**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA No. 1122 of 2015 (O&M)
Date of decision: September 1, 2015

Pal Kaur

...Appellant

Versus

Ramesh Kumar and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Kamaljeet Singh Sidhu, Advocate,
for the appellant.

**K. KANNAN, J.** (Oral)

CM No. 3275 and 3276 C of 2015

For the reasons stated in the applications, delay in re-filing as well as filing the appeal is condoned.

Main case

1. The defendant, who claimed to be the legal representative of the deceased mortgagor, is the appellant before this court. The learned counsel for the appellant presents three issues for consideration as points of law. One, the two mortgages are of the year 1998 and the suit was filed only on the eve of limitation period in 2010. The trial court had granted 6% past interest but the lower Appellate Court modified the interest to conform to the contractual rate of 24%. This was unjustified. Two, the plaintiffs' conduct in not instituting the suit immediately will disentitle him from

claiming interest at the contract rate and the court had the discretion to scale down the rate of interest. Three, the mortgagors referred to payment of partial consideration of Rs. 60,000/-under each one of the document and stated that Rs. 20,000/- was to be paid before the Sub-Registrar, but there is no endorsement of payment before the Sub-Registrar. On the other hand, a Clerk from the Sub-Registrar's office has given the evidence that no payment was made before the Sub-Registrar at the time of registration.

2. I find none of the objections sought to be projected as grounds for consideration in the second appeal merit acceptance. A contractual rate of interest which is not usurious or against the law cannot be denied to the plaintiffs for the only reason that the plaintiffs had not immediately filed the suit after mortgage. So long as the suit was instituted within the period of limitation there was no scope for denial. The Court's discretion will be conditioned by the examination of whether there exists any particular provision of law that scales down interest for certain class of debtors or interest itself is so usurious that the court will relieve the parties of such unfair bargain. I cannot find any such contention having been brought before the court and the appellate court was providing the rate of interest as per the contract in a suit instituted within time. Therefore, there is no error for interference in that regard which will answer the first two points raised above.

3. As regards the failure of consideration, if there is registered document reciting the particular document supported by a consideration, a plea of partial failure of consideration made by the defendant will have to be proved by only person making such assertion. The counsel explains that the original mortgagor died and she is only a legal representative. It is not

as if the defendant walks out of the proceedings because she had not executed the document. She is entitled to take up every plea which a mortgagor could be competent to take. If the document was, therefore, according to the defendant, not fully supported by consideration and the plaintiffs was making an assertion that the balance sale of consideration was also paid at the Registrar's office, it ought to have been elicited in the cross-examination as to why an endorsement had been made or when the amount was paid or in whose presence. I have heard the counsel read the version of cross-examination of the plaintiff and I find nothing elicited in the cross-examination about the failure of consideration against the assertion made by the plaintiff that even balance sale consideration had been paid.

4. I do not find any error in the judgments rendered by the two courts below for interference in second appeal. The same is dismissed.

**September 1, 2015** **(K.KANNAN)**
prem **JUDGE**