

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

THURSDAY, THE 5TH DAY OF AUGUST 2021

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN. No.152 of 2019

in

IP. No.91 of 1998

In the matter of the Presidency Towns
Insolvency Act, III of 1909

and

In the matter of

1. B.V. Saraswathy

2. Seenan

3. Dilli

4. Raja

5. K.S. Vijayalakshmi

6. Kesavan

7. Padma ...Debtors.

IP No. 91 of 1998

E. Balu

S/o. Late Ellappa Nattar,

residing at No.24,

Ella Kandappan Street,

Chennai – 600 003.

... Petitioning Creditor

-Vs-

1. B.V. Saraswathy

2. Seenan

3. Dilli

4. Raja

5. K.S. Vijayalakshmi

6. Kesavan

7. Padma

All are residing at No.2, Singannan Street,

Chennai – 600 003.

... Debtors

APPLN.No. 152 of 2019

1. Sha Champalal (Deceased),
S/o.Mr.Chunilal,
residing at No.21,
Vinayaga Maistry Street,
Sowcarpet, Chennai-600 001.
2. Sha Bhawarlal (Deceased),
S/o.Mr.Chunilal,
residing at No.6, Mannar Street,
Park Town, Chennai-600 003.
3. Mrs.Manju Devi,
W/o.Mr.Ashok Kumar Mehta,
D/o.Late Sha Bhawarlal,
No.29-13-47, Flat No.403,
Aiswarya Enclave, Kaleswara Rao Road,
Suryaraopet, Vijayawada,
Andhra Pradesh-520 004.
4. Mrs.Trishla Jain,
W/o.Mr.Ramesh Kumar,
D/o.Late Sha Bhawarlal,
No.75, Mulla Sahib Street,
Sowcarpet, Chennai-600 001.
5. Mr.Mahaveer Chand,
S/o. Late Sha Bhawarlal,
No.6. Mannar Street,
Park Town, Chennai-600 003.
6. Mr.Narendrakumar Jain,
S/o. Late Sha Bhawarlal,
No.210, Vidyasagar Oswal Garden Apartments,
C.B.Road, Kourkkupet, Chennai-600 021..
**(Applicant 3 to 6 are impleaded as per order
dated 31.01.2020 passed in Application No.12/2020.)**
7. Mrs.Kantha Devi,
W/o.Mr.Rajkumar Jain,

D/o. Late.Mr.Champalal,
Residing at No.6-21-14, 2nd Floor,
Arundelpet 6/2, Guntur,
Andhra Pradesh-522 002.

8. Mrs. Nirmala C.
W/o.Mr. Jayanthilal,
D/o. Late Mr.Champalal,
Thyagaraju Kaloni,
Gauribidanur, Chikkaballapur,
Karnataka-561 208.
9. Mrs. Sushila Devi,
W/o.Mr.Ashok Kumar,
D/o.Late Mr.Champalal,
No.9-9-3, Grandhi Vari Street,
Rajahmundry (Urban),
East Godavari, Andhra Pradesh-533 101.
- 10.Mrs. Lalitha Devi Bhansali,
W/o.Mahendra Bhansali,
D/o.Late. Mr. Champalal,
Residing at, #18/10, 2nd Floor,
2nd Cross, K.V.Temple Street,
Near Adarsh School, Sourashtrapet,
Akkipet, Bangalore, Karnataka-560 053.
- 11.Mrs.Santosh Kothari,
W/o.Tarun Kothari,
D/o.Late.Mr.Champalal,
Residing at, #14/14, 3rd Floor,
Suraj Residency, 36th A Cross,
11th Main, Jayanagar, 4th T Block,
Bangalore, Karnataka-560 041.
12. Mrs. Pinki Kumari C.
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D/o.Late Mr.Champalal,
Residing at No.3/3, T.D.Lane,
Cottonpet, Bangalore,
Karnataka-560 053.

