* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Writ Petition No. 659 of 2005

% 16.12.2016

The Charminar Cooperative Urban Bank Limited,
Rep. by its Recovery Manager (SPA),
Purani Haveli, Hyderabad.

…Petitioner

vs.

$ M/s. Shyam Trading Company, rep. by its
Proprietor Sri Shyam Chandak and others.

…Respondents

!Counsel for the Petitioner : Sri Abhinand Kumar Shavili

^ Counsel for the Respondents :Sri EVVS Ravi Kumar and D.V. Bhadram

<Gist :

>Head Note :

? Cases referred

1. (2002) 1 SCC 367
2. (2002) 4 ALT 580
3. (1993) 1 ALT 608 (FB)
4. 2008(1) ALT 383
5. 1998(2) ALT 6 (SC) = AIR 1998 SC 1101
6. 1987 (1) ALT 551

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.659 of 2005

Between:

The Charminar Cooperative Urban Bank Limited,
Rep. by its Recovery Manager (SPA),
Purani Haveli, Hyderabad.

….Petitioner

And

M/s. Shyam Trading Company, rep. by its
Proprietor Sri Shyam Chandak and others.

….Respondents

JUDGMENT PRONOUNCED ON : 16.12.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : YES

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 659 of 2005

Order:

This Writ Petition was filed by the Charminar Co-operative Urban Bank Limited challenging the order of the Andhra Pradesh Co-operative Tribunal, Hyderabad in C.T.A.No.239 of 2003 dated 14.07.2004 to the extent of reducing the rate of future interest from 21% p.a., to 6% p.a.

The facts leading to the said order are as follows: The first respondent obtained a loan of Rs.25,00,000/- on 08.01.1999 from the petitioner Bank and as security to the said loan, an extent of 300 sq. yards of land together with building having 2880 sq. feet of plinth area, situated in Plot No.60, Survey No.160, Tirumulgherry, Secunderabad was mortgaged. Respondents 3 to 5 stood as guarantors in their personal capacity. Since the first respondent did not repay the debt, arbitration proceedings were initiated before the Deputy Registrar/Arbitrator, Hyderabad in A.R.C.No.81 of 2000 and an award was passed on 06.05.2000 directing the first respondent to pay the amount of Rs.27,24,810/- together with interest at 21% p.a., as on 01.10.1999. Challenging the said award, the first respondent filed C.T.A(SR) No.6370 of 2001 before the Andhra Pradesh Co-operative Tribunal, Hyderabad and the Tribunal in I.A.(SR) No.6371 of 2001 granted stay of further proceedings on 18.01.2001 subject to the condition of the first respondent depositing a sum of Rs.7,50,000/- within one month. But, he paid only an amount of Rs.1,00,000/- and in view of the default committed by the first respondent, the interim order dated 18.01.2001 stood vacated. Execution Proceedings were initiated in E.P.No.21 of 2001 and the property mortgaged was put to auction on 24.08.2002. The sale was confirmed in favour of one M. Krishna on 06.02.2003. Challenging the proceedings in E.P.No.21 of 2001, the first respondent filed W.P.No.15814 of 2002 and this Court disposed of the said Writ Petition on 06.09.2002 recording the undertaking of the first respondent that the balance amount would be paid on or before 07.01.2003, but he did not comply with the said undertaking. However, he preferred C.T.A.No.239 of 2003 before the Co-operative Tribunal challenging the award dated 06.05.2000 passed in A.R.C.No.81 of 2000 and an order was passed by the Co-operative Tribunal on 14.07.2004 reducing the rate of interest agreed between the parties to 6% p.a. The same is challenged in the present Writ Petition on the ground that the reduction of rate of interest from 21% p.a., to 6% p.a., is contrary to Section 21-A of the Banking Regulation Act. It was further stated that Section 34 of the Code of Civil Procedure is not applicable to the proceedings under the Andhra Pradesh Co-operative Societies Act, 1964 as it is a special enactment and only the limited powers given under the Act with regard to the application of provisions of C.P.C. are applicable in a limited sphere.

Since the above facts are not disputed, learned counsel for the petitioner as well as the respondents advanced their arguments on the points of law.

Learned counsel for the petitioner submits that in view of limited power given to the proceedings under the Andhra Pradesh Co-operative Societies Act, applying few provisions of Code of Civil Procedure, Section 34 of CPC has no application. He further submits that in view of Section 21-A of the Banking Regulation Act, the Tribunal has no power to reduce the rate of interest agreed between the parties. He relied on Central

Bank of India v. Ravindra[1], A.P. State Co-operative Bank Limited v. Co-operative Tribunal[2] and State Bank of Hyderabad v. Advath Sakru[3].

Learned counsel for the respondents submitted that the Tribunal has got jurisdiction to reduce the rate of interest and he relied on a decision reported in Andhra Pradesh Co-operative Societies Housing Federation Ltd., v. Sapna Co-operative Housing Society Ltd[4].

In the light of the above contentions and on the basis of the facts of the case, the only point that remains for consideration is with regard to power of the Cooperative Tribunal to reduce the rate of interest awarded by the Arbitrator in arbitration proceedings arising out of the provisions of the Andhra Pradesh Cooperative Societies Act.

