IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 18.02.2019

Coram::
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.748 of 2011

1. The Oriental Benefit and Deposits Society Ltd.
   Rep. by its President.

2. Gopakumar,

3. Krishnakumar,
   No.1 to 3 at
   No.108, Audiyappa Naicken Street,
   Sowcarpet, Chennai-600 079. ... Appellants

/versus/

1. Dr.Perumal,
   No.70, 7th Street, Sasi Regha Nagar,
   Kodungaiyur, Chennai-600 018.

2. The State of Tamil Nadu,
   Rep.by Inspector of Police,
   E.O.W., Chennai-2. ... Respondents

Prayer:- Criminal Appeal is filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act read with Section 374 (2) of the Criminal Procedure Code, against to set aside the order and decreetal order dated 26.10.2009 passed in Crl.M.P.No.1384 of 2009 in Crime No.12 of 2005 by the Special Judge, The Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997, Chennai.

For Petitioner : Mr.P.Paranjothi

For R1 : Mr.C.K.M.Appaji

For R2 : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

J U D G M E N T

The Revision Petition is filed against the order passed by the Special Judge under TNPID Act, Chennai in Crl.M.P.No.1384 of 2009 dated 26.10.2009.

2. The grievance of the appellant is that the first respondent herein availed a loan of Rs.4,00,000/- from the appellant/Financial Institution and mortgaged his property by depositing the title deed. He agreed to repay the loan amount in 96 monthly instalments at the rate of Rs.8,800/- per month which includes interest at the rate of 21.6% per annum. The first respondent was not regular in his payment of E.M.I. He committed default and therefore the appellant was forced to bring the respondent's property for public auction, to recover the money due from him. Meanwhile, there was a spate of complaints against the appellant/Financial Institute by many of the depositors for default in re-payment of their deposited money.

3. The case was registered under Crime No.12 of 2005 by the Economic Offence Wing, Chennai. Under such circumstances, the 1st respondent herein made an application before the Special Court, Chennai alleging that he has paid Rs.3,87,110/- to the Appellant herein towards the loan of Rs.4,00,000/- and ready to pay further sum of Rs.7,97,934/- and sought for the return of title deed and discharge the mortgage. This application was contested by the Appellant herein on the ground that the 1st respondent who has availed loan, agreed to pay the interest at the rate of 21.6% per annum is bound to pay the principle and interest as per the terms of agreement. As on the date of application he is liable to pay around 17 lakhs. He cannot restrict his liability to Rs.7,97,934/-.

4. The trial Court, after considering the rival submissions made by the financial institution and the borrower, reconciling the statement of accounts produced by either side and passed the impugned order directing the respondent herein to deposit a sum of Rs.11,89,136/- on or before 26.11.2009 before the Appellate Court. If the said amount is not deposited, the petition shall stand dismissed.

5. It is now submitted by the learned counsel appearing for the respondent that the said amount Rs.11,89,136/- has been paid. The document has also been released by the Court but the lien created over the mortgaged property not yet been discharged. Whereas, the learned counsel for the appellant would submit that the trial Court has miserably failed to appreciate the fact that the 1st respondent has borrowed loan on a specific term that he will pay 21.6% per annum towards interest for the money borrowed. However, the trial Court has only calculated 9% interest for the period starting from March 2005 to August 2009. If the trial Court has properly calculated the rate of interest for the outstanding amount, the 1st respondent will be liable to pay a sum of Rs.17,47,882/- as on date of his application to redeem the loan. Arbitrarily, the trial Court has reduced the rate of interest from 21.6% to 9%

contra to the terms of agreement. Hence, the Criminal Appeal is filed before this Court. In view of the pendency of the appeal the lien over the property not discharged.

6. The learned counsels appearing for the respective parties have made their submission adverting to the provision of law and some of the judgments rendered by the Apex Court as well as this Court regarding payment of interest. This is a case where a registered non-banking Financial Institution has failed to pay his depositors. Therefore, action has been initiated against the Finance Institute under Tamil Nadu Protection of Depositors Act.

7. The 1st respondent herein is one of the person who has borrowed loan from the Financial Institution. While availing loan of Rs.4,00,000/- in July-1995 he has agreed to pay interest at the rate of 21.6% per annum. Further and also agreed to pay the loan in 96 monthly instalments. Admittedly he has committed default in repayment. Though, the 1st respondent should have cleared the loan within 96 months i.e., period of 8 years, he has not cleared the loan and did not care to redeem the property clearing the entire loan till criminal case was registered against the finance Company. Only during the month of August 2009, the 1st respondent has taken out an application with an undertaking that he will pay the loan amount and sought for return of the document, which was deposited to the Financial Institution while availing loan. Even in that application, the 1st respondent has not stated the actual due, he owe to the Financial Institution. Therefore, the trial Court has taken up the task of calculating the due and ultimately directed him to pay a sum of Rs.11,98,136/-. While doing so, the trial Court has fixed the interest for the period between March-2005 to August 2009 at the rate of 9% instead of agreed interest at the rate of 21.6%

8. By learned counsel for the 1st respondent, except refering a judgment of the Apex Court where the rate of interest reduced below the agreed rate from the date of decree, no other law could be quoted for justifying the reduction of rate of interest from 21.6% to 9%.

9. The learned counsel further rely upon Section 34 of the Civil Procedure Code which deals with interest. For better understanding the provision of Section 34 of Civil Procedure Code is extracted below:-

> 34. Interest
>
> "(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date

of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 2[with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from] the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
1[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest 3[on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

10. This provision is only in respect of period after decree, where the rate of interest is restricted to 6% that too, not for commercial transactions. The proviso to Section 34 of Civil Procedure Code makes it very clear that the restriction of 6% for the due after decree will not apply to commercial transaction. Insofar as the commercial transactions are concerned, the contractual rate of interest alone will be applicable. Therefore, this Court is of the opinion that the trial Court has miserably failed to appreciate the law and facts in a proper perspective and has erred in reducing the rate of interest from 21.6% to 9% from March 2005 to August 2009. Hence, liable to be set aside. Accordingly, the Criminal Appeal is allowed. The impugned order of the trial Court dated 26.10.2009 in Crl.M.P.No.1384 of 2009 is set aside.

11. While holding so, this Court is of the view that the above order passed by this Court shall not stand in the way of the 1st respondent herein to get discharge of the mortgage, if he comes, forward to pay the balance sum of Rs.5,58,746/- as per the agreed rate of interest till the date of application and Simple Interest at the rate of 12% from the date of application till the date of payment of Rs.17,47,882/-

12. In the result, the Criminal Appeal is Allowed on the above terms. The 1st respondent is directed to return back the title deed to the Special Court, Chennai, within 30 days from receipt of the order copy. The 1st respondent is at liberty to deposit the balance amount as indicated above in the Special Court, Chennai and get redeem the mortgage.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm

To

1.The Special Judge,
TNPID, Chennai.

2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police,
E.O.W., Chennai-2.

+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No.15068
+1cc to Mr.P.Paranjothi, Advocate, S.R.No.15331

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MG(CO)

rrs 22/03/201