

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.73 OF 2008

JUDGMENT:

The present appeal is preferred by the plaintiff under Section 96 of the Code of Civil Procedure, 1908, questioning the rate of interest awarded by the learned IV Additional Judge, City Civil Court, Hyderabad, while decreeing the suit in O.S. No.174 of 1995, by judgment, dated 08.03.1996.

2. Today, when the appeal was called in the morning session, there was no representation, therefore, it was kept aside and it was called again in the after-noon session, still, there is no representation and, therefore, decided to proceed on merits.

3. As could be seen from the appeal grounds, the appellant as plaintiff, in fact, sought for future interest on the suit amount of Rs.8,59,495/- at the rate of 19.75% per annum with quarterly rests as respondent No.1 availed the loan of Rs.5,00,000/- with interest at the rate of 17.5% per annum by executing all relevant documents joined by respondent Nos.2 to 4 in execution of pro-note in their personal capacity, besides respondent Nos.4 and 5 depositing their title deeds towards collateral security with the appellant bank, and respondent No.1 even agreed that overdue interest at the rate of 2.5% per annum with quarterly rests would be paid in case of breach of terms and conditions of the agreement and, thus, the contractual rate of interest

was at the rate of 17.5% plus 2.5% overdue interest. But, the Court below, somehow, declined to grant the interest at that rate and granted lesser rate of interest.

4. In the said context, there is no necessity to refer to the pleadings at all, nor the findings recorded by the Court below in arriving at that the suit claim was proved by the appellant - plaintiff. But, so far as the rate of interest is concerned, the Court below having referred to the evidence of PW.1 and the documents marked as Exs.A-1 to A-16, on appraisal, held that the claim of the appellant is proved decreeing the suit for Rs.8,59,495/- with future interest at the rate of 18% per annum from the date of suit till realization on the principal amount of Rs.5,00,000/- and, thus, ordered to pass a preliminary decree in respect of the plaint schedule properties against respondent Nos.4 and 5 by granting six months time for redemption.

5. The suit relates to the year 1995 and disposed of on 08.03.1996. It is not known whether any application to pass final decree was filed or not. It appears, with delay condonation petition, the present appeal was filed and that was the reason the present appeal was registered in the year 2008. But, in fact, the appellant has not taken steps and since it did not pursue the directions given by this Court to issue notices to respondent Nos.3 and 5, the present appeal was dismissed against them on 25.07.2007. Thereafter also, the

appellant has not taken any steps to get the dismissal order against respondent Nos.3 and 5 set aside.

6. The only point that arises for consideration is, whether the request of the appellant for grant of interest at the rate of 19.75% per annum with quarterly rests can be acceded to?

7. As could be seen from the proceedings, the appellant failed to take steps to get the dismissal order, dated 25.07.2007, against respondent Nos.3 and 5 set aside. In fact, the decree contemplates personal decree against respondent Nos.1 to 4 and preliminary decree against properties mortgaged by respondent Nos.4 and 5. As already stated in the above, whether any application is filed to pass final decree and whether any final decree is passed or not is not forthcoming as there is no representation for the appellant. Since the appeal is dismissed against respondent Nos.3 and 5, and no steps were pursued, on this short ground itself, the appeal is liable to be dismissed. However, keeping in view, the decree passed by the Court below was an *ex parte* decree and the decree was passed in the year 1996 and when there is no representation for the appellant, it is not desirable, at this stage, to accede to the relief in the present appeal, more particularly, when the rate of interest awarded by the Court below was at 18% per annum on the principal amount of Rs.5,00,000/- from the date of suit till realization while decreeing the suit for Rs.8,59,495/- which consists of principal as well as agreed

interest as calculated by the appellant as per the terms and conditions of the agreement.

8. Therefore, the present appeal is dismissed. But, however, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal suit, stand closed.

A. SHANKAR NARAYANA, J

January 31, 2018.
Mgr

