IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.15 of 2007

The Secretary,
Erode Co-operative Urban Bank Ltd.,
No.597, P.O.Box No.42,
Erode. ... Appellant/Plaintiff

Vs

1.S.M.Ramasamy
2.Smt.Mariammal ... Respondents 1 & 2/Defendants
3.Deputy Registrar -cum-Arbitrator,
Extension Officer (Cooperation),
Thiruvenkatasamy Street,
Erode - 1. ...3rd Respondents/2nd Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal District Judge, Erode, dated 21.06.2007 in C.M.A.No.4 of 2005, partly reversing and modifying the award passed by the second respondent in ARC No.767/2003-2004, dated 27.03.2004.

For Appellant : Mr.P.Valliappan
For R3 : Ms.T.Girija, GA
For R1 & R2 : No Appearance

JUDGMENT

This Appeal is directed against the judgment and decree passed by the learned Principal District Judge, Erode, dated 21.06.2007, in C.M.A.No.4 of 2005, partly reversing and modifying the award passed by the second respondent/Deputy Registrar-cum-Arbitrator, Erode, in ARC No.767/2003-2004, dated 27.03.2004.

2. It is averred that the respondents 1 and 2 herein obtained a mortgage loan of Rs.60,000/- on 01.08.2001 from the appellant herein / the Secretary, Erode Cooperative Urban Bank Ltd., Erode, and since then, they were paying the dues without any delay till 09.02.2003 and thereafter, they were unable to

pay the dues and as on 18.09.2003, there was a due to the tune of Rs.47,648/-. The above dispute was referred before the third respondent herein/Arbitrator, whereby, the learned Arbitrator, vide award dated 27.03.2004, while allowing the claim of the Society, had ordered for payment of interest at the rate of 20% per annum. Aggrieved against the same, the appeal was filed in C.M.A.No.4 of 2005 before the Cooperative Tribunal/Principal District Judge, Erode, taking a stand that the Arbitrator ought not to have passed an award with interest at the rate of 20% per annum as it is against the law laid down by this Court as well as the Hon'ble Apex Court. Learned Tribunal, vide impugned judgment and decree dated 21.06.2007, reduced the rate of interest from 20% to 6% per annum, with a further direction to pay the balance amount of Rs.43,191/- with subsequent interest at 6% per annum. This judgment and decree is questioned before this Court.

3. This Court, while admitting this appeal, vide its order dated 07.09.2007, framed the following substantial question of law;

> A) Whether the Lower Appellate Court is correct in law in reducing the rate of interest to 6% p.a. by applying the ratio laid down by this Court in 2001(2) Law Weekly 165, especially when the parties are governed by terms of the contract between them and there is a Government Order stipulating the rate of interest?

While answering the above substantial question of law, Mr.P.Valliappan, learned counsel appearing for the appellant submitted that the grant of interest at the rate of 20% cannot be found fault with. In support of his submissions, he has also relied on a judgment of this Court in the case of Madurai City Cooperative Housing Society Limited, Vs. Special Tribunal for Cooperative cases, Madurai [1999 (II) CTC 407] to say that the award of interest at contractual rate of 16% is legal and justified and therefore, by following the said ratio, the learned Arbitrator had accepted the contractual rate of interest fixed at 20% per annum while entering mortgage deed, hence, the learned Tribunal ought not to have interfered with the award passed by the learned Arbitrator.

4. Again, referring to a judgment of the Bombay High Court in Mrs.Roshan Dinshaw Karai and another Vs. Mrs.Sangita L.Mankani and others [AIR 2003 Bombay 105] submitted that when the parties reached an agreement to pay certain rate of interest for the amount received, the same interest is entitled to be received by the persons advanced the loan, therefore, neither of the parties can be blamed for reaching of an agreement, hence,

interference with the rate of interest agreed by the parties is unacceptable.

5. Referring to one another judgment of Gauhati High Court in Anil Chandra Debnath Vs. State Bank of India [AIR 2001 Gauhati 119], it is submitted that the rate of interest would be one agreed by the parties and the rate of interest, after the expiry of the prescribed period, would be that deemed reasonable by the Court. By relying the aforesaid judgments, he requested to confirm the rate of interest as awarded by the learned Arbitrator.

6. No representation for the respondents 1 and 2.

7. The respondents 1 and 2 herein are the members of the Erode Cooperative Urban Bank Limited/petitioner herein and they had obtained a mortgage loan of Rs.60,000/- on 01.08.2001. As there was a due to the tune of Rs.47,648/- as on 18.03.2003, the same was referred before the Arbitrator/third respondent herein. In the said proceedings, a counter affidavit was filed by the respondents 1 and 2 herein stating that they were paying the dues till 09.02.2003 without any delay and thereafter, they were unable to pay the dues. Finally, the learned Arbitrator, after perusing the materials available before him, passed an award fixing the rate of interest at 20% per annum. Aggrieved by the rate of interest alone, the respondents 1 and 2 herein preferred an appeal before the Principal District Judge, Erode/Cooperation Tribunal, whereby the learned Tribunal, vide its impugned judgment and decree dated 21.06.2007, reduced the rate of interest from 20% to 6% per annum.

8. Now, the only question needs to be answered by this Curt is whether the rate of interest fixed at 20% is excessive or not, especially when the said rate of interest was fixed on the basis of contract entered between the parties.

