THE HON'BLE SMT JUSTICE ANIS

SECOND APPEAL NO.1133 OF 2000

JUDGMENT:

The present appeal is filed by the appellants against the judgment passed in A.S.No.13 of 1997 dt.15.03.2000 on the file of Senior Civil Judge, Miryalaguda wherein the court below directed the appellants to pay the suit amount of Rs.22,861/- to the respondent-Bank along with interest at the rate of 18% per annum and costs of Rs.1,759/-.

The brief averments made in the plaint are as follows:

The appellants filed the said appeal against the judgment and decree, dt.31.12.1996 passed in O.S.No.226 of 1994 on the file of the District Munsif, Miryalaguda and to set aside the decree and judgment of the court below. The respondent Bank sanctioned an over draft facility of Rs.19,500/- on 29.01.1985 to one T.Venkata Rajendra Prasad and after availing the loan facility, he died in the year 1992, leaving behind his grand sons, who are his legal heirs. During his life time, the original borrower also created equitable mortgage through the properties of the guarantor G.Venkateswararao who also deposited the title deeds of his properties on 29.01.1985. The deceased also executed debt revival letters on 14.09.1987 and 06.03.1990 acknowledging the debt. Both the principal borrower and the guarantor failed to discharge the debt in spite of the demands made by the Bank, during their life time. After their death, the respondent Bank got issued a legal notice dt.30.05.1994 to the legal representatives of the original borrower and the guarantor, who failed to respond. Thereafter, the respondent Bank filed O.S.No.226 OF 1994 for recovery of Rs.26,217-30 ps., on 31.03.1994 along with interest at the rate of 23.25% per annum with quarterly rests. The defendants therein filed a joint written statement admitting the borrowing of the loan by the original borrower and also stating that though the respondent Bank has stated in its notice, dt.25.05.1991 addressed to the original borrower that the rate of interest agreed is only 16.5% per annum, but they are now claiming interest at 23.25% per annum. It is also stated that no property was inherited by the appellants and hence they are not liable to pay any amount to the Bank, since the mortgaged property does not belong to the guarantor.

Basing on the said pleadings, the trial court framed three issues and examined PW-1 and got marked Exs.A-1 to A-20 on behalf of the respondent Bank. On behalf of the appellants, the son of the guarantor (appellant No.5) was examined as DW-1 and the wife of the original borrower was examined as DW-2 and got marked EXs.B-1 and B-2 on their behalf. After going through the record, the trial court decreed the suit in favour of the Bank directing the respondents/appellants to pay to the plaintiff Bank a sum of Rs.26,217-30 ps., together with interest at the rate of 23.25% per annum on the principal amount of Rs.19,500/- from the date of suit, till the date of realization and also to pay an amount of Rs.3,758/- towards costs of the suit. Aggrieved by the same, the defendants/appellants preferred A.S.No.13 of 1997 on the file of the Senior Civil Judge, Miryalaguda. Basing on the oral and documentary evidence, the learned Senior Civil Judge partly allowed the appeal holding that the respondent Bank is entitled to charge interest only at contractual rate of interest at the rate of 18% per annum with quarterly rests. Aggrieved by the same, the present appeal is filed.

The learned counsel for the appellants argued that as per Ex.A-2, dt.29.01.1985 the agreed rate of interest is 16.5% per annum but not 18% per annum. Therefore, the respondent Bank is entitled to interest at the rate of 16.5% per annum only.

Though notice was served, none appeared for the respondent Bank.

There is no dispute that the appellants failed to produce the legal notice, dt.01.07.1993 wherein the loan amount as shown by the Bank by that date was only Rs.21,956-30ps., whereas the legal notice exhibited by the respondent Bank in Ex.A-9 dt.30.05.1994 reveals that the outstanding amount is Rs.26,017-30ps. It is evident from the record that the respondent Bank failed to state what was the rate of interest that was fixed by the R.B.I. However, the said fact was not considered by both the courts and erroneously the rate of interest was fixed at 18% per annum. Nowhere in the agreement it was shown that the principal borrower agreed to pay the varied interest rates from time to time. Considering this aspect, the appellate court held that the respondent Bank is entitled to interest at the rate of 18% per annum, but not 23.25%, as stated by the trial court. The appellants failed to show any substantial question of law in their favour.

Therefore, the second appeal is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

ANIS,

J

Dt.02.03.2016

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Dt.02.03.2016