IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12 – 12 – 2014

Judgment Delivered on : 03 – 03 – 2015

Coram:

THE HON'BLE MRS. JUSTICE **PUSHPA SATHYANARAYANA**

C. S. No. 555 of 2009

The Purasawakum Permanent Fund Ltd.
Rep. by its Administrative Director
No. 173 Vellala Street
Purasawalkam, Chennai – 84 ... Plaintiff

-Vs-

1. P. Lakshmi
2. P. Janaki ... Defendants

Plaint filed under O. IV R.1 of O.S. Rules r/w O. VII R.1 CPC.

For Plaintiff : Mr. M.A. Lakshmipathi

For Defendants : Set *ex parte*

J U D G M E N T

The Purasawakum Permanent Fund Limited, a Nidhi Company registered under the Indian Companies Act, 1956, has filed the suit for direction to the defendants to pay them jointly and severally a sum of Rs. 32,73,428.65 together with interest at 24% p.a. from the date of plaint till the date of realisation, in default, to order for sale of the schedule mentioned property and proceed latter defraying the expenses of the sale applied towards the payment of the said principal, interest, penal interest, interest tax and for costs.

2. The case of the plaintiff, a finance Company, recognised by the Reserve Bank of India and the Department of Company Affairs, as narrated in the plaint, is as follows:-

(a) The plaintiff is in the business of accepting deposits from its members and is having business transaction of lending the same to its members on security of immovable property and jewels.

(b) In pursuant to the application for mortgage loan made by the first defendant on 01.11.1997 in respect of an immovable property bearing Door No. 62, S.P. Koil 2nd Street, Thiruvottiyur, Chennai – 19, the plaintiff sanctioned her a sum of Rs. 5 Lakhs after obtaining a registered Mortgage Deed dated 16.12.1997 registered as Document No. 4634 of 1997 in SRO, Thiruvottiyur, to be repaid in 99 equal monthly instalments at the rate of Rs.11,000/- per month, along with interest at 22% p.a., in TSL Account No. 5827. As per the resolution of the Board, the interest was raised to 24% p.a. from November 2000 onwards. The second defendant, who is the sister of the first defendant, was also joined in the execution of the mortgage deed.

(c) Since the defendants committed default in payment of the loan amount inspite of repeated demands, the plaintiff caused lawyer's notice dated 08.09.2004 calling upon them to pay a sum of Rs.15,11,481.70 due as on 31.8.2004 within three months from the date of receipt of the notice. Though the second defendant did not acknowledge the notice and it was returned with an endorsement “not found”, the first defendant, after the receipt of the notice, requested for three months time to discharge the loan.

(d) Since the first defendant failed to discharge the loan as promised, the plaintiff caused final notice dated 18.10.2005 calling upon the defendants to pay a sum of Rs.17,43,343.70 due as on that date. Despite acknowledgement of the said notice, the defendants have not settled the account and hence, another notice came to be issued by Registered Post on 15.12.2008 calling upon them to pay a sum of Rs.31,22,336.25 due in respect of the mortgage loan as on 31.12.2008. Since the said notice was returned by the defendants ”As refused”, the plaintiff filed the suit for recovery of the amount due as on 31.3.2009.

3. From the papers placed before this Court, it is seen that though the defendants had been served in the suit as early as on 10.9.2009, no one entered appearance nor they appeared in person. Thereafter, the matter was posted under the caption "Undefended Board" for filing written statement by the defendants and as there was no representation for the defendants and no written statement was also filed, they were set *ex parte* by this Court on 21.07.2014.

4. One G. Mohan, Manager of the plaintiff Company filed proof affidavit and he was examined as P.W.1. In the *Ex parte* Evidence, P.W.1 marked the following documents as Exs. P.1 to P.12 as documentary evidence in order to prove the suit claim:-

Sl. No.	***Exhibits***	***Date***	***Description of documents***
1.	P.1	23.12.2009	Attested true copy of Board resolution
2.	P.2	11.08.2014	Original authorisation letter issued by the plaintiff
3.	P.3	01.11.1997	Original loan application of the defendants
4.	P.4	16.12.1997	Original mortgage deed executed by the defendants in favour of the plaintiff
5.	P.5	08.09.2004	Copy of the legal notice sent by the plaintiff through the plaintiff's counsel to the defendant
6.	P.6		Original acknowledgement card for service of Ex. P.5 to the 2nd defendant
7.	P.7		Returned cover with acknowledgement card addressed to the 1st defendant

