

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(NPD).Nos.3351 of 2011 & 2352 of 2013
and
M.P.No.1 of 2011 in C.R.P(NPD).Nos.3351 of
2011 & 2352 of 2013**

The Secretary,
K.1161, Elayamalai Primary Agricultural
Co-Operative Bank Ltd., Bhavani – 638 301.
Kalingarayanpalayampudur,
Erode Taluk and District.

...Petitioner in both the CRPs

Versus

1. P.Kanagaraj
2. K.PoongodiRespondents in CRP(NPD)No.3351 of 2011

3. The Deputy Registrar/Chief Revenue Officer/Arbitrator
Erode District Central Co-Operative Bank Limited,
Bhavini Main Road, Opp. VOC Bank,
Erode – 638 003, Erode District.

...3rd Respondent in both the CRPs

4. C.Thenmozhi
5. C.Ganesh

...Respondent in CRP(NPD)No.2352 of 2013

Prayer in CRP(NPD)No.3351 of 2011:

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the reversing Order passed in C.M.A.No.38 of 2009, dated 07.04.2010 by the Principal District Judge of Erode in A.R.C.No.8787/2003-2004, dated 04.10.2008 of the Deputy Registrar/Chief Revenue Officer/Arbitrator, Erode District Central Co-Operative Bank Limited, Erode.

Prayer in CRP(NPD)No.2352 of 2013 :

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the reversing Order passed in C.M.A.(C.S).No.37 of 2011, dated 22.11.2011 by the Principal District Judge of Erode modifying the order passed in A.R.C.No.4701/2003-2004, dated 26.03.2011 of the Deputy Registrar/Chief Revenue Officer/Arbitrator, Erode District Central Co-Operative Society Limited, Erode.

For Petitioner
in both the CRPs : V.S.Kesavan

For Respondents 1 & 2
in both the CRPs : Mr.N.Manokaran

For Respondent 3 in
both the CRPs : Given Up

ORDER

1.1. These two cases though set to different set of facts, involve a common question of law. To state the facts briefly, respondents (Private Respondents) P.Kanagaraj & K.Poongodi in CRP(NPD)No.3351 of 2011 and C.Thenmozhi & C.Ganesh in CRP(NPD)No.2352 of 2013 were members of the Revision Petitioner Society, and they have obtained a mortgage-loan on security of their respective properties. When they failed to repay the same, the Society referred the matter for Arbitration before the third respondent/Deputy Registrar/Chief Revenue Officer/Arbitrator, Erode District Central Co-Operative Bank Limited.

1.2. The third respondent has quantified the principal amount due and directed its payment with interest at 13.5% as per the contract of mortgage entered into between the respondents 1 and 2 with the Society. These debtors of the Co-Operative Society would prefer separate CMA in C.M.A.No.38 of 2009 and C.M.A.(C.S).No.37 of 2011 before the Tribunal (Principal District Court, Erode). While confirming the award, the Tribunal has reduced the future interest from 13.5% to 6%. This is now challenged by the Co-Operative Society in these two Civil Revision Petitions.

2. The learned counsel for the respondents brought to the notice of the Court that an identical question arose in CRP(NPD)No.2352 of 2013 and the learned single Judge before whom the matter came up, referred the matter for consideration of the larger Bench. Accordingly, the reference was made to a Division Bench and was answered by it in ***The Secretary, K.1161 Kalingarayan Palayam Primary Agricultural Co-Operative Credit Society Ltd., Vs. Chinnusamy*** [2017 (4) CTC 636] where it has held:

"11. As has been held in all these four Judgments consistently, there can be no doubt that in view of the express provision contained in sub-section(8) of Section 90 of the Tamil Nadu Cooperative Societies Act in respect of an Award under Section 90 of the Tamil Nadu Cooperative Societies Act, Section 34 of C.P.C is not at all applicable. Therefore, there can be no dispute that Order 34, Rule 11 of C.P.C is applicable in respect of

interest to be awarded while passing an Award under Section 90 of the Tamil Nadu Cooperative Societies Act because except Section 34 of CPC, the other provisions have not been excluded from their applicability to the proceedings before the Arbitrator under the Tamil Nadu Cooperative Societies Act and the Cooperative Tribunal under the said Act. As has been held by the Hon'ble Supreme Court in **N.M.Veerappa Vs. Canara Bank, 1998 (1) CTC 219 (SC); Attur Thuluva Velalar Sangam Vs. S.Duraisamy, 2014 (1) MWN (Civil) 286**, before 1929 it was obligatory for the Court to restrict the rate of Interest to be paid in the Preliminary Decree from the date of Suit till the date fixed for payment as per Order 34, of C.P.C. But, after 1929 amendment, beacuase of the words used in the main part of Order 34, Rule 11 of C.P.C., 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 on the amount due from the date of Suit till the date fixed in Decree for payment due under the Decree. The new provision date fixed in Decree for payment due under the Decree. The new provision gives certain amount of discretion to the Court. As has been held by the Hon'ble Supreme Court, the Court has discretion to order payment of Interest from the date of Suit under Order 34, Rule 11 of C.P.C upto the date fixed for payment in the Preliminary Decree, the same rate agreed in the Contract or if no rate is so fixed such rate on the principal amount found is concerned. As has been lucidly held by the Hon'ble Supreme Court in **N.M.Veerappa's case** cited supra, the discretion vested with the Arbitrator acting under Section 90 of the Tamil Nadu Cooperative Societies Act and the Tribunal acting under Section 152 of the said Act cannot be doubted. Thus, it is crystal clear that it is not at all obligatory that the Arbitrator or the Tribunal should award Interest from the date of claim only at the Contractual rate. We make it clear that the Arbitrator as well as the Tribunal have got

