THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.439 OF 2000

JUDGMENT:

Heard Sri M. Venkataramana Reddy, learned counsel for the appellants – respondents – defendants. None appears for the respondents.

2. The present Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), relates to the year 2000 and is directed against the judgment and decree dated 13.04.1999, in A.S.No.68 of 1994 passed by the IV Additional District Judge, Tirupati, whereby and whereunder preliminary decree passed on 25.04.1994 in O.S.No.242 of 1992 on the file of the Additional Subordinate Judge, Tirupati, was modified by enhancing the pendente lite interest from 18% per annum to 24% per annum on Rs.50,000/- from the date of borrowal till the date of passing of preliminary decree, on the ground that the suit claim was based on mortgage deed and the provisions of Section 34 of the Code would govern.

3. In fact, on the first date of hearing i.e., on 15.11.1999, this Court ordered notice returnable in two weeks. On 09.06.2000, CMP.No.24088 of 1999 filed for condoning the delay of 9 days in preferring the Second Appeal, was allowed finding that there was sufficient cause to condone the delay. Thereafter, since none appeared on 05.09.2000, the Second Appeal was directed to be posted for dismissal. On 20.01.2001, the matter was adjourned. Subsequently, on 25.01.2001, this Court admitted the Second Appeal. Of course, substantial questions of law were not formulated that day nor

subsequently. However, today, the learned counsel for the appellants advanced arguments.

4. In paragraph '5' of the grounds of the Second Appeal, the following questions of law, termed as substantial questions of law, have been formulated:

> "a) Whether the Appellate Court below while modifying the preliminary decree and granting 24% rate of interest p.a. instead of 18% p.a. is not excessive and contrary to Law 1989 (A.P) page No.47, Law Summary.
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> b) Whether the Appellate Court below has committed error in Law in not formulating the correct issues with regard to the substantial grounds raised in the appeal by the appellant as required under Order 41, Rule 31 of C.P.C reported in 1999 ALT 821 and 1997 (2) A.L.T page 781.
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> c) Whether the Appellate Court below holding that in private transaction between the parties under the mortgage deed prescribing the rate of interest at 24% p.a. is it not usurious or penal, is it not against the Usurious Laws Act 8 of 1937 and Interest Act, 1987.
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> d) The Court below granting 24% interest p.a. is it not substantially unfair.
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> e) The Court below failed to see that the debt is a secured debt."

5. Now, it is to be seen whether these questions of law really do constitute the substantial questions of law in the backdrop of what has been decided by the Courts below.

6. By the judgment under challenge, the lower appellate Court enhanced the pendente lite interest granted by the trial Court from 18%

per annum to 24% per annum on Rs.50,000/- from the date of borrowal till the date of passing of preliminary decree and confirmed future interest at 6% per annum from the date of preliminary decree till the date of realisation as also the time for redemption.

7. Admittedly, the present appeal is preferred only questioning the enhancement of pendente lite interest granted by the lower appellate Court.

8. In fact, before the trial Court, the 1st plaintiff examined himself as PW.1 and got marked the mortgage deed, dated 17.06.1989, executed by the defendants in favour of the plaintiffs as Ex.A1 and office copy of notice, dated 02.11.1992, issued by the plaintiffs to the defendants as Ex.A2, whereas on behalf of the defendants, only Exs.B1 and B2 were marked, but no evidence was let in.

9. The findings recorded by the trial Court on issues 1 to 3 have been perused. The suit is based on mortgage and what all defence taken by the defendants in regard to interest is that it is usurious to charge interest at 24% per annum, besides raising the plea that the 4th defendant is not a necessary party. That has been the only dispute and the trial Court, in view of Exs.B1 and B2 recitals, passed the preliminary decree after deducting Rs.4,500/-, with interest at 18% per annum on Rs.50,000/- from the date of borrowal till the date of passing of preliminary decree and future interest at 6% per annum from the date of preliminary decree till the date of realisation.

10. As already observed in the above, the lower appellate Court affirmed the preliminary decree passed by the trial Court, but enhanced pendente lite interest from 18% per annum to 24% per annum. The relevant conclusion of the lower appellate Court made in paragraph '11' of the judgment reads thus:

> "In the result, the appeal is allowed with costs through-out and the preliminary decree passed by the court below is modified to the following effect:-
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> In the result, a preliminary decree is passed after deducting an amount of Rs.4,500/-, with interest at 24% p.a. on Rs.50,000/- from the date of borrowing of the amount till date of passing of preliminary decree and future interest is allowed at 6% p.a. from the date of preliminary decree till the date of realisation and with costs. Time for redemption is granted 6 months from today. The suit against D-3 and D-6 is dismissed for non-payment of batta."

11. Now, the learned counsel for the appellants once again reiterates that the loan is usurious and, therefore, seek to reduce the rate of pendente lite interest, as the same is against the provisions of Usurious Loans Act 8 of 1937 and Interest Act, 1987.

12. One thing is certain that it is a suit based on mortgage deed and, therefore, it is difficult to accede to the request of the defendants. Even otherwise, there is absolutely no patent illegality in the findings recorded by the Courts below, more particularly, the findings recorded by the lower appellate Court, where pendente lite interest is enhanced from 18% per annum to 24% per annum, keeping in view the provisions

of the Code, more particularly the provisions of Section 34 of the Code. There is no merit in the present appeal.

13. The present Second Appeal is, accordingly, dismissed. No order as to costs.

Miscellaneous petitions, if any pending in the present appeal, stand closed.

A. SHANKAR NARAYANA, J

February 02, 2018.
v v