13.Mrs.Tina,
W/o.Kumar Pal,
D/o.Late.Mr.Champalal,
Residing at, No.35-5-35,
Kaspa Street, MangalavarapuPeta,
Rajamahendravaeam, East Godavari,
Andhra Pradesh-533 101.

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W/o.Mr.Gouthamchand,
D/o.Late Mr.Champalal,
Residing at 32, 2nd Floor,
3rd Main Chamundi Vihar,
Layout, Nazarbad, Mysore,
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15.Mrs.Rakhi,
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Residing at Flat No.301,
15-2-294 Umraw Avenue,
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Nampally, Hyderabad,
Andhra Pradesh-500 012.

16.Mr.Praveen Kumar Jain,
S/o.Late Mr.Champalal,
Residing at No.21, Vinayaga Mesthri Street,
Sowcarpet, Chennai-600 001.

**(Applicants 7 to 16 are impleaded as per order
dated 05.07.2021 Passed in Application No.59 of 2021)**

...Applicants/Claimants

VS

1. B.V.Saraswathy,
2. Seenan,
3. Dilli,
4. Raja,
5. S.Vijayalakshmi,

6. Kesavan,

7. T.Padma,

Respondents 1 to 7 are residing at
No.2, Singannan Street,
Chennai – 600 003.

8.The Official Assignee,

Office of the Official Assignee,

High Court, Madras.

...Respondents/Respondents

Application praying that this Hon'ble court be pleased to set aside the order passed by the Learned Official Assignee in Claim Petition No.271 of 2005 in I.P.No.91 of 1998 and direct the 8th respondent to admit our claim of Rs.73,93,442.46/-(Rupees Seventy Three Lakhs Ninety Three Thousand Four Hundred Forty Two and Forty Six Paise Only) together with interest at 24% per annum till realisation.

The above application having been heard on 02.08.2021 in the presence of Mr.Vikram U.Jain, Advocate for the applicants/Claimants herein; and the Official Assignee, and the Deputy Official Assignee, for the 8th respondent herein; and upon reading the Judges Summons and affidavit of Bhawarlal filed herein; and having stood over for consideration till this date and coming on for hearing before this court for order in the presence of aforementioned advocate and this court do not find any reason to interfere with the order of the Deputy Official Assignee made in Claim No.271 of 2005 and

It is ordered as follows

That the Application No.152 of 2019 in I.P.No.91 of 1998 be and is hereby dismissed.

2. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
5TH DAY OF AUGUST 2021.

Sd./-
ASSISTANT REGISTRAR
Original Side-I

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2021.

MANAGER
INSOLVENCY OFFICE

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VSP
17/08/2021

HIGH COURT , MADRAS

APPLN.No.152 of 2019

IN

I.P.No.91 of 1998

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

DECREE DATED:05/08/2021

FOR APPROVAL:17/08/2021

APPROVED ON :17/08/2021

COPY TO:

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HIGH COURT, MADRAS.

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The above application having been heard on 02.08.2021 in the presence of Mr.Vikram U.Jain, Advocate for the applicants/Claimants herein; and the Official Assignee, Deputy Official Assignee, for the 8th respondent herein; and upon reading the Judges Summon and affidavit of Bhawarlal filed herein; and having stood over for consideration till this day and coming on for hearing before this court for orders in the presence of the aforementioned advocate and

The court made the following order

This application taken out by claimants/secured creditors challenging the order of the Deputy Official Assignee made in Claim No.271 of 2005,

wherein the learned Deputy Official Assignee had partly allowed the claim of the applicants while rejecting the major portion of it.

2. The applicants, as secured creditors, had advanced a sum of Rs.2,00,000/- on the strength of a mortgage to the insolvents on 21.01.1987. The said mortgage is evidenced by a registered instrument. As per the Mortgage Deed, the debtors/insolvents have agreed to pay interest at the rate of 24% per annum.

