IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.616 of 1980

Against the judgment and decree dated 05.05.1980 passed in Mortgage Suit No.82 of 1978 by 1st Sub-Judge at Chapra.

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State Bank of India, a bank constituted under the State Bank of India Act, 1955 having it central office at Bombay a local Head Office at Patna and one of its branches at Chapra known as the Chapra Bazar Branch, P.S. Town Chapra Perg. Manjhi, P.O. Chapra, District-Saran.

.... Plaintiff-Appellant/s

Versus

1. Nag Narain Singh son of Baldeo Singh
2. Jagarnath Singh, son of Sri Nagnarain Singh both by profession cultivation of village Anjani Phulwaria, P.S. Parsa- District Saran at present residing at Garkha Road, Mohalla- Gandhi Chouk of Chapra, Perg. Manjhi, P.S. Town Chapra, District-Saran.

.... Defendants-Respondent/s

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Appearance :
For the Appellant/s : None

For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date: 20-02-2015

The plaintiff, in Title Suit No. 82 of 1978, on the file of 1st Sub Judge, at Chapra, filed this appeal.

The facts in brief are that the respondents borrowed certain amount from the appellant and mortgaged an immovable property as a security for repayment thereof. Since the repayment was not made as per the terms of loan, the appellant filed the suit for foreclosure of the mortgage. After contest of the parties, the trial Court passed the preliminary decree dated 5.5.1980 for a sum of Rs.32855.25 with interest at the rate of 6% from 6.8.1980 on Rs.19600 till the date of realization.

The appellant felt aggrieved by the denial of the contractual rate of interest by the trial Court. Hence, the appellant filed this appeal.

There is no representation for the appellant or the respondents.

It transpires that there existed a transaction of mortgage between the parties and the deed of mortgage, has also stipulated the rate of interest. The trial court, however, took into account, the fact that repayment of borrowed amount is adequately assured and, accordingly, awarded interest as per Section 34 of the Code of Civil Procedure. The occasion to award contractual rate of interest over and above what is mentioned under Section 34 of the C.P.C. would arise if only there exists an element of risk in repayment. Once the borrower of amount executed deed of mortgage, the lender or the mortgagee cannot insist on payment of contractual rate of interest. The trial Court has taken correct view of the matter. This Court does not find any basis to interfere with the preliminary decree.

The appeal is, therefore, dismissed. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

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