IN THE HIGH COURT OF JUDICATURE AT MADRAS
CORAM:

Reserved on	02.11.2021
Pronounced on	07.02.2022

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL
C.M.S.A.No.7 of 2012
and
M.P.No.1 of 2012

Purasawalkkam Santhatha
Sangam Nidhi Ltd.,
No.47, Vellala Street,
Purasawalkkam, Chennai - 84

..Appellant/Defendant

Versus

1. N.Vijaya
2. Shanthi
3. N.Srinivasan
4. N.Anandhi

..Respondents/Plaintiffs

Civil Miscellaneous Second Appeal filed under Section 100 Civil Procedure Code and under Section 96 CPC r/w Order 43 Rule 1 C.P.C., against Judgment and Decree dated 19.08.2009 on the file of the learned III Additional Judge, City Civil Court, Chennai in C.M.A.No.70 of 2008, reversing the Judgment and decree dated 11.10.2006 in O.S.No.4114 of 2002 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Raghupathi
For Respondents 1, 2 & 4 : Mr.A.K.Raghavallu
R3 : No appearance

J U D G M E N T

The Defendant in O.S. No. 411 of 2002 on the file of the learned II Additional City Civil Court, Chennai, is the appellant.

2. The suit in O.S. No. 411 of 2002 was filed by the respondents herein, as plaintiffs, for redemption of the suit

mortgage dated 21.03.1997, for a consequential injunction and for costs.

3. According to the plaintiffs, the first plaintiff namely Vijaya and her husband Late. T.N.U. Nagarajan are the joint owners of the property, house, ground and premises bearing No.46, Ariya Gowda Street, Chennai -33. They have executed a registered mortgage deed dated 21.03.1997 with the appellant, by offering the above said property, as a security and availed loan to the tune of Rs.15 Lakhs for business purpose. As per the terms of the mortgage deed, the respondents-plaintiffs have to repay the principal along with interest over a period of 78 months on monthly installment basis. However, it is the case of the plaintiffs that the defendant-Sangam, under the mortgage, incorporated certain clause for payment of interest of 21.6% upon unpaid instalment from the date on which instalment becomes due and added such interest liability to the capital. It is also stated that the first plaintiff and her husband were made to sign the mortgage deed containing usurious and penal interest clauses due to their urgent business necessity. It is also contended that the plaintiffs have paid Rs.9,73,620/-, however, the defendants claim a whooping sum of Rs.27,49,244/- as due from the plaintiffs. The defendant is also attempting to bring the property on auction for which a notice dated 05.08.2022 was issued. According to the plaintiffs, the notice dated 05.08.2022 is arbitrary and illegal and that the plaintiffs are not liable to pay such a huge sum of Rs.27,49,244/- to the defendant. Therefore, the plaintiffs have filed the suit.

4. The defendant filed a written statement contending inter alia that the plaintiffs have consciously entered into the suit mortgage deed. The terms and conditions entered in the suit mortgage will bind the plaintiffs and they cannot feign ignorance of the same. It is futile on the part of the plaintiffs to contend that the defendant is claiming usurious penal charges. The defendant further contends that when the plaintiffs failed to pay the instalments in time, the defendant is entitled to invoke the terms and conditions of the mortgage. The defendants are liable to pay a sum of Rs.23,63,567/- as on 28.11.2002 and are liable to pay further interest until the settlement of the entire loan amount. Even according to the plaintiffs, they have committed default while so, it is open to the defendant to bring the property on auction to realise the mortgage amount. The defendant therefore prayed for dismissal of the suit.

5. Before the trial court, the third defendant examined himself as PW1 and marked Exs. P1 to P4. The defendant examined one Chandrasekaran and marked Exs. D1 to D3. The trial court, on consideration of the oral and documentary evidence, concluded that when the plaintiffs have committed default in payment of the mortgage amount, it is well open to the defendant to bring the property in auction to realise the mortgage amount. At the same time, the trial court concluded that the defendant is not entitled to claim interest on penal interest. Accordingly, by the judgment dated 11.10.2006, the trial court concluded that the plaintiffs are liable to to pay a sum of Rs.18,49,535/- to the defendant with interest at the rate of 21.6% per annum. At the same time, the trial court has concluded that since the decreed amount being Rs.18,49,535/-, it has no jurisdiction to pass a decree in the suit and therefore directed the plaint to be re-presented to a competent Court having jurisdiction as per Order VII Rule 10 of the Code of Civil Procedure, within a period of one month.

6. Aggrieved by the judgment and decree passed by the trial court, the plaintiffs have filed C.M.A. No. 70 of 2008 by contending that the trial court, having entertained the suit and permitted the parties to adduce evidence, ought not to have returned the plaint for being re-presented before a competent Court. In fact, the suit was originally filed before the learned Principal Judge, City Civil Court and it was returned for being tried by the trial court. While so, it cannot be said that the trial court has no jurisdiction to try the suit. The trial court ought to have directed the plaintiff to pay the deficit court fee, being the difference between the court fee already paid and court fee due and payable for the suit simplicitor for redemption of mortgage under Section 33 (8) provisio of the Court Fees and Suit Valuation Act. When the entire trial is over, witness examined and documents were marked and arguments advanced, at that stage, invocation of Order VII Rule 10 of CPC is not proper.