3. The applicants have filed a suit in CS No.850 of 1990 on the file of this Court seeking preliminary decree for sale of the hypotheca on the strength of the mortgage. The said suit was transferred to the City Civil Court and numbered as OS No.6766 of 1996 and an *exparte* decree came to be passed in the said suit on 17.10.2003. By the time, the decree came to be passed some of the defendants in the said suit were declared insolvents in IP No.91 of 1998. Therefore, it is the applicants have given up the security and have chosen to lodge their claim before the Official Assignee.

4. The Claim Petition filed by the applicants includes several other amounts also apart from the mortgage money which was decreed in the suit. The applicants claimed a sum of Rs.20,500/- towards stamp duty, registration fees and brokerage charges for the mortgage, interest for that Rs.20,500/-, a sum of Rs.37,600/- towards Court expenditure for initiating Rent Control proceedings and Execution Petitions against the tenants, a sum

of Rs.25,500/- as amounts spent on the receiver and the auctioner and a sum of Rs.20,000/- spent for execution of the eviction orders passed by the Rent Controller. In all, the claim for about Rs.11,90,400/-. However, during the course of the proceedings a statement has been filed by the learned counsel for the applicants claiming a sum of Rs.68,48,494/- as the amount due and payable to the applicants from and out of the estate.

5. The statement of accounts submitted by the applicants before the Official Assignee which is self explanatory is reproduced hereunder:

STATEMENT OF ACCOUNT

In I.P.No.91/98 O.S.No.6766/96
VII ADDL. CITY CIVIL COURT

	<i>Rs.</i>	<i>Rs.</i>
1. Mortgage Amount @ 24% P.A.	2,00,000.00	
2. Suit Valuable Amount as on 12/3/1990	3,65,320.00	
Suit Claim amount as on 17/10/2003	8,00,666.66	
3. Decreetal amount as on 17/10/2003	11,65,986.66	
4. Interest calculated at 24@ P.A. on Rs.11,65,986.66 from dt.17.3.2003 to 10.6.2014	29,81,039.25	41,47,025.91

5. MORTGAGE REGISTRATION

Expenses on 21.2.1987	20,500.00	
Interest from 21.1.87 – 20.5.2014 @ 24% p.m.	1,34,480.00	1,54,980.00
6. Property Auction (Expenses) Stayed expenditure dt.25.10.1988 as Advocate fees etc	20,500.00	

	<i>Rs.</i>	<i>Rs.</i>
Interest 24% P.A. For 25-1/2 years	1,25,460.00	1,45,960.00
7. Dt. 1.4.1989 Rent Control Proceedings against 21 Tenants in petition property and expenditure incurred as Advocate fees, Clerks fees, publication, Regd. Postage etc.	37,600.00	
25 years Int.@24/- P.A..	2,25,600.00	
Dt.1.4.90 Expenditure incurred for proceeding 21 R.C.O.P. Cases in various S.C. Courts such as Advocates fees, clerk, publication postage etc.	23,800.00	
24 years interest @ 24/- P.A.	1,37,088.00	4,24,088.00
FILING OF EXECUTION PETITIONS		
8. 1.1.1992 E.Ps.14 Files in R.C.O.P.s incurred Expenditure on Advocates Fees, Court's Amins, travelling, publications, postage etc.	35,200.00	
22 years Int. @ 24% P.A.	1,85,856.00	2,21,056.00
8a. Dt.1.6.1995 E.P.Proceedings incurred by RECEIVER Mr.Abdul Ghani in Hon'ble High Court, by order from H.H.Court to take possession of the entire mortgage property from 21 tenants E.P. executed with Assistant of Court Amins, Police security and labours	1,46,600.00	
18-1/2 years Int.24% P.A.	6,61,459.00	8,08,059.00
MISCELLANEOUS		
9. Dt.14.1.2001 cash paid to Mortgagers to execute Power of attorney	20,000.00	
13 years Int.24% P.A.	62,000.00	