Section 61 of the Andhra Pradesh Cooperative Societies Act provides for settlement of disputes including a claim by a society for any debt or other amount due to it. Section 62(1)(c) refers to the disposal of the dispute by an Arbitrator on reference by the Registrar. As per Sub-Section (4) of Section 62, the Arbitrator shall decide the dispute in accordance with the provisions of the Act, the rules and bye-laws and the said decision, subject to the provisions of Section 76, would be final. The procedure for arbitration and settlement of disputes is contained in Rule 49 of the Andhra Pradesh Cooperative Societies Rules, 1964. Sub-Rule 4 of Rule 49 deals with the procedure for passing the order. The procedure for disposal of appeals by Tribunal is contained in Rule 49-A and it is necessary to extract the same and it reads as follows:

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1 (2002) 1 SCC 367
2 (2002) 4 ALT 580
3 (1993) 1 ALT 608 (FB)
4 2008(1) ALT 383

> “49-A. Procedure regarding disposal of appeals by Tribunal:- The proceedings of the Tribunal shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908)”

A reading of the above Rule makes it clear that the procedure is summary and it is governed by the provisions of the Code of Civil Procedure as far as practicable. Separate rules are provided regulating the procedure called ‘the Andhra Pradesh Cooperative Tribunal (Procedure) Rules, 1994’. Rule 26 of the said Rules states that whenever the rules are silent on the question of any procedure, the Tribunal shall follow the procedure stipulated under the Code of Civil Procedure, 1908. But, those rules do not enable the application of substantive provisions of Code of Civil Procedure. Section 34 CPC deals with interest. In the instant case the Arbitrator passed an award for an amount of Rs.27,24,810/- with interest at 21% p.a. based on the agreement entered into between the parties. When it was reduced to 6% p.a., by the Tribunal, the present Writ Petition was filed.

Section 21-A of the Banking Regulation Act, 1949 reads as follows.

> “21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts.— Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.”

A reading of the above provision makes it clear that the transaction between a banking company and its debtor shall not be re-opened by any court. ‘Banking Company’ is defined in Sec.5(c) of Banking Regulation Act, 1949. By virtue of conjoint reading of Section 3 and Section 56 of the Act, a Cooperative Bank comes under the definition of 'Banking Company' under the provisions of the said Act.

In State Bank of Hyderabad's case (supra), the Full Bench of this Court was considering the point of the applicability of Section 21-A of the Banking Regulation Act to the transactions entered into between a Banking Company and its debtors. The Full Bench of this Court ultimately answered the questions referred to it as follows.

> "81. Having regard to the above discussion and for the reasons mentioned in the foregoing paragraphs, we answer the questions referred to us as follows :
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> 1) Section 21-A of the Banking Regulation Act, 1949 applies to all transactions entered into between the banking company and its debtor whether the transaction was entered into prior to its commencement or after.
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> 2) Section 21-A of the Banking Regulation Act, 1949 applies to suits pending on the date of coming into force of the said section.
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> 3) Section 21-A applies to pending appeals irrespective of the fact whether a decree was passed giving relief to the debtor or not.
>
> 4) Section 21-A makes no distinction between an advance made for agricultural purpose or for commercial purpose and it equally applies to both."

In A.P. State Co-operative Bank Limited's case (supra) the point involved before a learned single Judge of this Court is an identical point that is raised in the present case. In that case also the interest awarded by the Arbitrator at 19% p.a., was reduced to 6% p.a. This Court thoroughly examined the provisions of the Andhra Pradesh Cooperative Societies Act and the Rules made thereunder, the Code of Civil Procedure, Banking Regulation Act and held that Section 34 CPC has no application to a proceeding before the Registrar/Arbitrator or the Cooperative Tribunal. Thus, they have no power to restructure the rate of interest due to the petitioner Bank from the party respondents since it was governed by the agreement between the parties. The said decision is squarely applicable to the facts of the present case.

In Central Bank of India's case (supra) the Hon'ble Supreme Court was considering the quantification of interest and capitalisation of unpaid interest and the meaning given to the 'principal sum' on the date of suit within the meaning of Section 34 CPC.

In Andhra Pradesh Co-operative Societies Housing Federation Ltd's case (supra) another learned single Judge of this Court considered the question of awarding future interest. The learned single Judge upheld the decision of the Tribunal in reducing the rate of future interest from the stage of Section 71 proceedings and fixing the interest at the rate of 6% p.a. on the purported ground of exercise of discretionary jurisdiction by the Tribunal under the provisions of Code of Civil Procedure. The learned single Judge's attention was not brought to the decision of this Court in A.P. State Co-operative Bank Limited's case (supra) and the learned single Judge relied on a decision of the Hon'ble Supreme Court reported in N.M. Veerappa v. Canara Bank[5]. The reasons given by the said learned single Judge appears to be not correct in view of the decision reported in Nellore District Cooperative Marketing Society Ltd. v. Cooperative Tribunal[6], wherein it was held that the Arbitrator and Tribunal do not come under the meaning of Civil Court in order to attract the application of Section 34 CPC.

In view of the above discussion, I am of the opinion that the Cooperative Tribunal constituted under the provisions of A.P. Cooperative Societies Act is not a Civil Court and the provisions of Section 34 CPC are

[5] 1998(2) ALT 6 (SC) = AIR 1998 SC 1101
[6] 1987 (1) ALT 551

not applicable to it in order to enable it to reduce the future rate of interest. Section 21-A of the Banking Regulation Act comes into operation. Consequently, the order passed by the A.P. Co-operative Tribunal, Hyderabad in C.T.A.No.239 of 2003 dated 14.07.2004 to the extent of reducing the rate of interest is held to be without jurisdiction and the award of the Arbitrator dated 06.05.2000 is upheld.

The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 16th December, 2016
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