8.	P.8	15.12.2008	Copy of legal notice sent by the plaintiff through the plaintiff's counsel to the defendants
9.	P.9		Returned cover addressed to the 1st defendant
10.	P.10		Returned cover addressed to the 2nd defendant
11.	P.11		Original statement of accounts for the period from December 1997 to June 2009
12.	P.12	21.04.2009	Original encumbrance certificate

5. Heard the learned counsel appearing for the plaintiff and perused the records.

6. The only question that has to be decided by this Court is whether the plaintiff is entitled to a decree as prayed for.

7. Learned counsel appearing for the plaintiff contended that at the time obtaining the loan of Rs. 5,00,000/-, the defendants executed a mortgage deed dated 16.12.1997 in favour of the plaintiff company respect of their property at Thiruvottiyur, as per which they agreed to repay the loan together with interest at 22% per annum in 99 monthly instalments at the rate of Rs.11,000/- per month. He further submitted that as per the resolution of the Board of Directors, the interest rates on unpaid instalments was increased to 24% per

annum from November 2000 onwards. It is his further contention that though the first defendant requested the plaintiff's Directors for time to discharge the loan as per the lawyer's notice dated 08.9.2004, she has not discharged the same. If the borrowers fail to pay monthly instalments regularly, according to him, the plaintiff will not be in a position to pay interest to its depositors every month and the matured amount to the depositors on their respective due dates. Therefore, he sought for interest at 24% p.a. for the unpaid instalments.

8. In order to appreciate the aforesaid contention, this Court is required to consider the scope and ambit of Section 34 of the Civil Procedure Code which provides for the grant of rate at which moneys are lent or advanced. Since the same gets attracted in the instant case, the provisions of Section 34 of the Code are reproduced hereinbelow :

> *"3**4. Interest** - (1) Where and in so far as a decree is for the payment of money, 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 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, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

9. The quantum and rate of interest which the plaintiff 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.

10. a. Insofar as the awarding of interest tax is concerned, it is pertinent to point out that the rate of interest tax at 3% was reduced to 2% per annum from 01.4.1997 and it was abolished after 31.3.2000.

aa. It is, no doubt, true that irrespective of the fact that whether the defendants pay interest tax or not, the plaintiff has to remit the same to the Central Government regularly.

aaa. Hence the claim of the plaintiff on the recovery of interest tax is sustainable.

11. From the materials available on record, it is also seen that though the first defendant received the legal notices dated 08.9.2004, 18.10.2005 and 15.12.2008, she has not taken any steps to discharge the mortgage loan. As such, it is clear that the defendants have caused considerable loss to the plaintiff inspite of repeated demands. In view of the fact that the defendants have failed to discharge the loan and considering the public interest involved in this case, I am of the view that the suit is to be decreed.

12. It would not be out of place to point out at this point of time that the Hon'ble Apex Court as well as this Court, in a catena of decisions, have discussed the aforesaid scope and ambit of Section 34 of the Code. It has been repeatedly held that interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It has also been observed time and again, that in ascertaining the rate of interest, the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-

made laws.

13. Having regard to the facts and circumstances of the case and taking into consideration the settled legal principles and also the provisions of law, this Court is of the considered view that interest prayed for at 24% is exorbitant and interest of justice would be sub-served, if the rate of interest is fixed at 6% per annum.

In the result, the suit is decreed with costs and the rate of interest is directed at 6% per annum from the date of plaint till the date of realisation within a period of six months.

03 – 03 – 2015

Index : Yes

Website : Yes

gri/mvs.

List of Witnesses Examined on the side of the Plaintiff:-

P.W.1 – Mr. G. Mohan

List of Exhibits Marked on the side of the Plaintiff:-

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List of Witnesses Examined on the side of the Defendnats:-

Nil

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Nil

PUSHPA SATHYANARAYANA, J.

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Pre-Delivery Judgment in

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