

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2016

PRONOUNCED ON: 03.11.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.No.9 of 2010

T.R.Bhuvaneshwari

... Appellant

-VS-

1.Punjab National Bank
Assets Recovery Management Branch,
Khivraj Buildings, 1st Floor,
624, Anna Salai,
Chennai-600 006.

2.The Official Assignee,
High Court, Chennai-600 104.

.. Respondents

Appeal filed under Order 36 Rule 1 of O.S.Rules r/w Clause 15
of the Letters Patent, against the order passed by this Court on
11.03.2009 in A.No.318 of 2007 in I.P.Nos.134 and 77 of 2002.

For Appellant :: Mr.P.L.Narayanan

For Respondents :: Mr.Nattarajan Gopinath for R1

Mrs.V.Uma, Official Assignee,
party-in-person
assisted by
Mrs.S.Hermies, Dy.Official Assignee
for R2

JUDGMENT**R.MAHADEVAN, J.**

This appeal is filed against the order passed by this Court on 11.03.2009 in A.Nos.318 of 2007 in I.P.Nos.134 and 77 of 2002, along with the other applications of the first respondent bank, allowing the claim of the bank to the extent of Rs.3,19,23,571.05 out of Rs.3,79,11,492.64, in respect of the sale of the appellant's property by way of public auction.

2.The facts leading to the filing of this appeal, are as follows:

(i)The appellant was declared as insolvent in two matters. The total claim arrived at by the bank was Rs.3,79,11,492.64. The interest rate claimed by the bank was based on the contractual agreement entered into between the bank and the insolvent. The amount claimed by the bank also includes law charges, paper publication charges and charges towards possession and auction. However, the Official Assignee while adjudicating the claim, took the balance amount due from both the borrower firms as on 26.11.2002, the date of adjudication of the borrowers as insolvents. Further, on the balance due as on 26.11.2002, the Official Assigned allowed simple interest at the rate of 16% p.a., and it was charged only upto the date of the first sale, ie. 18.05.2006. Thereafter, the Official

Assignee deducted the entire Government commission of 7% on the total bid amount of Rs.7.02 crores also deducted the entire publication charges, valuer charges and auctioneer charges, thus deducting a total sum of Rs.59,01,847/- towards these heads. Thus, the claim made by the bank was ultimately allowed to the extent of Rs.2,21,27,251.23.

(ii) Aggrieved by the same, the bank filed the application in A.No.318 of 2007 to set aside the order of the Official Assignee dated 28.09.2007 passed in Claim No.166 of 2007 and also filed three more applications in respect of its claim. After a detailed perusal of the entire records and the relevant provisions of the Presidency Towns Insolvency Act, 1909, Provincial Insolvency Act, 1920, the Companies Act, 1956, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the various decisions of the Hon'ble Supreme Court, this Court arrived at the sum of Rs.3,48,54,887.47 as due and payable to the bank. Thereafter, holding that the bank is also liable to contribute to the share of Government commission and costs, this Court deducted a sum of Rs.29,30,316.42 out of Rs.3,48,54,887.47 and arrived at the net amount of Rs.3,19,23,571.05 which the bank is entitled to.

(iii) Challenging the order of the learned single Judge, this

appeal has been filed by the appellant herein.

3. The learned counsel for the appellant has submitted that the learned single Judge ought to have dismissed the application of the first respondent-bank, holding that the bank was not entitled to the entire claim made by it. It is his further submission that the Official Assignee had failed to notice that there were several discrepancies in the calculation of the amounts due, by the bank and the bank was not consistent in the maintenance of accounts, as different figures were reflected at different places for the amounts due on one date. The Official Assignee had failed to bring these discrepancies to the notice of the learned single Judge and had the Official Assignee brought this to the notice of the Court, the learned single Judge would have remanded the matter for fresh disposal, after ascertaining the correctness of the accounts. He stated that the learned single Judge erred in stating that the first respondent bank was entitled to the interest as claimed for. He further stated that the second respondent would not be entitled for interest at the contractual rate and in any rate, not compounded after the date of adjudication. It is his further submission that the learned single Judge ought not to have relied upon the provisions of the Companies Act while deciding the issues, as the legislative intent of the Companies Act and the Acts relating to insolvency, are distinct in

