HON'BLE SRI JUSTICE M. SATYANARAYANAMURTHY

SECOND APPEAL No.665 of 2010

-

JUDGMENT:

This Second Appeal is filed under Section 100 of Code of Civil Procedure (for short 'CPC') by the appellant/defendant No.1 being aggrieved by the Decree and Judgment in A.S.No.106 of 2006 on the file of I Additional District and Sessions Judge, Krishna, Machilipatnam, whereby the decree and judgment passed by Senior Civil Judge, Gudivada in O.S.No.74 of 1999 was partly allowed.

2. For convenience of reference, the parties to the appeals are ranked as arrayed in O.S.No.74 of 1999 by Senior Civil Judge, Gudivada, through out the judgment.

3. The plaintiff filed the above suit for recovery of a sum of Rs.61,574/- due under a promissory note in connection with chit agreement. The plaintiff is a registered company carrying on chit fund business and the first defendant joined as a subscriber of a chit No.BLL-1 on 29.03.1990, he was allotted ticket number 23, he agreed to subscribe Rs.2,000/- each for 50 monthly installments and the chit value was Rs.1,00,000/-. In the auction, on 08.07.1990, first defendant became successful bidder in the chit, who agreed to forego a sum of Rs.45,800/- towards prize amount. Till then he paid six monthly installments and thereafter, he committed default in payment of the amount towards monthly subscriptions.

4. Defendant Nos. 2 and 3 are the guarantors of chit agreement

dt. 6.08.1990, who executed the Agreement of Guarantee for due payment of the amount under the Chit transaction. All the defendants jointly executed a promissory note for Rs.88,000/- dt. 08.08.1990 agreeing to pay the amount covered by promissory note together with interest @ 18% per annum towards future installments liability. After execution of the promissory note and the Guarantee Agreement dt. 6.8.1990 by the defendant Nos. 2 and 3, chit amount was received by the defendant No.1.

5 . On the date of execution of the promissory note dt.08.08.1990, Defendant No.1 deposited his title deeds pertaining to the land in an extent of Ac.0.32 cents covered by the plaint schedule and created a mortgage by deposit of his title deeds and confirmed the mortgage by a Letter dt. 11.08.1990.

6. After receiving the bid amount, first defendant paid Rs. 34,116/- and thereafter he committed default in payment of Rs.53,884/-. Hence, the plaintiff issued a Legal Notice on 05.10.1992. As no purpose was served, the plaintiff filed Mortgage Suit for grant of preliminary decree by depositing title deeds of defendant No.1 for recovery of Rs.61,750/- and personal decree against D2 and D.3.

7. Defendant No.1 filed Written Statement and admitted that he joined as subscriber of the chit agreeing to pay Rs.2000/- per month for 50 installments, as per the company regulations, and also admitted that he became highest bidder and the execution of the Guarantee Deed and Promissory Note etc., The amount claimed by the plaintiff is not correct and the interest claimed by the plaintiff is improper and the interest claimed is excessive since the defendant is an agriculturist and hence, it is liable to be scaled down.

8. The trial court, on appreciation of both oral and documentary evidence, has passed a preliminary decree for Rs.61,574/- with interest at 12% p.a. on the principal sum adjudged from the date of suit till realization while granting six months time for redemption.

9. Aggrieved by the decree and judgment dt. 28.07.2005, first defendant preferred an appeal in A.S.No.106 of 2006, which was allowed partly by the decree and judgment dt. 03.08.2009 modifying the decree and judgment granted by the trial Court to simple money decree by setting aside the preliminary decree creating a charge over the suit schedule property.

10. The present Second Appeal is filed by the defendant No.1 raising several contentions, but during the course of arguments, Sri Y. Ramathirtha, learned counsel for Defendant No.1 fairly conceded that the dispute is only with regard to rate of interest and sought installments for payment of amount due by applying the provisions of Section 4 of 1938 of Chit Fund Act. The counsel for plaintiff did not object for granting installments, but objected for scaling down the interest.

11. As seen from the material available on record, the plaintiff is under the care and custody of his son, as per the Cause Title in the grounds of appeal, and though defendant No.1 contended that he is an agriculturist, he did not produce any scrap of paper to establish that he is an agriculturist within the meaning of agriculturist under Section 4 of **ANDHRA PRADESH (ANDHRA AREA) AGRICULTURISTS RELIEF ACT, 1938**, to scale down the rate of interest. But, during the course of arguments, the appellant's counsel contended that the property allegedly mortgaged with the plaintiff is an agricultural land and therefore, no further proof is required to establish the same. As seen from the

record, the suit schedule property is consisting of Ac.0.32 cents in Rs.No.45/58 Pedayerikapadu Village, Gudivada Mandal with two poultry farms. Thus, it is not the agricultural land and as it consists poultry farms, the same cannot be treated as agricultural land. Tilling of land and sowing of seeds is *sine qua non* treating the land as agricultural land. Therefore, the contention raised by the learned for Defendant No.1 that the schedule property is an agricultural land cannot be accepted.

12. The trial Court and the Appellate Court granted interest at 12% p.a. *pendente lite* and subsequent interest at 6%. p.a till the date of realization. The agreed rate of interest was at 18% as per Ex.A.1--promissory note. The appellate Court decreed the suit for a sum of Rs.61,574/- while setting aside the charge created under Mortgage Decree. The agreed rate is to be paid during pendency of the suit, which is governed by Section 34 of CPC. According to it, where a decree is for payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit till the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum, as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit and where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions. Thus, it is clear that as per Section 34 of

Code of Civil Procedure, the rate of interest during *pendente lite is discretionary and such discretion has to be exercised judicially and* it is not a matter of course. But, after considering the facts and circumstances of the case only, the trial Court has granted rate of interest during *pendente lite* as held in ***G.M, ICC Bank Limited vs. S. Kanal***[1]. In the present case, defendant No.1 was not agriculturist and he is the owner of poultry farm, but now he is under the protection of his son and though he raised a contention before the trial Court that he is entitled to the benefits of AP (Andhra Area) Agriculturist Relief Act, did not produce any iota of evidence to substantiate his contention. Hence, I hold that the rate of interest *pendente lite* is just and reasonable taking into account the circumstances of the case and the same cannot be set aside.

13. As per the request made by the learned counsel for defendant No.1/appellant to grant installments while passing a decree, the Court may grant installments by exercising the discretionary power under Order 20 Rule 11 of CPC for payment of money incorporating the terms of payment after hearing both parties, who appeared either in person or by pleader or postponement of execution of the decree with or without interest. Taking into consideration the attending circumstances of the case, more particularly, first defendant, who is under the care and custody of his son, who allegedly mortgaged the property with the plaintiff, is granted 10 installments for payment of decretal amount commencing from 15.08.2016 together with interest at 6% per annum as awarded by the trial Court, which was confirmed by the appellate court.

14. In the result, this Second Appeal is dismissed of at the stage

of admission while granting 10 installments to the Defendant No.1 for payment of the decretal amount with interest commencing from 15.08.2016, but without costs. In the event of failure by first defendant in paying two consequent installments, the plaintiff is at liberty to execute the decree for recovery of the decretal amount.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20-07-2016.

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

_

S.A.No. 665 of 2010

Dt. 20-07-2016

eha

---

[1] 2011(2) ALD 91 SC.