	<i>Rs.</i>	<i>Rs.</i>
Dt.1.3.2001 For purchase of stamp papers to purchase property as agreed by Insolvents & Mortgagers	1,64,800.00	
13 years Interest @ 25% P.A.	5,14,175.00	7,61,375.00

REPAIRS & MAINTENANCE

10. 1.4.2004 expenses incurred to carry out repairs and maintenance of petition property.	36,750.00	
10 years Int.@ 24% P.A.	88,200.00	1,24,950.00

LEGAL EXPENSES

11. 15/6/2008 Advocates fees for staying the auction proceedings pertaining to the petition property	25,000.00	
6 years Int. @ 24% P.A.	36,000.00	61,000.00
SUM TOTAL		68,48,494.00

Though a fanciful claim was made no documents were produced in support of the expenses incurred towards registration, brokerage etc. and towards Court expenses in prosecuting the Rent Control Original Petitions and the Execution proceedings.

6. The applicants were content to produce the suit register extracts in the Rent Control Original Petitions. Though a sum of Rs.20,500/- is claimed as expenses incurred towards stamp duty, registration fees and brokerage charges for the mortgage except production of the Mortgage Deed no other documents has been produced to justify the expenses.

7. The learned Deputy Official Assignee, who considered the claim, rejected the claim made under the heads: mortgage expenses, Court expenditure and amounts spent for maintenance of the hypotheca. While allowing the claim under the decree, the learned Deputy Official Assignee had granted simple interest at 24% on the sum of Rs.2,00,000/- viz., the principal money borrowed from the date of the decree till date of payment. Thus, the learned Deputy Official Assignee had admitted the claim for a sum of Rs.19,23,465/-. Aggrieved by the said partial rejection of the claim, the applicants have come up with the above application.

8. The learned Official Assignee has filed a report disputing the claims made.

9. I have heard Mr.Vikram U. Jain, learned counsel appearing for the applicants and Official Assignee and Mr.Vasanthakumar, learned Deputy Official Assignee appearing for the eighth respondent.

10. Mr.Vikram U.Jain, learned counsel appearing for the applicants would vehemently contend that once the Court has awarded 24% compound interest under the decree, the learned Deputy Official Assignee was not justified in rejecting the claim for compound interest. He would also further contend that once the insolvents have authorised the applicants to launch proceedings under the Rent Control Act and the applicants had in fact launched proceedings under the Rent Control Act. The expenses incurred

towards such proceedings must be paid out of the estate of the insolvents. He would further contend that the Deputy Official Assignee cannot go behind the decree and reject the claim. He would also rely upon the judgment of this Court in *Narendra Kumar Vs. Sumathi*, reported in **2012 (2) CTC 198**, in support of his contention that the Executing Court cannot go behind the decree and test the veracity of the decree in an application under Section 47 of the Code of Civil Procedure.

11. Contending contra, the learned Deputy Official Assignee would submit that the judgment in OS No.6766 of 1996 being an *exparte* judgment only says the suit is decreed as prayed for. Nowhere in the plaint the applicants, as plaintiffs, have contended that they are entitled to compound interest on the mortgage. A perusal of the Mortgage Deed also does not show that there was an agreement to pay compound interest. Therefore, according to the learned Deputy Official Assignee, a proper interpretation of the decree that has been drafted pursuant to the *exparte* judgment would only be to confine the interest to the principal amount due under the mortgage and not on the suit claim. The suit was filed in the year 1990 claiming a sum of Rs.3,48,000/-. The prayer 'a' in the suit reads as follows:

“for foreclosing the suit mortgage and passing a final decree for Rs.3,48,000/- with interest at 24% per annum from the date of plaint till date of realisation.”

12. The said suit came to be decreed *ex parte* on 17.10.2003. The decree passed in the suit reads as follows:

“It is hereby declared that amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to 17th day of October 2003, is the sum of Rs.3,18,200/- for principal together with interest at 24% for a sum of Rs.8,00,666.66 for interest on the said principal sum of Rs. for cost, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security together with interest thereon and a sum of Rs.17,120/- for the costs of the suit awarded to the plaintiff, making in all a sum of Rs.11,65,986.66.