nature and cannot be compared in the matter of this nature. Finally stating that the other reasons pointed out by the learned single Judge in allowing the application of the first respondent herein are unconvincing and unsustainable in law, the learned counsel for the appellant prayed that this appeal has to be allowed.

4.The learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in Central Bank of India v. Ravindra and others, reported in (2002) 1 SCC 367, in support of his contention that charging of interest at reasonable rates on lendings on periodical rests and capitalisation thereof, remaining unpaid, is permissible, subject to the terms of a voluntary contract or established practice or usage and subject to any legislative restriction. He also relied on the judgment of the Hon'ble Supreme Court in Punjab and Sind Bank v. Allied Beverage Company Private Limited, reported in (2010) 10 SCC 640, wherein the reduction of interest by the High Court has been held fair, applying the ratio laid down in Ravindra's case (supra).

5.Per contra, the learned counsel for the first respondent bank submitted that the secured creditor would be entitled to full payment of his dues with interest at contractual rate, till payment, since an agreement was entered into between the parties providing rates at

which interest is to be paid on principal amount as well as for delayed payment. To that effect, he relied on the judgment of the Karnataka High Court in Can Fin Homes Ltd. v. A.Vittal Murthy, reported in AIR 2003 KARNATAKA 440. He also relied on the judgment of the Hon'ble Supreme Court in C.K.Sasankan v. The Dhanalakshmi Bank Ltd., reported in 2009 (2) CTC 381 in support of his contention that discretion of the Court has to be exercised, in respect of reduction of interest, properly, reasonably and on sound legal principles and the Court should take into account the parameter, scope and ambit of Section 34 of the Civil Procedure Code while exercising such discretion. Relying on the above judgments, he submitted that the contentions put forth by the learned counsel for the appellant are not tenable and that the order passed by this Court in the application now under challenge in this appeal, has to be confirmed, as the principles enunciated in the above two judgments have been taken into account by this Court, while passing the order.

6.(i)The second respondent-Official Assignee appeared before this Court as party-in-person, assisted by Dy.Official Assignee. It is stated in the written submissions filed on behalf of the second respondent that the appellant herein was adjudged as insolvent on a Creditor Petition in I.P.No.134 of 2002 by this Court on 03.03.2003. Similarly, in I.P.No.77 of 2002, a firm by name M/s.TLV Estates and

the appellant herein were adjudicated as insolvents on 26.11.2002. The act of insolvency arose on non-payment of decretal debt. Pursuant to the order of adjudication, all the properties of the insolvents wherever situate, vest with Official Assignee for its realisation and distribution among the general body of the creditors. It is further stated that the insolvent had disclosed the first respondent bank as a secured creditor. The insolvent who was a partner of the firm M/s.Edelweiss International and a sole proprietrix in another concern by name TLV Industries was indebted to the first respondent bank herein. She had created an equitable mortgage on deposit of title deeds to secure various credit facilities sanctioned to her by the first respondent. She had deposited the title deeds to the first respondent bank in respect of her property comprised in New No.8A, Old No.17, New Thandavaraya Mudali Street, Purasawalkam, Chennai to secure the aforesaid loans by way of equitable mortgage. On default in payment of the loan amount by the appellant / insolvent, the asset was classified as a Non-Performing Asset (NPA) by the first respondent bank. As the loan accounts were collaterally secured by way of equitable mortgage, the Punjab National Bank initiated proceedings under the SARFAESI Act to realise the dues. In this connection, notice under Section 13(2) of the SARFAESI Act was also issued by the bank and the possession of the property was taken by the Punjab National Bank on 02.12.2004. Later on, the bank

decided to sell the property by way of a private treaty. When it was brought to the notice of the second respondent Official Assignee, the Official Assignee, for the benefit of the general body of creditors, requested the bank not to resort to sale of the property by way of any private treaty. The request of the Official Assignee was accepted. Later on, the bank further proceeded to sell the property by public auction thereby fixing the upset price of the property at Rs.1,19,25,000/- and the same was also advertised in the newspapers.

