IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2016

PRONOUNCED ON : 16.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.125 of 2011

The Villupuram People's Mutual
Benefit Society Limited,
180, Kamarajar Street,
Villupuram - 605 602.
Rep.by its Secretary Mr.G.Ramamurthy
S/o. Govindaha Iyer. ... Appellant

Vs.

1.P.Janardhanam
2.J.Murali Sankar
3. J.Udhayakumar ... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.11.2009 passed in A.S.No.3 of 2009 on the file of the Principal District Judge, Villupuram, modified the Judgment and Decree dated 29.02.2008 made in O.S.No.17 of 2006, on the file of the Principal Subordinate Judge, Villupuram.

For Appellant : Mr.T.K.Bhaskar
For Respondents : Mr.N.Suresh

JUDGMENT

Impugning the judgment and decree dated 18.11.2009 passed in A.S.No.3 of 2009 on the file of the Principal District Court, Villupuram modifying the Judgement and decree dated 29.02.2008 made in O.S.No.17 of 2006 on the file of the Principal Subordinate Court, Villupuram, the plaintiff has come forward with the present second appeal.

2. The suit has been laid on a mortgage.

3. The plaintiff's case is that the defendants borrowed a sum of Rs.2,00,000/- from the plaintiff society and mortgaged the suit property agreeing to pay interest as incorporated in the mortgage deed dated 11.03.2003 and the principal with interest at 16.8% per annum is repayable in 50 equal monthly instalments. However, inasmuch as the defendants had failed to pay the amount due to the plaintiff society as per the terms and conditions of the mortgage deed, consequentially, the plaintiff society issued a notice calling upon the defendants to pay the amount due with interest and as the defendants have not responded to the same, the suit has been laid.

4. The case of the defendants in the written statement in brief is as follows:

The suit is not maintainable either in law or on facts. It is false to state that the defendants have borrowed a sum of Rs.2,00,000/- from the plaintiff society under the mortgage deed and agreed to pay interest as stipulated in the mortgage deed and that, the defendants are liable to pay interest at 16.8% per annum and also, liable to repay the amount in 50 equal monthly instalments with interest and the plaintiff society is entitled to claim penal interest. On account of illness, the defendants could not send a reply to the notice issued by the plaintiff society and the interest claimed by the plaintiff society is on the higher side and hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 9 were marked. On the side of the defendants, DW1 has been examined and no document has been marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit on the sum adjudged at Rs.2,42,422/- restricting the claim of interest from the date of plaint till the date of decree at 16.8% per annum and subsequently, with interest at 6% per annum, till the date of payment. The plaintiff preferred the first appeal and the first appellate court had modified the judgment and decree of the trial Court with reference to the quantum of interest. As against the judgment and decree of the first appellate court, the present second appeal has been preferred by the plaintiff.

7. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in the second appeal.

(i) Whether the Lower Appellate Court was right in concluding that the Respondents even though they have agreed to the rate of interest of 21% p.a are still liable only to the extent of 16.8% interest p.a towards default amount?

(ii) Whether the Courts below have acted in consonance with section 34 of Civil Procedure Code?

8. The plaintiff's counsel contended that as per the terms and conditions stipulated in the mortgage deed Ex.A1, the defendants are liable to pay the interest agreed by them under the mortgage deed and as the defendants have borrowed the loan amount for developing their property and as the defendants have also not paid any instalment amount due to the plaintiff as per terms and conditions of the mortgage deed, the plaintiff is entitled to claim penal interest also as prescribed in the mortgage deed and therefore, the Courts below have erred in restricting the quantum of interest, which the plaintiff is entitled to and hence, the appeal.

9. Per contra, it is argued by the defendants' counsel that the interest claimed is on the higher side and the Courts below have correctly calculated the quantum of interest to which the plaintiff is

entitled to and therefore, there is no ground made out by the plaintiff to interfere with the findings of the Courts below, particularly, on the quantum of interest and therefore, according to them, the second appeal is liable to be dismissed.

10. The only point that arises for consideration in this second appeal is the quantum of interest that has to be directed to be paid by the defendants on the mortgage amount borrowed by them.

