IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2023

CORAM:

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

AS.No.801 of 2008 and
CMP.Nos.22042, 22054 & 22056 of 2023

The Purasawakum Permanent Fund Limited,
having its office at Appadurai Buildings,
No.173, Vellala Street,
Purasawalkam,
Chennai 600 084 ... Appellant

Vs.

M.Dharumarajan(died)
1.D.Karthikeyan
2.Uma Rani Eniya Sivam
3.D.Ravikumar
4.Sridevi Kingston ...Respondents

PRAYER:

Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 28.09.2007 made in OS.No.4043 of 2002 on the file of the III Assistant Judge, City Civil Court, Chennai insofar as the direction to pay interest at 6% per annum on the principal amount of Rs.9,50,000/- from the date of plaint till realization is concerned and set aside the same and direct the respondents to pay interest at 24% per annum on the mortgage dues as per the terms of the mortgage deed.

For Appellant		: Mr.K.Sridhar for M/s.K.Sridhar Associates
For Respondents	For R1	: Mrs.G.Sumitra
	For R2 to 4	: Not ready in notice

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 28.09.2007 made in OS.No.4043 of 2002 on the file of the III Assistant Judge, City Civil Court, Chennai insofar as its interest portion alone.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the defendant and the respondents are the

plaintiffs. The plaintiffs filed suit for redemption of mortgage. The case of the plaintiffs is that they are the owner of the property at door No.19, 11th Cross Street, Indira Nagar, Adyar, Chennai. They borrowed a sum of Rs.9,50,000/- from the defendant against security of the said property. They registered the mortgage in the year 1994 for borrowal of loan carrying interest at the rate of 21% per annum. As per the mortgage, the plaintiffs have to pay mortgage amount being the principal and interest in monthly instalments of Rs.20,900/- and as such, the monthly payments came for Rs.20,900/- for 92 monthly instalments. Towards principal amount at Rs.9,50,000/- and interest therein at 21% per annum and towards liability to discharge the mortgage at 92 monthly instalments, the plaintiffs have paid a total sum of Rs.10,33,237/- Hence, the suit for redemption of mortgage

4. Resisting the same, the defendant filed written statement and stated that the plaintiffs should have pleaded what are the mortgage amount in 92 months and so far 100 months have been completed. The plaintiffs have paid the first instalment of Rs.20,900/- on 01.09.1994 at the time of availing of loan and have paid second instalment on 26.10.1994. Thereafter, they failed to pay

instalments in the month of November and December 1994, January and February, 1995. They had paid a sum of Rs.83,000/- on 22.03.1995, out of which a sum of Rs.3,655/- was appropriated towards default interest and a sum of Rs.79,345/- was appropriated towards instalment arrears. Therefore, they are not at all regular in payment of instalments and they allowed the arrears to accumulate and hence they are liable to pay default interest on arrears of instalments. When the payments are made by the plaintiffs, it will be first appropriated towards default interest and the balance only will be appropriated towards arrears of instalments. As on 30.11.2002, there are instalment arrears of Rs.16,84,435/- and default interest is Rs.7,51,439.72/-. Therefore, as on date, they ought to pay a sum of Rs.24,35,874.72/-.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

(1) Whether the plaintiff is entitled to redemption of mortgage as prayed for?
(2) Whether the plaintiff is entitled to permanent injunction as prayed for?
(3) To what reliefs is the plaintiff entitled?

6. In support of the plaintiffs' case, P.W.1 was examined and sixteen documents were marked as Ex.A.1 to Ex.A.16. On the side of the defendant, D.W.1 was examined and Ex.B.1 to Ex.B.8 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit and passed preliminary decree for redemption of mortgage dated 01.09.1994 of the suit property on payment of a sum of Rs.24,35,874.72/- with interest at the rate of 6% per annum for the principal amount of Rs.9,50,000/- from the date of the plaint till realisation by the plaintiffs, to the defendant. On receipt of the entire amount, the defendant is directed to return the original documents of the suit property. If either parties fail to comply with the direction, they are at liberty to proceed by way of final decree application. Now, insofar as the interest portion of the decree, the defendant has preferred this appeal suit.

7. The learned counsel for the defendant would submit that except the portion of the interest, the defendant accepted the decree passed by the trial

court. Even according to the plaintiffs, they agreed to pay at the rate of 21% in the contract itself. The trial court cannot go beyond the contract and reduce the interest at the rate of 6% from 21%.

8. Heard, the learned counsel appearing on either side.

9. On perusal of the contract and mortgage deed dated 01.09.1994, revealed that the plaintiffs borrowed a sum of Rs.9,50,000/- and agreed to pay the same with interest at the rate of 21% by 92 instalments. Accordingly, the monthly instalment came to Rs.20,900/- per month. Except few payments, the plaintiffs committed default in payment of their instalments. They filed suit for redemption of mortgage. The learned counsel for the defendant relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State Bank of India Vs. Yasangi Venkateswara Rao*** reported in ***AIR 1999 SC 896***, wherein it is held as follows:

> *We are unable to understand as to how the High Court could come to the conclusion that the Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21-A deals with the question of the rate of*

interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers the Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of the Parliament. The said Section applies to all types of loans which are granted by a banking company, whether to an agricul-turist or a non-agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted.

We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be paid, we fail to understand as to how the court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged.

10. Thus, entering into a mortgage is a matter of contract between the

parties. If the parties agreed that in respect of the amount advanced against a mortgage compound interest will be paid, the court cannot possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The learned counsel for the defendant also relied upon the judgment of this Court in the case of ***The Purasawakkam Permanent Benefit Fund Ltd., rep. by its Administrative Director, Purasawakkam, Chennai Vs. P.Shanmugam and others*** reported in ***2013 (5) CTC 856***, wherein this Court held that it is the normal contractual clause used to stipulate interest on the unpaid instalment money at a particular rate. Therefore, reducal of interest cannot be permissible by the court beyond the contract which is agreed by the parties.

11. As stated supra, admittedly the plaintiffs borrowed loan for a sum of Rs.9,50,000/- by registering mortgage deed in respect of the subject property and agreed to pay interest at the rate of 21%. Therefore, the trial court ought not to have reduced the rate of interest from 21% to 6% as it is wrong and against the contract. Therefore, this Court finds infirmity in the judgment and decree insofar as interest portion alone. However, though the plaintiffs agreed to pay interest at the rate of 21%, considering the status of the plaintiffs, this Court is

inclined to reduce the rate of interest from 21% to 15%.

12. In the result, this appeal suit is partly allowed and the interest portion of the judgment and decree dated 28.09.2007 alone is modified to the effect that "redemption of mortgage dated 01.09.1994 of the suit property on payment of a sum of Rs.24,35,874.72/- with interest at the rate of 15% per annum for the principal amount of Rs.9,50,000/- from the date of plaint till realisation, by the plaintiffs to the defendant. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

13.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1.The III Assistant Judge,
City Civil Court, Chennai
2.Section Officer,
V.R.Section,
High Court of Madras

AS.No.801 of 2008

13.12.2023