

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P. (NPD) .No.1318 of 2014

and

MP.No.1 of 2014

S.Elangovan

..Petitioner

Vs.

1.Managing Partner

Jayapriya Financiers, Neyveli -2

Rep. by its Power Agent Sekar

No.320/2, (Behind) Gengusamy ITI,

Periyakurichi, Neyveli- 2.

2.R.Mathiyalagan

3.Elangovan

..Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the order and decree made in E.P.No.48 of 2011 in O.S.No.99 of 2009 on the file of Sub-ordinate Judge, Neyveli dated 06.02.2014.

For Petitioner : Mr.S.Vijayakumar

For Respondents: Mr.V.Rajesh Babu for R1

R2 & R3 - Not ready in notice

O R D E R

This Civil Revision Petition is directed as against the order and decree dated 06.02.2014 made in E.P.No.48 of 2011 in O.S.No.99 of 2009 on the file of Sub-ordinate Court, Neyveli, thereby, allowed the Execution Petition and directed the petitioner to pay the balance amount as per the calculation memo submitted by the 1st respondent herein.

2. The 1st respondent filed the suit as against the petitioner and the respondents 2 and 3 herein for recovery of money on the strength of the pro-note dated 19.10.2007. The petitioner did not appear before the trial court and the suit was decreed exparte. On the strength of the decree, the 1st respondent filed the execution petition in EP.No.48 of 2011. While pending execution petition, the 1st respondent filed a calculation memo, calculating the interest at the rate of 30%

p.a. from the date of the suit. Accordingly, the petitioner is liable to pay a balance sum of Rs.1,31,718/-. While pending execution petition, the petitioner so far paid Rs.3,32,179/-.

3. The learned counsel for the petitioner would submit that though a decree was passed at the rate of interest at 30% p.a. for the decree amount, the petitioner did not borrowed the loan for commercial purpose, therefore, as per Section 34 CPC interest should not exceed 6% p.a. The Section 34 CPC reads as follows:-

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, 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 :

[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 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.

4. On a perusal of the records, in the suit filed by the 1st respondent for recovery of money on the strength of the pro-note, there is no averments stating that the petitioner borrowed loan for commercial purpose. Therefore, the interest should not exceed 6%. The court below accepted the calculation memo filed by the respondent by calculating the interest at 30% p.a. Therefore, the order passed by the court below is perverse and illegal and is liable to be set aside.

5. Accordingly, the order and decretal order dated 06.02.2014 made in E.P.No.48 of 2011 in O.S.No.99 of 2009 on the file of Sub-ordinate Court, Neyveli is set aside and this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

6. However, when the interest is calculated at the rate of 6% p.a., the balance amount payable by the petitioner workout to Rs.30,820/- and the same is rounded off to Rs.30,000/-. The petitioner shall pay the said sum of Rs.30,000/- within a period of four (4) weeks from the date of receipt of a copy of the order, failing which, this order shall stand automatically cancelled.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Sub-ordinate Judge, Neyveli.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.S.Vijayakumar, Advocate Sr.NO.13001
+1cc to M/s.S.Kadarkarai, Advocate Sr.No.13007

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MGR (CO)
NR 16/04/2021