(ii) It is further stated that when the proposed sale by public auction was brought to the notice of the Official Assignee, he immediately moved an application before this Court in Application No.164/2005 in I.P.No.77/2002 seeking injunction restraining the Punjab National Bank, the first respondent herein not to proceed with the auction sale, and interim stay was also granted by this Court. Meanwhile, another application in Application No.483/2005 was filed by the secured creditor, the first respondent herein before this Court to vacate the stay granted in Application No.164/2005. Disposing the aforesaid applications, this Court permitted the Official Assignee to sell the property by way of public auction. In pursuance of the orders passed by this Court, the Official Assignee initiated sale proceedings and conducted public auction. The first three auction

sales conducted by the Official Assignee were not confirmed by this Court. In the fourth auction sale held on 18.12.2006, the highest bid was knocked in favour of one Surender Sri Srimal for a sum of Rs.7,02,00,000/-. The said sale was subsequently confirmed by this Court.

(iii)It is contended that the first respondent bank being a secured creditor and as the mortgaged property was taken possession and realised by the Official Assignee, the bank filed a claim in Claim No.166/2007 before the Office of the Official Assignee claiming a sum of Rs.3,79,11,492/-. The insolvent appeared before the Official Assignee through a counsel for the claim enquiry and ample opportunities were given to the insolvent. She filed a counter. After hearing both sides, the Official Assignee admitted the claim for a sum of Rs.2,21,27,251/-. The contention of the learned counsel for the appellant that the insolvent was not given sufficient opportunity to putforth her case before the Official Assignee is absolutely baseless.

(iv)The entitlement of the first respondent bank was held to be of Rs.2,80,29,098/- by the Official Assignee and from out of the said amount, 7% Government commission and other expenses amounting to Rs.59,01,847/- were deducted and ultimately the claim was

admitted as a secured claim for a sum of Rs.2,21,27,251/-, as it is mandatory on the part of the Official Assignee as per Order XVII Rule 10 to charge a commission at the rate of 7 % upon the moneys to be paid as dividends and credit the commission so charged to the State Government. The Official Assignee had taken the balance outstanding as on 26.11.2002, ie., the date of adjudication, as the principal amount and awarded simple interest at the rate of 16% per annum to the principal amount for the subsequent period till the date of the first sale. Contractual interest was not compounded by the Official Assignee after the date of adjudication.

(v) It is further contended in the written submissions that the order passed by the Official Assignee in Claim No.166/2007 was assailed before the Single Judge of this Court in its Insolvency Jurisdiction in Application No.318/2007 and this Court elaborately discussed the issues and modified the order of the Official Assignee by allowing the rate of interest upto the date of realisation, with proportionate deduction towards Government Commission and other expenditure. In pursuance of the order of this Court dated 11.03.2007 in Application Nos.318 to 321 and 290/2007, the Official Assignee had disbursed the balance amount payable to the secured creditor, ie., the first respondent herein.

(vi) With regard to the contention raised by the appellant that the Official Assignee failed to note the inconsistencies and discrepancies in calculation of the amount in the statement of accounts filed by the bank, it was submitted by the Official Assignee that this aspect of inconsistencies and discrepancies in the calculation of amount has been raised for the very first time before this Court. Neither before the Official Assignee nor before this Court in its insolvency jurisdiction, this aspect has been raised. In fact, the insolvent appeared before the Official Assignee for claim enquiry and she had engaged a counsel to represent the matter. The insolvent had also filed an objection and sought calculation of interest for the principal amount by simple interest and not by compound interest. The contention of the learned counsel for the appellant that the statement of accounts filed by the bank before the Official Assignee were not certified by the bank officials, is totally false. In fact, the statement of accounts produced by the bank before the Official Assignee was duly certified under the Banker's Book Evidence Act.

