

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.5515 of 2016

Order:

This CRP is filed by the petitioner/plaintiff aggrieved by the order dated 08.03.2016 in I.A.No.184 of 2015 in O.S.No.94 of 2003 whereunder the petition filed by the petitioner/plaintiff under Section 151 CPC to frame three additional issues viz.

1. *Whether the relevant sub-sections of Section 6 of Transfer of Property Act r/w Sec. 23 of Contract Act applies to the sale deed?*
2. *Whether the unfair excessive and usurious rate of interest Act applies to the interest rate of 36% stipulated in the re-conveyance agreement? and*
3. *Whether the provisions of Money Lending Act apply to the on hand loan transaction?*

was dismissed by the trial Court.

2) Heard arguments of Sri E.V.V.S.Ravi Kumar, learned counsel for petitioner and Sri Venkat Reddy Kodumury, learned counsel for respondent and with their consent this CRP is disposed of at the admission stage.

3) Learned counsel for petitioner would fairly submit that so far as the proposed additional issues 1 and 3 are concerned, they are not relevant and he is not insisting to frame those two issues and would

submit that this Court may consider 2nd issue as additional issue since in the written statement the defendant has claimed the interest at the rate of 36% p.a. which according to the petitioner/plaintiff is unfair and excessive.

4) Learned counsel for respondent opposed the CRP.

5) A perusal of copy of written statement made available along with material papers in the CRP would show that in para-5 of the written statement the defendant referred the agreement recital Nos.(a) to (e) wherein recital 'C' reads that the interest is payable at the rate of 36% p.a. and interest has to be paid every month without fail. That apart, in para-7 of the written statement the defendant has alternatively prayed that plaintiff has to pay Rs.2 lakhs with interest at the rate of 36% p.a. from 29.05.2001 to the date of payment of amount to claim re-conveyance. Hence, in case, re-conveyance were to be allowed, whether the defendant is entitled to interest at that rate of 36% is a question.

6) According to the petitioner/plaintiff, the rate of interest at the rate of 36% p.a. is excessive and usurious. This aspect needs consideration by the trial Court at the end of trial. Therefore, in the considered view of this Court, an issue has to be framed in that regard.

7) Therefore, this CRP is partly allowed and while setting aside the impugned order dated 08.03.2016 in I.A.No.184 of 2015 in O.S.No.94 of 2003, the trial Court is directed to frame the following additional issue:

“Whether the interest claimed by the defendant at the rate of 36% p.a. stipulated in the re-conveyance agreement is unfair and excessive?”

The trial Court is directed to give an opportunity to both sides to let in evidence in respect of aforementioned additional issue and decide the suit on merits within four (4) months from the date of receipt of copy of this order.

Date: 09-03-2017
Murthy



U. DURGA PRASAD RAO,J.