9. In this context, it is necessary to refer to the ratio laid down by this Court in Madurai City Cooperative Society Limited's case (cited supra), whereby it is clearly held that authority passing the award under Section 90 of the Cooperative Societies Act, 1983, has power to award interest at the contractual rate and therefore, Section 34 of the Civil Procedure Code has no application in view of express provision contained in Section 90(8) of the Act in this regard. For better appreciation, paragraph Nos.7 and 8 thereof are extracted below:-

> "7. Learned counsel for the petitioner apart from pointing out the terms of contract from the mortgage-deed, also

brought to my notice Section 90 (8) of the Tamil Nadu Co-operative Societies Act, 1983 which is as follows:

"Section 90 (8): Nothing contained in Section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section."

It is clear from the above provision that Section 34 of the Code of Civil Procedure is not applicable to any decision passed or award made under Section 90 of the Act. On the other hand, learned counsel appearing for the respondents 2 to 4 very much relied on a decision of Ramaprasada Rao, J., (as His Lordship then was) reported in Gurunathan and another v. Villupuram Co- operative Urban Bank Limited, 1979 T.L.N.J. 448. In that decision, after referring to a similar award by the Co-operative Sub Registrar and the award of the Co- operative Tribunal, the Hon'ble Judge has observed as follows:

"In my view, as it should be on a par with the powers of courts under section 34 of the Code of Civil Procedure, the arbitrator also necessarily can grant interest for the post-award period only at the rate of six per cent per annum notwithstanding the contractual rate of interest by which the parties are bound for the pendente lite period..."

The said decision has been rendered in a non-mortgage suit and the interest was awarded in arbitration proceedings. However, the proceedings against the respondents 2 to 4 herein is to enforce the terms of the mortgage-deed for which Order 34, Rule 11, C.P.C. applies, section 34, C.P.C. will not be applicable to the proceedings. I have already extracted section 90(8) of the Tamil Nadu Co-operative Societies Act, 1983 which specifically bars section 34, C.P.C., in respect of decision passed or award made under section 90 of the said Act. Further, in an identical case, Subramani, J., in a decision reported in M.D.A., H.S.G.6, Thirumangalam Co-op. Housing Society Ltd., v. Principal District Court, Madurai and others. 1999 W.L.R. 210 has held that in the light of Section 90 (8) of the Act, Section 34 of the Code of Civil Procedure has no application. The learned Judge has also considered the decision of Ramaprasad Rao, J., in Gurunathan and another v. Villupuram Co- operative Urban Bank Limited, 1979 T.L.N.J. 449. In N.M. Veerappa v. Canara Bank and others, , while considering a similar question, the Supreme Court has held that in a mortgage suit, section 34 C.P.C., has no application.

8. In the light of what is stated above, in view of section 90 (8) of the Tamil Nadu Co-operative Societies Act, 1983 the decision rendered in Gurunathan v. villupuram Co-operative urban bank Ltd., 1979 T.L.N.J. 448 is no more a good law and I am in agreement with the view expressed by Subramani, J., in M.D.A H.S.G.6, Thirumangalam Co-op. Housing Society Ltd. v. Principal District Court, Madurai and others 1999 W.L.R. 210 . Apart from the above legal position, it is a fact that co-operative institutions are borrowing at heavy interest and awarding loans to their members. It is also clear from the information furnished in the affidavit filed by the Madurai City Co-operative Housing Society that the borrowing rate of interest paid by the Society is 13 1/2 per cent per annum and if it is held that the Co- operative Societies are entitled to collect interest only at 6 per cent per annum from the date of decree till the date of realisation, the functioning of the Societies will be adversely affected and they will run only at a loss. In that event the house building activities will suffer a set back. Other-wise the Co-operative Societies will not be in a position to promote the house building activities. The co-operative building Societies are now playing a prominent part in the house building activities on co-operative basis. If the Co-operative building societies are not able to collect interest at contract rate, their functioning will come to standstill. In such circumstances, the impugned award of the Special Tribunal for Co-operative Cases, Madurai in so far as it relates to the rate of interest is set aside

and the interest at the rate of 16 per cent per annum for the decree amount till the date of realisation as ordered by the Co-operative Sub Registrar is hereby confirmed. Net result, the writ petition is allowed. No costs."

The above ratio clearly says that once the parties have agreed for payment of interest, the award of interest at contractual rate is always legal and justified.

10. In B.R.Shamala's case (cited supra), the Hon'ble Division Bench of this Court, finding that the award of interest at contracted rate of 21% is excessive, reduced the rate of interest from 21% to 12% in the interest of justice from the date of suit till the date of payment. Paragraph 37 thereof is extracted below:-

> "37. In this case, the amount borrowed is only Rs. 2,55,000/- and the suit claim is nearly Rs. 9,00,000/-. Taking into consideration the facts and circumstances, we feel that at least from the date of suit, defendants must be given some relief regarding interest. It is submitted at the time of hearing that the entire amount has been paid by the appellant to avoid payment of future interest. Taking into consideration the said conduct of defendants also, we feel some concession must be given to them. We feel the interest of justice will be met in awarding 12% interest from the date of suit till date of payment. To that extent, Preliminary Decree will stand modified."

11. In view of the above, this Court, taking note of the fact that the payment due from the debtor is pending for a long time, to meet the ends of justice, modifies the interest portion alone from 6% to 12%. Accordingly, the impugned judgment is modified and the judgment debtor is directed to pay the interest at the rate of 12% per annum from the date of filing of the above dispute before the learned Arbitrator till the date of realization. To that extent mentioned above, the substantial question of law is answered.

12. In fine, the Civil Miscellaneous Second Appeal is disposed of. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Principal District Judge,
Erode.

2.Deputy Registrar -cum-Arbitrator,
Extension Officer (Cooperation),
Thiruvenkatasamy Street,
Erode - 1.

+1cc to the Special Government Pleader Sr.52356, 51988
+1cc to Mr.P.Valliappan, Advocate Sr.51417

C.M.S.A.No.15 of 2007

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