file an appeal before the Debt Recovery Appellate Tribunal, Chennai in R.A.No.65 of 2012 (against the order made in O.A.No.96 of 2012) under Section 20 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993, challenging the order of the Debts Recovery Tribunal insofar as the future interest had been awarded at the rate of 14% (simple) p.a, as against 20% p.a compound interest with quarterly rests claimed by the Bank. The Debts Recovery Appellate Tribunal, by its brief order dated 15.07.2014, allowed the appeal holding that the first respondent Bank was entitled to the subsequent interest as claimed in the Original Application, namely compound interest at the rate of 20% per annum with quarterly rests. The said order of Debts Recovery Appellate Tribunal is challenged in the present writ petition.

9. The arguments advanced by Mr. S.Saravanan, learned counsel for the writ petitioners and by Mr.Girish Kumar, learned for the second respondent were heard and the materials available on record were also perused. We paid our anxious consideration to the same.

10. There is no controversy over the claim of the first respondent Bank that the amount due from the writ petitioners as on the date of filing of the original application was Rs.12,80,645.25. Contending that the credit facilities extended by the Bank consists of three parts, viz. Term Loan, Over Draft Facilities and Cheque Discount Facilities, for which agreed rates of interest respectively were minimum of 19.89%, 19.89% and 21.42% compounded with quarterly rests, subject to revision in accordance with RBI guidelines, the first respondent Bank had claimed future compound interest from the date of filing of the Original Application at the rate of 20% per annum with quarterly rests. The Debts Recovery Tribunal, while upholding the claim for a sum of Rs.12,80,645.25 as the amount due as on the date of filing of the Original Application, applied the Principle embodied in Section 34 of the Code of Civil Procedure regarding payment of pendente lite and post decree interest (without expressly stating so) and awarded simple interest at the rate of 14% per annum from the date of filing of the Original Application till the date of payment or date of recovery. Without discussing the

principles governing award of pendente lite and post decree interest and without assigning any other reason, the Debts Recovery Appellate Tribunal chose to enhance the rate of interest awarded by the Debts Recovery Tribunal for the period starting from the date of filing of the Original Application, from 14% Simple Interest to 20% compound interest with quarterly rests, simply holding that the same was the contractual rate of interest.

11. The learned counsel for the petitioners drew the attention of the Court to the Judgment of the Hon'ble Supreme Court in C.K.Sasankan Vs. The Dhanalakshmi Bank Ltd., reported in 2009 (2) CTC 381 and argued that award of contractual interest or the rate of interest as claimed by the bank, without considering the principles governing the award of interest pending suit/original application and subsequent to the passing of the decree/ recovery order, shall be failure to exercise the discretion vested in the Court/Tribunal.

12. The learned counsel for the first respondent Bank, on the other hand, supporting the order of the Debts Recovery Appellate Tribunal, contended that the Debts Recovery Appellate Tribunal was justified in granting interest from the date of filing of the suit/O.A. till payment/recovery at the rate of 20% per annum compounded with quarterly rests, since the said rate of interest was the average of the contractual rates of interest applicable to the three types of loan facilities extended to the writ petitioners. According to bank, the rate of interest applicable to Cheque Discount Facility was reduced to 20% from 21.45% whereas in respect of the other two heads of credit facilities, it was a little more than the contractual interest, namely an increase from 19.89% to 20%.

13. Though the said contention of the learned counsel for the first respondent Bank would seem to be logically tenable, we are not persuaded to accept the said contention of the learned counsel for the first respondent Bank in the light of the judgment of the Hon'ble Supreme cited supra and relied on by the learned counsel for the writ petitioners. In the case before the Supreme Court, the Debts Recovery Tribunal awarded interest from the date of filing of the proceedings till the date of judgment at the rate of 25% per annum compounded with quarterly rests and post decree interest from the date of judgment till realization at the rate of 19.4% (simple interest). Though the award of pendente lite interest and post decree interest came to be confirmed by the Debts Recovery Appellate Tribunal as well as a Division Bench of this Court, on a further appeal to the Supreme Court, the Hon'ble Supreme Court held that even in respect of the claim by Banks and Financial Institutions, the pendente lite interest and post decree interest should be reasonable and that the same should not be exorbitant and contrary to the principles embodied in Section 34 of the Code of Civil Procedure.

14. After extracting Section 34 of the Code of Civil Procedure, the Hon'ble Supreme Court made the following observations:

"8. The quantum and rate of interest which the appellant in the present case is entitled to would be in accordance with the provisions of Section 34 of the Code. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and thereafter till realisation is in the discretion of the court as is confirmed by the use of the word 'may' but such discretion has to be exercised by the court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the court is also to consider the parameter, scope and ambit of Section 34 of Code."

The Hon'ble Supreme Court ultimately awarded pendente lite and future interest at the rate of 9% per annum by making the following observations:

" 10. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable."