(vii) It is submitted that the appellant herein was adjudged as insolvent on a creditor petition. Once adjudicated, as per Section 17 of the Presidency Towns Insolvency Act, 1909, the property of the insolvent wherever situated would vest with the Official Assignee. Proviso to Section 17 protect the right of the secured creditor to

realise the dues or otherwise dealing with the security. It reads as follows:

“On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the Official Assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose.

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed”.

(viii) It is also submitted in the written submissions filed on behalf of the second respondent that in so far as the secured creditors are concerned, they stand outside the insolvency. The right of the secured creditor to deal with the security is unaffected by the presentation of an insolvency petition or by making an order of adjudication. Section 47 of the Provincial Insolvency Act 1920, contemplate three courses to a secured creditor, which are as

follows:

That he may realise his security and then prove for the balance if any, due to him.

That he may relinquish his security for the general benefit of the Creditors and prove for the whole debt.

And that he may state in his proof the particulars of his security and the value at which he assess it and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(ix) It is contended that similar provisions in the Presidency Towns Insolvency Act 1909 is in Rule 9 to 11 of the Second Schedule. Rule 10 of the Second Schedule of the Presidency Towns Insolvency Act 1909 is equivalent to Section 47(2) of the Provincial Insolvency Act 1920. Rule 10 of the Second Schedule of the Presidency Towns Insolvency Act 1909 contemplate the entitlement of the secured creditor when he surrenders the security for the benefit of the general body of creditors. It reads as follows:

"If a secured creditor surrenders his security to the Official Assignee for the general benefit of the creditors he may prove for his whole debt".

(x)By the intervention of the Official Assignee, the secured asset was brought for sale after obtaining order from this Court. The property fetched more amount than the claim of the secured creditor. The first respondent bank surrendered the security in pursuance of the order of this Court. Therefore, as per Rule 10 of the Second Schedule of the Presidency Towns Insolvency Act 1909, he may prove for the whole debt. The term whole debt was interpreted by the Karnataka High Court in Can Fin Homes Ltd. v. A.Vittal Murthy, reported in AIR 2003 KARNATAKA 440, which was relied on by the learned counsel for the first respondent, wherein it was held that the secured creditor is entitled to the whole debt and they can claim contractual rate of interest after an applicant is adjudged as insolvent. As such, the secured creditors are entitled to contractual rate of interest from the proceeds of the sale of secured property even after adjudication and till the date of payment. In the above referred case, Section 47(2) and 48(2) of the Provincial Insolvency Act were dealt with by the Karnataka High Court. The equivalent provisions of 47(2) and 48(2) in the Presidency Towns Insolvency Act 1909 are Rule 10 and 23(2) of the Second Schedule. It was further submitted that the order of the Official Assignee in awarding simple interest at the rate of 16% per annum till the date of the first sale taking the balance outstanding as principal as on 26.11.2002, the date of adjudication was rightly modified by this Court in Application

No.321/2007. Placing reliance upon various authorities, this Court awarded contractual rate of interest upto the date of realisation. The date of last sale which was subsequently confirmed by this Court was taken as the date of realisation.

