HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.139 of 1997

JUDGMENT:

The defendants in O.S.No.284 of 1994 on the file of II Additional Subordinate Judge, Visakhapatnam preferred this appeal challenging the decree and judgment
dated 20-12-1996, whereunder the defendants were directed to pay Rs.2,54,022-12 ps together with subsequent
interest @ 18% per annum from the date of suit till the date of realization.

For convenience of reference, the rank given to the parties in O.S.No.284 of 1994 by the II Additional Subordinate Judge, Visakhapatnam will be adopted throughout the judgment.

The plaintiffs filed suit for recovery of Rs.2,54,022-12 ps together with interest alleging that the defendant is a builder and promoter of apartments in the city of Visakhapatnam and the defendant purchased a flat in the apartment by name Sindhu Villa Apartment and booked a plot for Rs.4.51 lakhs, subject to approval by the proprietor and paid Rs.20,000/- by way of Demand Draft drawn on Canara Bank, Suryabagh, Visakhapatnam initially and later paid Rs.2,80,000/- by demand draft dated 12-01-1993 bearing No.0114061 drawn on bank of Maharashtra towards part of the consideration and receipt of the same was acknowledged by the defendant on 19-01-1993. Thus the plaintiffs in all paid Rs.3.00 lakhs by 16-01-1993 towards part of sale consideration for Flat No.2. Since the present transaction was entered into subject to the approval of the Proprietor of the firm and as he was out of station at the time of taking amount, the receipts were issued treating the same as hand loan, although the same was paid towards part of sale consideration.

Subsequently the representatives of the defendant intimated that the cost of the Flat was increased to Rs.5.00 lakhs and demanded interest @ 2% per annum per hundred due to belated booking payment, but these conditions were not agreeable to the plaintiffs. Therefore, the plaintiffs withdrew their offer and demanded for repayment of
Rs.3.00 lakhs. Thereafter, the defendant reduced the cost of the Flat to Rs.4.08 lakhs and the plaintiffs did not agree even for the revised offer. Therefore, the oral agreement between the plaintiffs and defendants came to an end.

Subsequently, father of first plaintiff who was looking after the affairs of plaintiffs demanded for repayment of the amount and thereupon the defendant addressed several letters promising to repay the amount. But failed to do so. The plaintiffs issued telegram on 9th and 12th July, 1993 and also sent a letter dated 20-07-1993 by registered post demanding payment of the amount. Thereupon, the defendant paid one lakh in the month of May, 1993. The balance of Rs.2.00 lakhs remained unpaid. Hence, the plaintiffs claimed refund of Rs.2.00 lakhs together with interest @ 18% per annum from the date of transaction till realization.

The defendant admitted about the loan transaction under the receipts marked, but pleaded that he paid amount of Rs.1.00 lakh on 10-05-1993 while promising to pay the balance and admitted his liability to pay balance of Rs.2.00 lakhs and agreed to pay within a reasonable time. The defendant denied the letters and other correspondence.

Finally, it is contended that the interest claimed by the plaintiff is excessive and prayed to pass decree for the balance of the amount without interest.

On the strength of above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled to claim interest at 18% p.a. as the transaction in question is not a commercial one?

2. To what relief?

During the course of trial, On behalf of plaintiffs, PWs 1 and 2 were examined and marked Exs.A-1 to A-15. On behalf of the defendants, no evidence is adduced.

Upon hearing both the counsel, the trial Court passed the decree for refund of amount together with interest at 18% per annum till realization.

Aggrieved by the judgment and decree, the defendant filed the present appeal challenging the rate of interest only.

The learned counsel for the plaintiffs would contend that the document marked as Exs. A-2 and A-3 are only receipts, but not negotiable instruments as defined under Section 4 of the Negotiable Instruments Act (for short 'the Act'). Therefore, Section 80 of the Act would not apply to the present transaction. Hence, the rate of interest granted by the trial Court at 18% per annum from the date of suit till realization is erroneous and prayed to set aside the finding so far it relates to the interest.

None appeared for the respondents.

Considering the contentions of plaintiffs and the counsel for the appellant, oral and documentary evidence and perusing the impugned decree and the judgment, the sole point arises for consideration is:

“Whether the defendant is liable to pay interest? If so, at what rate?

Undisputedly, the defendant received Rs.3 lakhs, whether under agreement of sale or as hand loan. But the trial Court held that it is only hand loan. Even the plaintiffs also admitted in the plaint that the representatives of the defendant issued letters acknowledging the receipt of
hand-loan of Rs.3.00 lakhs. This finding is not challenged in this appeal either by the plaintiffs or defendant. Therefore, in this appeal, it is unnecessary for me to decide the nature of transaction.

The only dispute is with regard to the rate of interest. Exs.A-2 and A-3 did not contain any conditions for payment of interest. As admitted by both the parties, the defendant received Rs.3.00 lakhs and repaid Rs.1.00 lakh on 10-05-1993. Even in the absence of any agreement for payment of interest, the transaction is governed by the Interest Act, 1978. According to Section 3 of the Act, the plaintiffs are entitled to claim interest not exceeding the current rate of interest. Undisputedly, the transaction is between the proposed purchaser of the plot and builder and it can be treated as a commercial transaction. But no material is placed before this Court what was the current rate of interest prevailing in the market by the date of transaction or to prove trade practice or usage. In the absence of any material before this Court regarding the prevailing rate of interest, I

find that it is appropriate to grant interest at bank lending rate on personal loans, which is between 12 to 14%. Therefore treating the transaction as hand loan, interest at the rate of 12% is granted from the date of transaction till
10-05-1993 on Rs.3.00 lakhs and subsequently on Rs.2.00 lakhs till the date of suit.

The rate of interest from the date of suit is governed by Section 34 of CPC, which says that the rate of interest from the date of suit till the date of realization to be granted reasonably on the principal sum due. But further interest shall not exceed 6% per annum from the date of decree till the date of payment. Keeping in mind Section 34 of C.P.C.,
I am of the considered view that grant of interest at the rate of 12% per annum from the date of suit till the date of decree, at the rate of 6% per annum from the date of decree till realization is just and proper. The finding of the trial Court that the plaintiffs are entitled to interest at 18% per annum in view of Section 80 of the Act is erroneous on the face of it,
for the reason that Exs.A-2 and A-3 are not negotiable instruments. Therefore, the finding of the trial Court granting interest at 18% per annum by applying Section 80 of the Act is hereby set aside.

In view of my foregoing discussion, I hold that the plaintiffs are entitled to recover the suit amount together with interest at the rate of 12% per annum from the date of suit till the date of decree, subsequent interest at the rate 6% per annum from the date of decree till the date of realization.

In the result, the Appeal is allowed in part. In consequence, Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 06-03-2015

nvl

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.C.C.A.No. 165 of 1997

Date. 23-01-2015

nvl