*discretion to award any reasonable rate of interest following the Principles laid down by the Hon'ble Supreme Court in **N.M.Veerappa's case** cited supra.*

12. In conclusion, we answer the reference as follows:

(i) Section 34 of C.P.C is not applicable to an Award made under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983.

*(ii) The Arbitrator passing award under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 and the Cooperative Tribunal acting under Section 152 of the said Act have got absolute discretion to award Interest at any reasonable rate not exceeding the Contractual rate following the principles laid down by the Hon'ble Supreme Court in **N.M.Veerappa Vs. Canara Bank, 1998 (1) CTC 219.***

(iii) The contrary view taken in some of the Judgments of this Court by the learned Single Judges hereby stand overruled."

The learned counsel added that in view of the categorical finding given on reference that upheld the authority of the Tribunal to direct payment of interest at a rate different from the agreed rate of interest, nothing can be said to survive in these two Civil Revision Petitions.

3. The learned counsel for the respondent fairly conceded on the legal position that emanates from the decision in **The Secretary, K.1161 Kalingarayan Palayam Primary Agricultural Co-Operative Credit Society Ltd., Versus Chinnusamy** [2017 (4) CTC 636].

4. Since issue involved in these Civil Revision Petitions are settled, nothing requires to be decided. Accordingly these petitions are dismissed and there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.04.2018

mrr

Index : Yes / No

To:

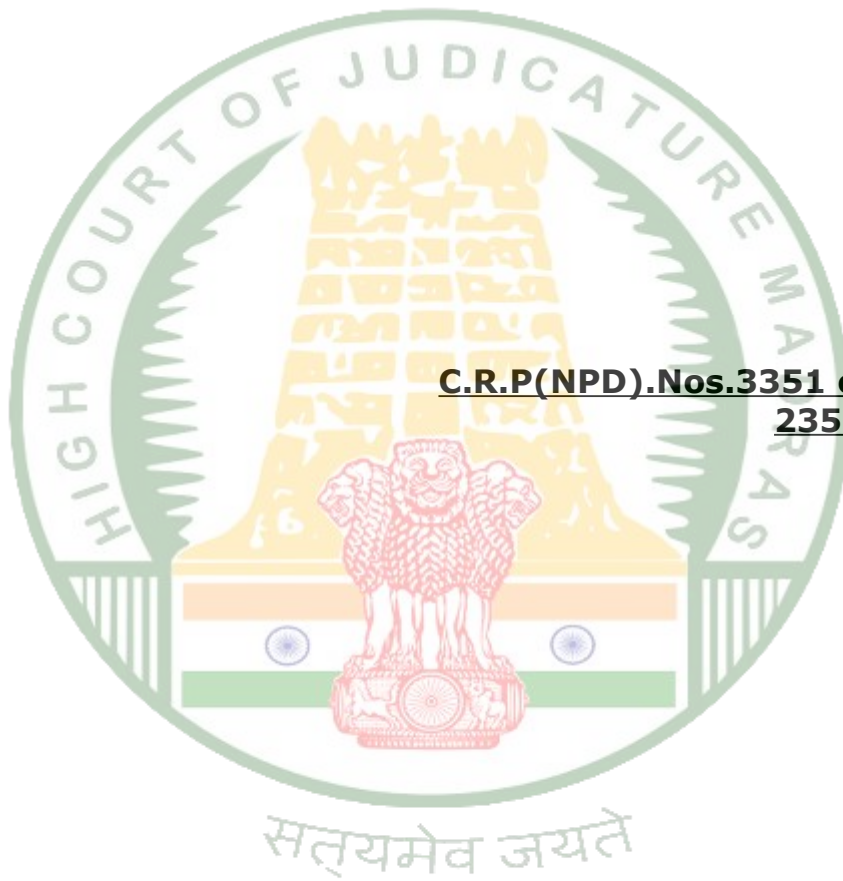
The Principal District Judge,
Erode.



WEB COPY

N.SESHASAYEE,J.,

mrr



**C.R.P(NPD).Nos.3351 of 2011 &
2352 of 2013**

WEB COPY

06.04.2018