(xi) It is also contended that the contention of the learned counsel for the appellant and one of the ground raised in the appeal that the first respondent would not be entitled to interest at contractual rate and that the interest cannot be compounded after the date of adjudication, is untenable. In fact, in the Hypothecation Agreement entered upon by the appellant / insolvent with the first respondent bank, there is a covenant / stipulation for payment of compound interest. Charging interest at reasonable rates on periodical rest and capitalising the same on remaining unpaid is a well recognized banking practice and accepted by the Hon'ble Supreme Court. In the instant case, loan carried interest at the rate of 16% per annum with monthly rest. There is an express agreement to pay compound interest in the deed. There was voluntary contract between the first respondent Bank and the appellant / insolvent. Further there is specific provision in the Presidency Towns Insolvency Act 1909 in Rule 10 of Second Schedule regarding dealing with the claim of the secured creditor when he surrenders the security. In such case, the secured creditor would be entitled to the Whole debt. The term "whole debt" has been interpreted in the

decision of the Karnataka High Court, which has already been referred above and as per the decision, the secured creditor has right to claim contractual rate of interest after adjudication and till the date of payment. Therefore, when mortgage property is surrendered and if the same has been realised by the Official Assignee, the secured creditor may prove for his whole debt and would be entitled for the same if the secured assets fetches enough amount. As such, the first respondent Bank is entitled to full payment of the dues with interest at contractual rate upto the date of realisation. The judgment of the Allahabad High Court in Jugal Kishore and another v. Bankim Chandra, reported in AIR 1919 Allahabad 255(1) has been relied upon by the Official Assignee to state that the mortgagee, according to law, is clearly entitled to receive out of the proceeds of the sale of the mortgaged property his principal, interest and costs. She also relied on the judgment of this Court in V.R.Ramasubba Raju v. Seshamma and others, reported in AIR 1929 Mad 242, wherein it has been held that Receivers should place before the Court a scheme for disposal of moneys available for distribution and that from funds of estate, plaintiff should pay the amount. In that judgment, the principle enunciated in Jugal Kishore's case (cited supra) that the mortgagee is entitled to receive out of the proceeds of the sale of the mortgaged property with principal, interest and costs, has been reiterated. Hence, the first respondent-Bank is entitled to full

payment of the dues with interest at contractual rate upto the date of payment. The mortgaged property fetched enough amount. It was sold for a sum of Rs.7,02,00,000/- while the claim of the secured creditor was only for a sum of Rs.3,79,11,492/-. Apart from that, the present estate is also a surplus estate. All the unsecured creditors, who have proved their debts, which is provable in insolvency had been paid off with dividend at a rate of 100 paise in a rupee. As far as surplus estate is concerned, as per Section 76 of the Presidency Towns Insolvency Act 1909, the insolvent is entitled to the surplus remaining after payment in full to his creditor with interest. Section 76 reads as follows:

"The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceeding taken thereunder".

(xii) Therefore, according to the second respondent, when the estate is a surplus estate, even the unsecured creditors would be entitled for contractual rate of interest after all the debts proved have been paid in full. Rule 23 of the Second Schedule of the Presidency Towns Insolvency Act 1909 contemplate such a procedure. Rule 23 of the Second Schedule is applicable only to unsecured creditors. Rule 23(2) reads as follows:

"Where a debt which has been proved in insolvency

includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full".

Even though in this estate, unsecured creditors had been paid off with dividend at a rate of 100 paise in a rupee, as it is a surplus estate, they are entitled to higher rate of interest (contractual). Further, the contractual rate of interest is yet to be paid to the unsecured creditors after obtaining order from this Court.

(xiii) From the aforesaid provisions of Presidency Towns Insolvency Act 1909 and the discussion of the Hon'ble courts referred above, it is obvious that the secured creditor who surrenders the security for the benefit of the general body of creditors are entitled for the whole debt, the term which has been interpreted by the Karnataka High Court as the contractual rate of interest till the date of realisation. Thus it is submitted on behalf of the second respondent that the bank is entitled to full payment of the dues with interest at contractual rate upto the date of payment and not more than that.

