HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No.123 OF 2015

JUDGMENT :

This appeal is preferred by the defendant against the decree and judgment dated 19.09.2014 passed in O.S.No.553 of 2011 by the II Additional Senior Civil Judge, Warangal, awarding rate of interest.

2. For convenience, the parties are hereinafter referred to as plaintiff and defendant.

3. The plaintiff filed the suit for recovery of Rs.8,67,000/- together with subsequent interest @ 6% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of realisation based on a registered mortgage deed. Since the defendant failed to pay the interest on the principal amount, the plaintiff got issued a legal notice dated 13.01.2011 demanding payment of debt due. On receipt of notice, the defendant got issued reply notice on 08.07.2011 denying his liability to pay the said amount. Hence, the plaintiff filed the suit.

4. The defendant filed written statement admitting borrowing of Rs.2,00,000/- from the plaintiff to meet his family expenses and agreed to pay interest at 3% per annum and execution of simple mortgage deed. It is further contended that there was no stipulated period of 18 months for repayment of the debt due and denied his liability to pay interest @ 3% per month.

5. Basing on the pleadings, the trial Court framed the following issues:

1) Whether the plaintiff is entitled to recover the suit claimed

amount from the defendants?

2) To what relief

6. During the course of trial, on behalf of the plaintiff, PWs.1 and 2 were examined and marked Exs.A.1 to A.5. None were examined on behalf of the defendant and no documents were marked.

7. Upon hearing the learned counsel for both the parties and considering the oral and documentary evidence on record, the trial Court decreed the suit with costs for Rs.8,67,000/- together with interest @ 6% per annum on principal sum of Rs.2,00,000/- from the date of suit till the date of realization.

8. The defendant, disputing the rate of interest, filed the present appeal raising several contentions and one of the contentions is that the rate of interest agreed under Ex.A.1 is only 3% per annum and not 3% per month, but, the trial Court on erroneous appreciation of law, awarded interest at 3% per month and therefore, prayed to set aside the finding with regard to the rate of interest.

9. During the course of arguments, learned counsel for the appellant/defendant would submit that in condition No.4 of para 4 at page 4 of the Mortgage Deed, dated 18.04.2002, the defendant agreed to pay interest @ 3% per annum only and not 3% per month on the principal amount of Rs.2,00,000/-. But, the trial Court granted interest at 3% per month instead of 3% per annum and whatever evidence adduced regarding rate of interest is not admissible in evidence in view of Section 92 of the Indian Evidence Act and prayed to set aside the finding recorded with regard to grant of interest.

10. Learned counsel for the respondent/plaintiff contended that in both the pleadings and evidence there is an admission to pay interest at 3% per month by the defendant. On the strength of the admission, the trial Court awarded interest at 3% per month, as the

said admission was not withdrawn by the defendant during the course of trial and not explained under what circumstances such admission was made.

11. Considering the rival contentions, the point that arises for consideration is :

> *Whether the plaintiff is entitled to claim interest @ 3% per month?*

12. Indisputably, the defendant executed Ex.A.1-mortgage deed dated 18.04.2002. As per the terms of Ex.A.1, the defendant agreed to pay interest at 3% per annum on the principal sum of Rs.2,00,000/- (vide condition No.4). Even in the registered correspondence between the plaintiff and the defendant, the plaintiff claimed interest only @ 3% per annum in the second para of Ex.A.2, dated 13.01.2011 and the defendant also agreed to pay interest @ 3% per annum under reply dated 18.01.2011.

13. Even according to the allegations made in para 3 of the plaint, the defendant agreed to pay interest @ 3% per annum. However, the defendant while reiterating his contention that he agreed to pay interest @ 3% per annum, in the last sentence of para No.9 of the written statement, he made an admission that he is ready to deposit interest @ 3% per month from the month of December, 2010. Taking into consideration the above admission in para 9 of the written statement, the trial Court passed decree awarding interest @ 3% per month instead of 3% per annum.

14. On consideration of entire pleadings i.e. para 3 of the plaint, Ex.A.1-mortgage deed and registered correspondence between the parties including the examination-in-chief of PW.1, the plaintiff claimed interest only @ 3% per annum. But, on the strength of para 3 of the plaint and in view of the examination-in-chief of PW.1, the plaintiff claimed interest @ 3% per month. This claim is totally

contrary to condition No.4 of Ex.A.1 and contents of registered correspondence, Exs.A.2 and A.3. Similarly, it is contrary to the pleadings in para 3 of the plaint. Section 92 of the Indian Evidence Act does not permit any party to adduce evidence contrary to terms of a document, it reads as follows:

> *"When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms subject to proviso 1 to 6 contained therein."*

15. Here the evidence adduced by PW.1 regarding rate of interest is hit by Section 92 of the Evidence Act and the same is contrary to the pleadings in para 3 of the plaint. Therefore, the evidence adduced by the plaintiff regarding rate of interest @ 3% per month is inadmissible in evidence when Ex.A.1-mortgage deed was reduced into writing. Therefore, the plaintiff is entitled to interest at 3% per annum on the principal amount of Rs.2,00,000/- from the date of Ex.A.1-mortgage deed till the date of realization. The trial Court only based on admission in the written statement by the defendant to pay interest at 3% per month from December,2010 onwards awarded interest, but the said finding is totally contrary to para 3 of the plaint and contents of Ex.A.1-mortgage deed (clause 4 at page 4). Therefore, the decree and judgment of the trial Court to the extent of awarding interest @ 3% per month is set aside by modifying the same to the extent of 3% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of realization.

16. With the above modification, the decree and judgment dated 19.09.2014 passed in O.S.No.553 of 2011 by the II Additional Senior Civil Judge, Warangal, are set aside to the extent indicated above.

17. Accordingly, the appeal is disposed of passing a preliminary decree for recovery of Rs.2,00,000/- together with interest @ 3% per annum from the date of mortgage till the date of realization, granting six months time for redemption. There shall be no order as to costs.

18. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY, J

08.07.2015
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HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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