15. It is true that Section 22 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 states that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. If we apply the above said principle enunciated in the judgment of the Supreme Court C.K.Sasankan Vs. The Dhanalakshmi Bank Ltd., reported in 2009 (2) CTC 381, cited supra to the effect that though the Tribunal and the appellate Tribunal shall not be bound to follow the procedure prescribed in the Code of Civil Procedure, broad principles embodied in Section 34 of the Code regarding award of future interest shall be the guiding factors for fixing the rate of pendente lite and future interest, we have to hold that the discretion to award reasonable interest is retained by stipulating that they should be guided by the principles of natural justice. By interpreting the said provision alone, the Hon'ble Supreme Court held that the principles embodied in Section 34 of the Civil Procedure Code spelling out a judicial discretion vested with the Court to award reasonable interest from the date of filing of the proceedings till the date of judgment and from the date of judgment till the date of realization should be applied and that in case of failure to exercise the discretion or improper exercise of such discretion, this Court under Article 226 of

the Constitution of India could interfere with the same and rectify the same.

16. The first respondent bank, which chose to make a claim of future interest at the rate of 20% per annum compounded with quarterly rests, did not come forward with any explanation as to how the rate of interest was reduced for one type of credit facility and increased for two other types of credit facilities from the contractual rates. In support of such a claim, the first respondent Bank has not produced any document containing guidelines of the Reserve Bank of India regarding the levy of interest in respect of a particular type of credit facility. Even in case of such production, it shall be the outer limit and the Court's/Tribunal's discretion to award reasonable interest during the pendency of the proceedings and after the judgment subject to such outer limit, in appropriate cases, cannot be ruled out.

17. In the light of the above facts and circumstances of the case on hand, the Debts Recovery Tribunal properly exercised its discretion in awarding pendente lite and post decree interest at the rate of 14% per annum (simple). Strong reasons should be assigned to interfere with such an exercise of discretion. We do not find any justification for the Debts Recovery Appellate Tribunal's interference with the same and awarding pendente lite and post decree interest at the rate of 20% p.a compounded with quarterly rests. Hence, we are of the firm view that the rate of interest from the date of filing of the Original Application till realization at 14% per annum (simple) fixed by the Tribunal is quite reasonable and it was done in proper exercise of judicial discretion of the Tribunal and that the interference made by the Debts Recovery Appellate Tribunal is quite unwarranted and the same deserves disapproval of this Court.

18. In the result, this writ petition is allowed and the order of the Debts Recovery Appellate Tribunal dated 15.07.2014 made in R.A.No.65 of 2012 is set aside. The order of the Debts Recovery Tribunal shall stand restored and confirmed in all respects including the rate of interest for the period from the date of filing of the OA till payment or realisation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

gpa

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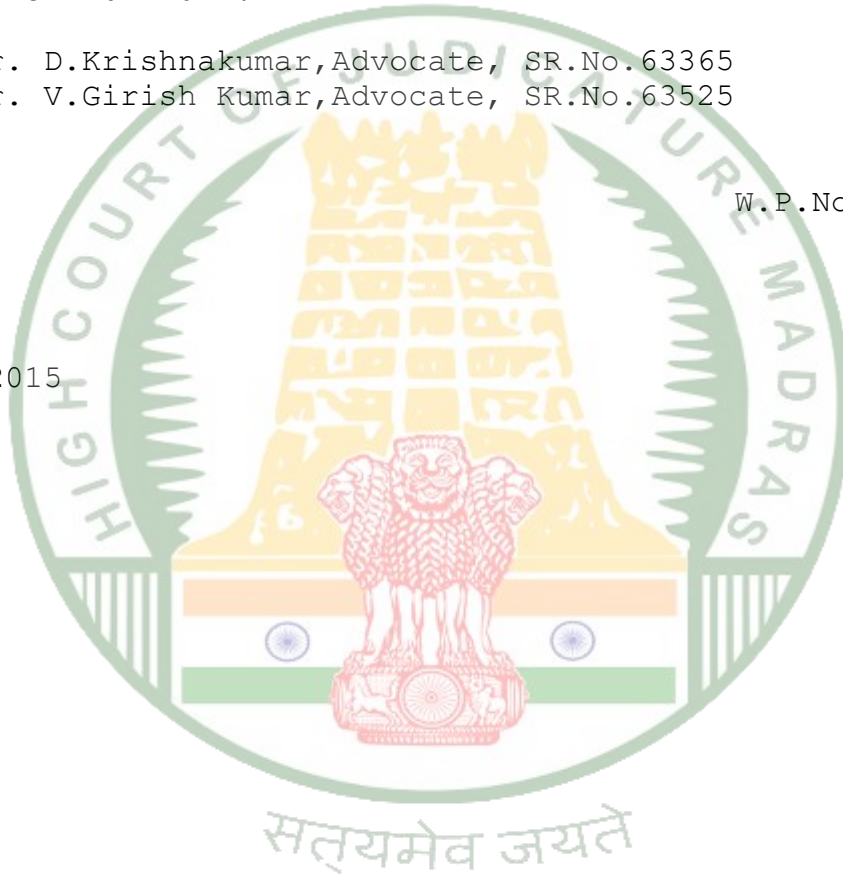
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1 cc to Mr. D.Krishnakumar, Advocate, SR.No.63365
1 cc to Mr. V.Girish Kumar, Advocate, SR.No.63525

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