(xiv)With regard to the argument of the learned counsel for the appellant that penal interest could not be capitalised, by relying upon the judgment of Hon'ble Supreme Court reported in (2002) SCC 367 in Central Bank of India Vs. Ravindra & Others, it is submitted that it is true that penal interest cannot be permitted to be capitalised, but in the instant case, there is no capitalisation of penal interest. It is a new fact put forth during the course of arguments. In fact, it was neither raised before the Official Assignee nor in the Memorandum of the Grounds of Appeal. As such, the decision relied upon by the learned counsel for the appellant has no bearing and relevance to the issue before this Court.

(xv)Stating so, the Official Assignee prayed for dismissal of the appeal.

7.Heard the learned counsel on either side and perused the materials available on record carefully.

8.In I.P.No.77 of 2002 a firm by name M/s.TLV Estates and one Mrs.T.R.Bhuvaneswari were adjudicated as insolvents by an order dated 26.11.2002 by this Court. In I.P.No.134 of 2002, the same Mrs.T.R.Bhuvaneswari was adjudicated as insolvent by an order dated

03.03.2003. Thereafter, the Punjab National Bank issued notice under Section 13(2) of the "SARFAESI Act" and took possession of the properties. The bank decided to sell the property by private treaty. On coming to know of the same, the Official Assignee asked the bank not to resort to sale of the property by private treaty. Further, upon moving an application before this Court, the Official Assignee got an order of injunction which resulted in the cancellation of auction. The said injunction application was disposed of permitting the Official Assignee to sell the property by public auction and it was accepted by the bank. Subsequently, many auctions were conducted and in the auction conducted on 18.12.2006, one Surendhar Sri Srimal offered the highest bid of Rs.7.02 crores and the same was confirmed by this Court. The bank lodged a claim, claiming a sum of Rs.3,79,11,492.64 as due and payable by the insolvents, as on 11.06.2007, but the Official Assignee, on verification of the records produced by the bank, admitted the claim of the bank only to the tune of Rs.2,80,29,098.23 and out of the said amount, deducted a sum of Rs.59,01,847/- towards Government commission at the rate of 7%, publication charges and charges towards valuers and auctioneers, and arrived at the sum of Rs.2,21,27,251.23 as the amount payable to the bank as a secured claim.

9.Further, on an application filed by the bank in A.No.318 of

2007 to set aside the order of the Official Assignee dated 28.09.2007 passed in Claim No.166 of 2007, this Court arrived at the sum of Rs.3,48,54,887.47 as due and payable to the bank. Holding that the bank is also liable to contribute to the share of Government commission and costs, this Court deducted a sum of Rs.29,30,316.42 out of Rs.3,48,54,887.47 and arrived at the net amount of Rs.3,19,23,571.05 which the bank is entitled to. The learned single Judge has relied upon the relevant provisions of the Presidency Towns Insolvency Act, 1909, Provincial Insolvency Act, 1920, the Companies Act, 1956, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the various decisions of the Hon'ble Supreme Court, in arriving at such a conclusion.

10. On a comparative study of the provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, it is clear that a secured creditor is entitled to stand outside the insolvency proceedings, in which event he would be entitled to realise his dues by the sale of the secured asset. Further, after a perusal of the Companies Act, 1956, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, and the SARFAESI Act, the learned single Judge has rightly held that the notice issued under

Section 13(2) of the SARFAESI Act before the date of adjudication of insolvency and the possession taken under Section 13(4) after adjudication, cannot be obliterated or belittled with the aid of the provisions of any of the two Insolvency Acts.

11.To examine the correctness of the yardsticks adopted by the Official Assignee, the learned single Judge perused the provisions of the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909 and came to the conclusion that the bank in this case, is a secured creditor. Further, the learned single Judge also perused the relevant provisions of the Companies Act, 1956, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the various decisions of the Hon'ble Supreme Court, and also the "Mulla on the Law of Insolvency in India" (4th Edition) 1997, as regards what the secured creditor is entitled to, and came to the conclusion that the bank would be entitled to the balance as indicated in their statement of account, as on the date of third auction sale, ie., 18.12.2006. Accordingly, the learned single Judge arrived at a sum of Rs.3,48,54,887.47 as due and payable to the bank.

