HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.2845 OF 2001

JUDGMENT:

Defendant in O.S.No.66 of 1997 on the file of learned Additional Senior Civil Judge, Srikakulam, preferred the present appeal, under Section 96 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), aggrieved over the rate of interest awarded by the learned Judge in the said suit, while decreeing the suit on 24.01.2001. That has been the only submission made by the learned counsel for appellant, Sri K. Subrahmanyam.

2. Heard Sri Aravala Rama Rao, learned counsel for the respondent – plaintiff.

3. The Court below, in the said suit, filed by the respondent – plaintiff for recovery of Rs.1,37,732/- from the appellant - defendant, which includes interest due, based on a simple mortgage deed, dated 17.02.1988, executed by the appellant in favour of the respondent for a sum of Rs.30,000/- agreeing to repay the same with subsequent interest at 24% per annum, settled the following three issues:

> "1. Whether the defendant paid the interest due every month?
> 2. If not, whether the plaintiff is not entitled for the suit amount?
> 3. To what relief?"

Examined PWs.1 and 2 and marked Exs.A1 to A3 on behalf of the respondent – plaintiff and DWs.1 and 2 on behalf of the appellant – defendant. On appreciation of evidence, rejecting the stand of the appellant that the suit was barred by limitation, held that the mortgage deed is true and the appellant is liable to pay the suit amount and arrived at a conclusion, basing on the findings recorded, and decreed the suit with costs and passed preliminary decree for the suit amount with interest at 24% per annum from the date of suit till the date of realisation by granting six months time for redemption.

4. So, the limited question in the present appeal, as argued by the learned counsel for appellant, is that whether granting interest at 24% per annum, even after passing the preliminary decree, is sustainable?

5. Learned counsel for the appellant placed reliance on the ratio laid down in **N.M. Veerappa v. Canara Bank**[1], wherein the Honourable Supreme Court, in the context of Order XXXIV Rule 11 C.P.C., while dealing with the rate of interest in a mortgage suit, held that grant of interest at 6% per annum from the date of suit, in mortgage suits for recovery of bank loan, is proper. The relevant observations contained in paragraph Nos.14 and 17 are thus:

> "14. Therefore under Order 34, Rule 11, sub-clause (a) the Court may order payment of interest up to the date on or

[1] AIR 1998 Supreme Court 1101

before which payment of the amount found or declared due as per the preliminary decree, in regard to two distinct amounts; firstly under sub-clause (a) (i) interest can in the Court's discretion, be directed to be paid on "the principal amount found due on the mortgagee" - at the rate payable on the principal or where no such rate is fixed, at such rate as the Court deemed reasonable; secondly under sub-clause (iii) interest can in the Court's discretion, be directed to be paid on costs, charges and expenses at such rate not exceeding 6% per annum as the Court may deem reasonable in both these situations the discretion is to be exercised subject to the above provisions.

(B) Interest after date fixed in preliminary decree: clause (b)"

"17. From the aforesaid rulings the following principles can be summarised. (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34, Rule 2(c)(i) or Order 34, Rule 4(1) or Order 34, Rule 7(c)(i), respectively in suits for foreclosure, sale or redemption. (b) But after the 1929 Amendment, because of the words used in the main part of Order 34, Rule 11, namely that "the Court may order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It has been so held in Jaigobind's Case by the Privy Council, AIR 1940 FC 20 and by this Court in S.P.Majoo's Case (1969) 3 SCR 33 : (AIR 1969 SC 600) that the new provision gives a certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned. (c) It is no longer obligatory to award the contractual rate after date of suit and up-to-date fixed for redemption as above-stated even though there was no question of the contractual rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from date of suit under Order 34, Rule 11 (a)(i) up-to-date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable - on the principal amount found or declared due on the mortgager is concerned. (e) The Court has also power to award from date of suit under Order 34, Rule 11 (a) (iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate not exceeding 6%. This is the position of the discretionary power of the Court, from date of suit up-to-date fixed in the preliminary decree as the date for payment. (f) Again under Order 34, Rule 11 (b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest up-to-date of realisation or actual payment, on the aggregate sums specified in clause (a) of Order 34, Rule 11, could award interest at such rate as it deemed reasonable."

6. Learned counsel also placed reliance on a decision of the Honourable Supreme Court in **Mhadagonda Ramgonda Patil and others v. Shripal Balwant Rainade and others**[2], in relation to the Rule of Damdupat. The Honourable Supreme Court, while holding that the said Rule was never applicable to Madras, held in paragraph No.21 thus:

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[2] AIR 1988 Supreme Court 1200

> “Admittedly, the rule of Damdupat was never applicable to Madras. It has been already noticed that in Madhwa Sindhanta's case ((1903) ILR 26 Mad 662) (supra) the principal reason to hold that the rule was inapplicable to mortgages governed by the Transfer of Property Act was that in view of Section 2 of the Transfer of Property Act, before it was amended by Act 20 of 1929, the rules of Hindu law were not saved with regard to mortgages of immovable properties and charges as contained in Chapter IV of the Act. By the Amending Act 20 of 1929, Section 2 has been amended and after such amendment it reads “and nothing in the second chapter of this Act shall be deemed to affect any rule of Muhammadan law.” The inference that was drawn in Madhwa Sindhanta's case (supra) from the provision of Section 2 about the non-applicability of the rules of Hindu law including the rule of Damdupat to mortgages cannot now be drawn from the amended provision with regard to any rule of Hindu law. Moreover, we are of the view that the law was not correctly laid down in Madhwa Sindhanta's case (supra), and the Calcutta, Bombay and Nagpur High Courts have rightly held in the decisions mentioned above that the rule of Damdupat is applicable to mortgages. No other point has been urged on behalf of the appellants.”

7. Order XXXIV Rule 11 C.P.C., dealing with payment of interest in any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, lays down to order ‘payment of interest’ to the mortgagee as mentioned in Clauses (a) and (b) thereof. They are relevant for the present purpose. They read thus:

> "11. Payment of interest – In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely -
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> (a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage –
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> (i) on the principal amount found or declared due on the mortgage, - at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable, and
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> (ii) * * *
>
> (iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage – security upto the date of the preliminary decree and added to the mortgage-money, - at the rate agreed between the parties, or, failing such rate, at such rate, not exceeding six per cent per annum as the Court deems reasonable; and
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> (b) subsequent interest upto the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable."

8. In **Life Insurance Corporation of India v. Vaila Lakshmi Bai**[3], in the context of Order XXXIV Rule 11 (b) C.P.C., this Court held that in a suit based on mortgage, the first step is to determine the principal amount as per Order XXXIV Rule 11 (a) C.P.C. It would be reasonable to award interest at 6% per annum from the date of filing of suit till the date of deposit by the defendant. It is also held in

Kakinada China Appa Rao (died) v. Palukuri Venkateswara Rao[4] that the Courts have discretion and power under Order XXXIV Rule 11 C.P.C. to fix rate of interest from the date of suit till the date of realisation notwithstanding the provisions in Section 21-A of the Banking Regulation Act.

9. Learned counsel for the respondent, no doubt, insisted that the rate of interest awarded by the Court below be maintained, but, of course, it is difficult to accede to that submission.

10. Therefore, the present appeal is allowed in part only to the extent of reducing the rate of interest from 24% per annum, awarded by the Court below, to 6% per annum from the date of suit till the date of redemption and realisation of Rs.30,000/-, while maintaining the judgment and decree under challenge in all other respects.

11. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

October 13, 2017.
MD

[3] 2003 (3) ALT 698
[4] 2003 (5) ALT 375