HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.415 OF 2008

JUDGMENT:

The present appeal is preferred by defendant Nos.1 and 2 under Section 96 of the Code of Civil Procedure, 1908, aggrieved over the judgment and decree, dated 17.03.2006, passed in O.S. No.324 of 2003, by the learned Additional Senior Civil Judge, Chittoor, whereby and where-under, the suit of the plaintiff - Vijaya Bank, sole respondent herein, was decreed for a total sum of Rs.3,69,871/-, which includes interest also on the principal amount of Rs.2,00,000/-, with future interest at the rate of 21.50% per annum from the date of suit till realization and costs of the suit.

2. Though, the present appeal suit relates to the year 2008, there is no representation for the appellants. The learned counsel for the respondent - plaintiff bank, in fact, is present and he has advanced arguments.

3. According to the learned counsel, the entire transaction was admitted by the appellants - defendants when they filed written statement. But, denied when DW.1 entered into witness box, his signatures occurring on Ex.A-1 - suit promissory note, though, admits the signatures in Ex.A-6, which is acknowledgment of debt, dated 05.12.2000, and also denied the signatures in the written statement. It is, therefore, his submission that there is virtually nothing in the

present appeal to hold the findings recorded by the Court below are not based on proper appreciation of evidence as claimed by the appellants and, therefore, sought to dismiss the appeal. But, however, when a question is put to the learned counsel for the respondent so far as post-decree interest is concerned, awarding at the rate of 21.50% per annum may not be reasonable as it is not a suit based on mortgage and the suit is based on promissory note though, based on loan, the learned counsel, of course, does not strongly dispute it. However, it would be examined at a later stage.

4. Now, turning to the grounds raised in the appeal, once again it is pleaded that the suit is barred by limitation, which according to the appellants the Court below did not properly consider. Yet another ground raised by the appellants is that evidence of DW.1 is not properly appreciated while examining Exs.B-1 to B-4. The last ground raised is that the Court below failed to give any reason while awarding future interest at the rate of 21.50% per annum on the suit claim of Rs.3,69,871/- till realization from the date of suit, and granting interest at that rate is usurious, penal and against the Usurious Loans Act, 1918, as amended by Act No.8 of 1937 and the Interest Act, 1978.

5. In fact, on the ground that the appellants are not represented, the present appeal would have been dismissed for non-prosecution.

But, however, on merits, the present appeal is disposed of, as the arguments of the learned counsel for the respondent are heard.

6. The appellants herein are defendants in the aforesaid suit, while respondent bank is the plaintiff.

7. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the suit.

8. As could be seen from the fact-situation, when DW.1 approached the plaintiff's bank, it sanctioned a loan of Rs.2,00,000/- and in token thereof, a promissory note was executed on 10.04.1995, and the loan was actually availed to purchase Commander Omni Bus bearing registration No.AP 03 9295, and, in fact, a letter of payment on 10.04.1995 was also executed to repay the loan amount in installments on or before 10.04.1999, agreeing to pay additional interest or penal interest also, for which transaction, defendant No.2 executed a letter of guarantee and, thus, according to the bank, both of them are jointly and severally liable, and despite receiving legal notice, dated 14.11.2003 and repeated demands, the due amount was not discharged, hence, the suit.

9. The defendants filed distinct written statements admitting the loan transaction and defendant No.2 standing as a guarantor, but, however, only disputed the additional interest stating that they did not agree for payment of additional interest in default. They, however,

claimed that execution of acknowledgements of debt, dated 05.02.1998 and 05.12.2000 marked as Exs.A-5 and A-6, and that the suit is barred by limitation and, therefore, sought to dismiss the suit.

10. The Court below on the basis of the above pleadings settled the following three issues:

"
1) Whether the suit is barred by limitation as contended by the defendants?
2) Whether the plaintiff Bank is entitled for recovery of the suit amount as prayed for?
3) To what relief? "

11. During trial, Manager of the plaintiff's bank was examined as PW.1 and marked Exs.A-1 to A-8 to substantiate the suit claim, whereas, on behalf of the defendants, defendant No.1 examined himself as DW.1 and marked Exs.B-1 to B-4.

12. On appraisal of the evidence on record, both, oral and documentary, the Court below decreed the suit for the amount and interest and also costs as referred to in the above.

13. Aggrieved over the same, the defendants preferred the present appeal agitating the grounds referred to in the above.

14. Basing on the grounds agitated and the arguments advanced by the learned counsel for the plaintiff, the following points require determination:

i) Whether the plaintiff bank could prove the acknowledgement of liability, precisely to say the contents of Ex.A-6?

ii) Whether bar by limitation as pleaded by the defendants is established by them?

iii) Whether the plaintiff is entitled to the suit claim?

iv) Whether the interest awarded by the Court below *pendente lite* and post decree is penal and unsustainable as pleaded by the defendants?

v) Whether the judgment and decree passed by the Court below are unsustainable as pleaded by the defendants

Point Nos.(i) to (iii)

15. In fact, when the pleas raised in the written statement are taken into consideration, certainly, there is no case for the defendants as they do admit the loan transaction and execution of Exs.A-1 to A-5, or at least Ex.A-4, and only the acknowledgment of debt under Ex.A-6 was disputed and just basing on that denial, they have taken the plea of bar by limitation.

i) Now, turning to the appreciation of evidence, it is clear from the evidence on record, more particularly, evidence of DW.1 when he was denying the signature on Ex.A-1-promissory note, it has to be viewed that deliberately in an attempt to wriggle himself out of the liability in payment of penal interest, set up the plea of bar of limitation. When an admission is figuring in the written statement i.e., pleading, certainly, what all he asserts in his evidence does not gain precedence over the pleading. Therefore, it is also clear from the finding recorded by the Court below that he has denied the signature on Ex.A-1 when it was confronted, but the very fact that he has admitted the signature on Ex.A-6, which was the acknowledgment of debt, dated 05.12.2000, nothing more is required to probe further to hold that the suit claim is not barred by limitation and it is within limitation, besides, it even lends assurance to execution of Ex.A-1 and other suit documents. Therefore, the grounds raised in the present appeal are really unsustainable for want of merits.

Point No.(iv)

16. Now, turning to the rate of interest granted by the Court below at 21.50% per annum on the suit claim of Rs.3,69,871/-, it is no doubt true, the defendants are burdened to pay the penal interest as per the terms and conditions of the suit documents, more particularly, Exs.A-1 to A-3 and having admitted their signatures in the suit documents, they cannot now contend that they were not explained charging additional rate of interest. Therefore, to the extent of *pendente lite* interest, certainly, the defendants have no case to that extent. Therefore, their request is disallowed. However, concerning the post-decree interest granted at the rate of 21.50% per annum, certainly, it has to be reduced to 6% per annum for the reason, there is no reason at all assigned by the Court below as to why it was granting interest at that rate. The Court below has not discussed anything in the direction of whether it was a commercial transaction or otherwise.

In such an event, certainly, to that extent, the decree requires modification allowing the present appeal in part.

Point No.(v)

17. In view of the aforesaid discussion, the present appeal is allowed in part, modifying the decree to the extent of post-decree interest restricting to 6% per annum from 21.50% per annum awarded by the Court below. 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

February 01, 2018.
Mgr