12.As regards whether the bank is entitled to the contractual

rate of interest despite the order of adjudication of insolvency, the learned single Judge relied upon the judgment of the Karnataka High Court in *Can Fin Homes Ltd. v. A.Vittal Murthy*, reported in AIR 2003 Karnataka 440 and also the judgment of the Allahabad High Court in *Jugal Kishore v. Bankim Chandra*, reported in AIR 1919 All. 255, and the judgment of this Court in *V.R.Ramasubba Raju v. Seshamma*, reported in AIR 1929 Madras 242, and came to the conclusion that the bank is certainly entitled to interest at the contracted rate up to the date of realisation, ie., 18.12.2006, the date of third auction.

13.The issues as to whether the bank is a secured creditor or not, what amount the bank is entitled to and whether the bank is entitled to the contractual rate, were properly decided by the learned single Judge relying upon the relevant provisions of the Acts as well the judgments of the Supreme Court. Thus, the learned single Judge, while arriving at the amount the bank is entitled to, had taken note of all these factors. These aspects are based upon law and facts and hence the same cannot be interfered with.

14.With regard to the observation of the learned single Judge that the bank is obliged to bear a part of the burden towards Government commission and expenditure incurred and that the Official Assignee is entitled to deduct a sum of Rs.29,30,316.42

towards proportionate share of Government commission and costs, from the amount payable to the bank, we are of the view that the learned single Judge has exercised his discretionary powers vested with him, as the bank had agreed to the sale of the property by the Official Assignee and also made a profit. It should also be noted that if the bank had stood outside the insolvency proceedings throughout and sold the secured debt, they would have been entitled to charge even the cost of realisation, on the sale proceeds. In such view of the matter, the learned single Judge has exercised his discretion, which in the considered opinion of this Court, does not require any interference. Thus the judgment of the learned single Judge as a whole, does not require any interference.

15. But, this appeal has been filed by the insolvent / appellant and not the bank. Therefore, the confirmation of the judgment of the learned single Judge of this Court, will not affect the bank. But the submission made by the learned counsel for the appellant is, the secured creditor is entitled to the whole debt and they can claim contractual rate of interest after an applicant is adjudged as insolvent, for which the judgment of the Karnataka High Court in *Can Fin Homes Ltd. v. A. Vittal Murthy*, reported in AIR 2003 KARNATAKA 440, has been relied upon. Therefore, as such, the secured creditors are entitled to contractual rate of interest from the proceeds of the

sale of secured property even after adjudication and till the date of payment. In this regard, as already stated, we are in full agreement with the learned single Judge as regards his conclusion that the bank is entitled to the contractual rate of interest. The learned single Judge has analysed this aspect in detail after perusing the relevant statutory provisions as well as the judgments of the Hon'ble Supreme Court, and came to the correct conclusion. Secondly, the judgment of the Hon'ble Supreme Court in Central Bank of India v. Ravindra and others, reported in (2002) 1 SCC 367, which has been relied on by the learned counsel for the appellant in support of his contention that charging of interest at reasonable rates on lendings on periodical rests and capitalisation thereof, remaining unpaid, is permissible, subject to the terms of a voluntary contract or established practice or usage and subject to any legislative restriction, is distinguishable on facts and hence the same cannot be applied to the present case.

16. In view of all the reasons stated above, the order passed by this Court on 11.03.2009 in A.No.318 of 2007 in I.P.Nos.134 and 77 of 2002 is confirmed and this appeal is dismissed. No costs.

Index : Yes/No
Internet : Yes/No

(S.K.K.,CJ.) (R.M.D.,J.)
03.11.2016

KM

**THE HON'BLE CHIEF JUSTICE
AND
R.MAHADEVAN, J.**

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Judgment made in
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