7. The first appellate Court, on appreciation of the rival contentions before it, held that the trial court having permitted the parties to adduce evidence, mark documents and conducted a trial, ought not to have returned the plaint to be re-presented before the competent Court having jurisdiction. The Appellate Court also held that if the trial court would have decided the question of pecuniary jurisdiction at the threshold of the suit, the necessity to return the plaint would not have arisen. When the trial court decided all the issues that had

arisen in the suit, directing the plaint to re-present the plaint before the Court having jurisdiction is improper. In any event, the trial court ought to have decreed the suit on condition that after payment of the due amount. Therefore, the trial court passed the decree and judgment dated 19.08.2009 holding that the plaintiffs are entitled to get the mortgage deed from the defendant on payment of Rs.13,93,620/- ason date of decree with subsequent interest at the rate of 9% from the date of decree till the date of realisation. Accordingly, the Appellate Court modified the decree and judgment passed by the trial court.

8. The learned counsel for the appellant submits that the first appellate Court is not correct in reducing the rate of interest at which the mortgage amount is payable by the plaintiff. The reduction of rate of interest is not warranted as it would run contrary to the suit mortgage deed. The trial court has already held that the plaintiffs are not entitled to interest on penal interest and therefore, the further reduction of interest amount by the first appellate Court has caused prejudice to the appellant-defendant. Therefore, it is contended that the Judgment of the first appellate Court is perverse and prayed for allowing the Civil Miscellaneous Second Appeal.

9. The learned counsel for the respondents/plaintiffs contends that after the judgment was passed by the lower appellate court, the respondents have offered to pay the entire amount in cash with covering letter to the tune of Rs.14,92,915 (Rs.13,93,620/- plus interest @ 9% amounting to Rs.99,295/-). The said letter was acknowledged by the appellant, however the appellant refused to accept the amount. As a result, on 01.06.2010, the respondents were constrained to send the decree amount vide pay order bearing no.017916 drawn on HDFC Bank, R.A.Puram, Chennai - 28. The said letter was also returned and the appellant flatly refused to accept the decree amount tendered by the respondents. Therefore, the respondents were constrained to file an application in C.M.A.No.70 of 2008 seeking permission to deposit the decree amount with interest to the credit of the appeal and the court granted permission and accordingly, Rs.15,04,762/- was deposited by the 1st respondent to the credit of the appeal. The learned counsel for the respondents relied on the following decisions in support of his contention:

(i) [Buragada Venkatrao and others Vs. Godavarti Venkatratnam and others, reported in AIR 1952 Mad 872.

(ii) AIR 1957 Mad 122 [Sri Balasaraswathi Ltd., Tirunelveli Vs. A.Parameswara Aiyar and others]

(iii) AIR 2007 Mad 15 [C.T.Faisal Vs. Official Liquidator and others]

(iv) AIR 2001 SC 3095 [Cetral Bank of India Vs. Ravindra and Others]

10. Heard the learned counsel for the appellant, learned counsel for the respondents and perused the documents placed on record.

11. It is not in dispute that the plaintiffs have mortgaged the property in question with the defendant. It is also not in dispute that the plaintiffs have paid a portion of the mortgage amount and committed default in payment of a portion of the amount. For having committed default, the defendant demanded payment of interest as also penal interest inter alia bringing the property for auction sale. At this stage, the plaintiff has filed the suit for redemption of mortgage and for consequential permanent injunction restraining the defendant from bringing the mortgaged property to sale on 05.08.2002. The defendant filed written statement contending that in view of the default committed by the plaintiffs, it is open to them to bring the property in auction to realise the mortgage suit and therefore they prayed for dismissal of the suit paving for bringing the property on auction to realise the mortgage amount.

12. In the suit, the parties went for trial, adduced oral evidence and also marked documents. The trial court framed issues and held that the defendant is not entitled for claiming interest on penal interest. At the same time, the trial court concluded that the plaintiffs are liable to pay the sum of Rs.18,49,535/- with interest at the rate of 21.6% percent till the date of realisation. Having come to such a conclusion, the trial court, without application of mind, invoked Order VII Rule 10 of CPC, after completion of trial requiring the plaint to re-present the plaint before the Court having jurisdiction.

13. On appeal by the plaintiffs, the First appellate Court, after elaborate consideration, has held that the trial court, after completion of trial ought not to have directed the plaint to be re-presented instead of passing a decree in the suit. The First Appellate Court, accordingly, passed a decree with a direction to the plaintiffs to pay the balance mortgage amount with interest at 9% per annum and on such payment, the defendant was directed to clear the encumbrance over the suit property by returning the mortgage deed.

