

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No. 2661 of 2001

ORDER:

This is an appeal filed against the judgment and decree dated 24.08.2001 in OS.No. 17 of 2000 passed by the Senior Civil Judge, Rajam.

As this is a first appeal, the parties are referred to as plaintiff and defendant only.

The brief facts of the case are that the plaintiff filed the suit for recovery of an amount of Rs.1,16,735/-. This amount is claimed on the basis that the defendants borrowed a sum of Rs.68,000/- from the plaintiff on 10.07.1997 and executed a demand promissory note agreeing to repay the same with interest at 24% per annum. As the defendants did not pay the amount borrowed despite demands and a lawyer notice dated 31.05.2000, the suit was filed for recovery of the sum. The defendants entered their appearance and filed their written statement denying the entire transaction. They state in their written statement that they have borrowed only Rs.50,000/- in January 1997 and the same was repaid through a mediator Narasimhulu Naidu. They also agreed that they repaid the said principal amount together with interest at Rs.3/- per Rs.100/-. They also pleaded in their

written statement that the land they purchased in 1989 was also developed and sold in 1999.

The lower Court framed the following issues:

- (a) Whether the suit pronote is true, valid and binding on the defendants?
- (b) whether the discharge pleaded by the defendants is true?
- (c) To what a relief?

On behalf of the plaintiffs three witnesses were examined and Exs.A.1 to A.3 were marked. On behalf of the defendants, two witnesses were examined and Exs.B.1 to B.5 were marked.

After considering all the evidence on record, the lower Court decreed the suit with interest and costs. The said order is impugned in this appeal.

Heard Sri T.V.Sridevi for the appellants and Sri K.Purushotham, learned counsel for the respondent.

The essential question that is raised and argued by the learned counsel for the appellants is on the question of interest. Learned counsel for the appellants argued that awarding future interest from the date of the suit till the date of the decree is not correct. Similarly she argued that the sum of Rs.1,16,735/- includes interest as claimed in the plant, therefore, that interest has to be scaled out and at

best, it can only be awarded on the sum of Rs.68,000/-, which is the principal amount for which the decree is passed.

In reply thereto, the learned counsel for the respondent argued that the decree passed is correct and valid. The discretion is vested in the Court. As per the learned counsel, to decide the question, the Court will have to “adjudicate” upon the principal sum due. Therefore, he states that the sum of Rs.1,16,735/- is correct. In addition, he states that as can be seen from the contents of promissory note itself, the borrowing was done to the purpose of purchasing of land. He also states that the plea set up by the defendants is found to be totally false and that therefore, they are not entitled to any scaling down of interest. He also points out that there is no pleading or proof to support this case of scaling down of interest.

After hearing both the learned counsel and on perusing the record, this Court is of the opinion that there are no serious infirmities in the order. The principal sum borrowed is Rs.68,000/- which is evident from Ex.A.1. The rate of interest is also stipulated in the promissory note as 24% p.a. No reasons have pleaded by the defendants to vary or reduce this rate of interest. Admittedly, the defendants borrowed the money for the purpose of purchasing a mango tope/garden.

They have not pleaded or proved anything to scale down the interest. There is no plea of equity that is raised to reduce the rate of interest that is agreed to in the promissory note.

As rightly pointed out by the learned counsel for the respondent and in terms of Section 34 of the Civil Procedure Code, the lower Court has to “adjudge” the principal sum. After trial, the lower Court considered the entire evidence; the plea advanced and came to a conclusion that the principal sum adjudged in terms of Section 34 of the Civil Procedure Code is Rs.1,16,735/-. Therefore, there is no infirmity as far as the said finding is concerned.

Coming to the issue of future interest, the trial Judge awarded future interest as per the contract rate from the date of the suit till the date of the decree only. This is also a matter, which is fully within his discretion and this Court is of the opinion that the lower Court rightly exercised the said discretion for awarding interest of Rs.68,000/- only.

As far as interest subsequent to the suit is concerned, it appears that the lower Court is, in fact, generous to the defendants and only awarded interest at 6% till the date of realization.

Therefore, this Court is of the opinion that there are no infirmities or errors either judicial or legal which are pointed

out so as to interfere with or modify the findings of the lower Court.

For all these reasons, the judgment and decree, dated 24.08.2001 passed in O.S.No.17 of 2000 is confirmed.

In the result the appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 20 .11.2017
KLP

D.V.S.S. SOMAYAJULU, J