11. The mortgage deed has been marked as Ex.A1. A perusal of the terms and conditions of the mortgage deed Ex.A1 would go to show that, as rightly argued by the plaintiff's counsel, the amount was borrowed for developing the property by the defendants and it could also be seen that the defendants have agreed to pay the amount due under the mortgage deed in equal instalments of the principal sum and interest every month and have also agreed that, in case of any default in the payment of monthly instalments consecutively for 6 months and also for a total period of 9 months intermittently the plaintiff would be entitled to charge 21% interest towards the defaulted amount. Further, it could also be seen that the defendants have also agreed to pay interest at 16.8% per annum towards the monthly instalments amount on condition that they would pay the instalments of the principal sum with interest without any default as stipulated in the

mortgage deed and in such view of the matter, the Courts below have erred in restricting the quantum of interest. According to the plaintiff's counsel, the Courts below have erred in reducing the quantum of interest to which the plaintiff is entitled to claim under the mortgage deed.

12. The above argument of the plaintiff counsel seems acceptable. The defendants have resisted the plaintiff's suit that they are not liable to pay any amount to the plaintiff under the mortgage deed, even though they had executed the mortgage deed and borrowed the loan amount from the plaintiff. However, though the Courts below have found that the defendants have borrowed the loan amount from the plaintiff and executed the suit mortgage and therefore, it could be seen should have held that the defendants are liable to pay the amount due to plaintiff as per the terms and conditions of the mortgage deed.

13. As rightly argued by the plaintiff's counsel, the defendants have not paid the instalments of the principal amount and interest due under mortgage to the plaintiff regularly and therefore, it could be seen that as per terms and conditions of the mortgage deed, the plaintiff is entitled to claim the interest on the amount due from the defendants. Further, it could also be seen that the plaintiff would also

be entitled to claim penal interest, i.e., in case, the defendants failed to pay the amount in its entirety within 50 months from the date of the mortgage including the principal and interest as stipulated in the mortgage. Further, the defendants would be liable to pay 21% interest per annum on the amount found to be due and therefore, it could be seen that the defendants are bound by the terms and conditions of the mortgage deed, once they have subscribed to the same. In such view of the matter, the argument put forth by the defendants counsel that the interest claimed by the plaintiff is on the higher side cannot be accepted.

14. As found earlier, the loan amount has been taken by the defendants for developing the property. Now, according to the plaintiff, on the date of the suit, as per the terms of the mortgage deed, the amount due to the plaintiff as per the accounts maintained is Rs.2,43,791/-. The suit has been laid on 15.02.2006. Therefore, it could be seen that the plaintiff had calculated the interest and also, after deducting the amount paid by the defendants as per its statement of account had filed the suit for Rs.2,43,791/- due on the date of the plaint claiming subsequent interest at 21% per annum from the date of the suit till the realisation. It has been stipulated in the mortgage deed that the defendants, if they make any default in payment of monthly instalments, both principal and interest, are liable

to pay interest at 21% per annum. If within 50 months, the defendants failed to pay the amount as stipulated in the mortgage deed, the plaintiff is entitled to proceed against the mortgaged property as per law. Therefore, considering the above recitals found in the mortgage deed and also the principles to be followed while awarding interest as laid down the Hon'ble Supreme Court in the decision reported in ***AIR 2001 SC 3095, (Central Bank of India V. Ravindra and ors).*** I hold that the Courts below had erred in calculating the interest at 16.8% on the principal sum adjudged from the date of the suit till the date of decree. However, the decision of the Courts below in awarding 6% subsequent interest cannot be found fault with, as the Courts below had taken into consideration Section 34 of the Civil Procedure code and also the provision contained under Order 34 Rule 11 CPC and following the decision of the Supreme Court, rightly awarded the subsequent interest at 6%. Even in the decision above cited, it could be seen that the discretion has been granted to the Courts to award subsequent interest at 6 % per annum, if the Court deems fit and reasonable on the facts and circumstances of the case involved and therefore, on the above aspect, no interference is called for with reference to the decision of the Courts below on the question of subsequent interest.

15. The date of mortgage is 11.03.2003 and the suit has been

laid on 15.02.2006. Therefore, it could be seen that the suit has been laid within 3 years from the date of the mortgage. In such circumstances, it could be seen that the plaintiff, as per the terms and conditions of the mortgage, would be entitled to claim interest at 21% per annum.

16. In the light of the above discussion, I hold that the judgement and decree of the Courts below are modified and the defendants are held liable to pay the plaintiff the sum of Rs.2,43,791/- with interest at 21% per annum from the date of the suit till the date of decree and at 6%per annum from the date of decree till the date of realisation. Accordingly, the second appeal is disposed of. No costs

16.11.2016

Index : Yes/No
Internet: Yes/No
sms

To

1.The Principal District Judge,
Villupuram.

2. The Principal Subordinate Judge,
Villupuram.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No. 125 of 2011

16.11.2016