14. Aggrieved by the judgment of the first appellate Court, the defendant has come up with this appeal by raising the following substantial question of law namely:-

> "Whether the Lower Appellate Court is correct in modifying the decree by arriving at wrong quantum of amount without remanding the matter to the trial Court for fresh disposal"

15. The appeal is filed mainly on the ground that reduction of interest at 9% per annum by the appellate Court is warranted. This contention of the defendant-appellant cannot be countenanced. Whenever a decree is passed, the court can award interest as has been contemplated under Section 34 of the Code of Civil Procedure. Section 34 of the Code of Civil Procedure contemplates payment of interest at such amount, which may be appears to be reasonable for the Court. In any event, in the present case, the mortgage was made in the year 2002 and the appeal was decided in the year 2009. During the pendency of the first appeal, the plaintiffs have paid the amount payable to the defendant and sought for release of the mortgage deed, but when it was refused, the amount was deposited before the trial court to the credit of the appeal. This clearly shows that the plaintiffs were bonafide in paying the amount to the defendant and this has to be taken note of.

16. In any event, the only question remains for consideration in this appeal at the instance of the defendant is whether the reduction of payment at which the interest is payable by the plaintiffs is sustainable. As mentioned above, the appellate Court in its discretion, has directed the plaintiffs to pay interest at 9% per annum. This is not a case where the transaction between the parties is a commercial transaction warranting payment of interest at 21.6% payable by the plaintiffs. The transaction relates to mortgaging the residential property out of which a portion of the amount was paid by the plaintiffs before institution of the suit. Having regard to all the above, it cannot be said that the appellate Court ought to have confirmed the rate at which interest was directed to be paid by the plaintiffs at 21.6%. The appellate Court, in the interest of rendering substantial justice, has directed plaintiffs to pay interest at the rate of 9% per annum, which does not call for interference of this Court. In such view of the matter, the question of law framed in this appeal is answered in favour of the respondents and against the appellant.

17. It is seen from the plaint that the plaintiffs have averred that they have paid a sum of Rs.9,73,620/- towards the mortgage loan as against the sum of Rs.15,00,000/- availed by them, however, the defendant/appellant claimed exorbitant sum of Rs.27,49,244/- by slapping interest on penal interest. Therefore, they have filed the suit for redemption of mortgage. In the written statement, the defendant-appellant has stated that as on 31.07.2002, a sum of Rs.23,63,557.05 is due and payable by the plaintiffs and to foreclose the loan amount, with penal interest and the legal expenses incurred by the defendant-appellant, a total sum of Rs.27,69,234.50 is payable by the plaintiffs as on 31.07.2002. The trial court held that slapping interest on penal interest is not proper, which was also upheld by the First Appellate Court. The trial court, in para No.13 of the judgment rendered a finding that the plaintiffs have paid a total sum of Rs.13,93,620/- and are liable to pay a further sum of Rs.18,49,535/- for redemption of mortgage. On the other hand, the first appellate Court observed that the findings of the trial court holding that interest on penal interest is not proper. The first appellate Court, by calculating the amount payable by the plaintiffs, without interest on penal interest, held that the plaintiffs are liable to pay only Rs.13,93,620/- for which amount, the trial court ought to have decreed the suit. By pointing out this observation, it is contended by the defendant-appellant that the amount indicated by the First Appellate court is without any basis and the quantum of amount payable by the plaintiffs is wrongly worked out by the Appellate Court.

18. Be that as it may, given the facts and circumstances of this case, this Court desist from venturing into a finding with regard to the quantum of amount payable by the plaintiffs. it is to be seen that the plaintiffs have already deposited Rs.15,04,762/- to the credit of the CMA No. 70 of 2008 before the Appellate Court. Having regard to the above, this Court is of the view that the appellant-defendant is permitted to withdraw the sum of Rs.15,04,762/- with accrued interest and it shall be given credit to the loan amount payable by the plaintiffs. After giving credit to the amount of Rs.15,04,762/- deposited in CMA No. 70 of 2008 and by taking note of the amount already paid by the plaintiffs prior to the institution of the suit in O.S. No. 4114 of 2002, the appellant-defendant shall intimate the plaintiffs regarding the amount, if any, still payable by them. On receipt of such intimation, the plaintiffs shall pay the remaining balance amount with interest at the rate of 9% per annum. On such payment, the defendant-

appellant is directed to redeem the mortgage made by the plaintiffs on 21.03.1997.

19. In the result, the judgment and decree passed by the First Appellate Court shall stands confirmed and accordingly, this Civil Miscellaneous Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

To

1. The III Additional Judge,
   City Civil Court, Chennai

2. The II Assistant Judge,
   City Civil Court, Chennai.

+1 CC to Mr.V.Raghupathi, Advocate sr 7886
+1 CC to Mr.A.K.Raghavallu, Advocate sr 8190

C.M.S.A.No.7 of 2012

SSI(CO)
SP(10/03/2022)