2. And it is hereby ordered and decreed as follows:

That, the defendant do pay into court on or before the day of ---- 19---, or any later date up to which time for payment may be extended by the Court, the said sum of Rs.11,65,986.66 (Rs.Eleven lakhs sixty five thousand nine hundred eighty six and sixty six only) together with interest at 24% per annum from the date of plaint till the date of realization.”

13. Taking advantage of the language, the learned counsel for the applicants would contend that the applicants would be entitled to 24%

interest on Rs.11,65,986.66 from the date of plaint till the date of realisation. I am afraid that such a calculation made would amount an erroneous interpretation of the decree granted by the Court. The very fact that the interest at 24% has been awarded from the date of plaint till date of realisation would only mean that the interest is not on the amount decreed, but it is on the principal amount due under the mortgage. Therefore, I do not see any error in the interpretation of the decree as placed by the learned Deputy Official Assignee.

14. As already pointed out the Mortgage Deed does not contain a provision for payment of compound interest. The plaint in OS No.6766 of 1996 also does not incorporate a claim for compound interest. The decree is very clear where it reads that the plaintiff would be entitled to interest at 24% per annum from the date of plaint till date of realisation. Therefore, at no stretch of imagination, can it be said that the decree contemplated payment of interest on the decretal amount viz., Rs.11,65,986.66. I am therefore of the opinion that on a proper interpretation of the decree, the learned Deputy Official Assignee has rightly accepted the claim partially by calculating interest on the principal amount viz., Rs.2,00,000/- from the date of plaint till date of realisation. Therefore I do not see any error in the conclusions of the learned Deputy Official Assignee with reference to the amount payable under the decree.

15. As regards the other claims are concerned the applicants have not only claimed various amounts said to have been expended by them on litigation, they would also claim interest at 24% for the said amounts. Such a claim is not supported by any contract between the parties viz., the Mortgagors/Insolvents and the applicants.

16. No doubt some evidence has been produced to show that the applicants have filed certain Rent Control Original Petitions against the tenants and obtained orders of eviction and have put the said orders in execution. In the absence of concrete evidence to show the exact expenses incurred, supported by vouchers, I do not think that the learned Deputy Official Assignee could be faulted for rejecting the said claims. The amount that is claimed towards registration charges, stamp duty and brokerage regarding the execution of the Mortgage Deed dated 21.01.1987 must have been made subject matter of the suit. Since the same was not made subject matter of the suit, I do not think the applicants can be allowed to claim the said amount before the Official Assignee in the Insolvency proceedings. Though certain vouchers have been produced to show that there has been some expenses incurred by the applicants those documents have not been proved in accordance with law.

17. The Deputy Official Assignee has rejected those documents and has concluded that there is no proper proof for the expenditure that is claimed to have been made. Though a promissory note has been produced

to show that the insolvents have borrowed a sum of Rs.20,000/- from the applicants sometime in 2011, I find that there are over writings in the document and the date of the document itself is not very clear. Though it is stated to be a document that has emanated in the year 2001, it is written on a printed form which shows the year as 2009. I therefore do not think it would be safe to rely upon the said instrument as evidence of borrowing of Rs.20,000/- by the insolvents from the applicants. Even otherwise that has emanated after the borrowers were adjudicated as insolvents and therefore the estate cannot be held liable to answer such claims.

18. I therefore do not find any reason to interfere with the order of the Deputy Official Assignee made in Claim No.271 of 2005 and this application is **dismissed**. However in the circumstances of the case, there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
5TH DAY OF AUGUST 2021.

Sd./-
ASSISTANT REGISTRAR
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ORDER DATED:05/08/2021

FOR APPROVAL: 17/08/2021

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