



A.S.No.164 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

A.S.No.164 of 2014
and
M.P.Nos.2 of 2014 & 1 of 2015

The Purasawakkam Santhatha Sanga Nidhi Ltd.,
Represented by its Director-Trustee,
No.47, Vellala Street,
Purasawalkam, Chennai – 600 007.

...Appellant

Vs.

1.K.Murugesan (Died)

2.M.Muthulakshmi

3.M/s.Balajee & Company,
Auctioneers and Estate Agents,
1st Floor, No.160, Thambu Chetty Street,
Chennai – 600 001.

4.M.Anand

5.M.Shanthi

6.M.Sumathi

7.M.Raj Mohan

(R4 to R7 are brought on record as LR's of deceased 1st respondent
viz., K.Murugesan vide order of Court dated 03.11.2022 made in
CMP.Nos.18234, 18235 & 18237/2022 in A.S.No.164/2021)

...Respondents



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Prayer: First Appeal filed under Order 41 Rule 1 r/w. Section 96 of C.P.C., against the judgment and decree dated 27.08.2013 of the learned V-Additional City Civil Judge at Chennai in O.S.No.5928 of 2012.

For Appellant : Mr.V.Raghupathi

For Respondents : Mr.R.Thiagarajan &
M/s.Vasudha Thiagaraja for R2, R4 to R7
R3-served-No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendant is on appeal, aggrieved by a decree for redemption granted by the Trial Court. A suit was laid by the respondents 1 and 2 seeking redemption of mortgage that was created on 28.06.1993 for a loan of Rs.85,000/-. There was another loan granted on 11.07.1995 for Rs.1,25,000/-. The plaintiffs sought for redemption valuing the amount that is due and payable under the both loan account is Rs.4,62,099.38/-.

2.The suit was resisted contending that the 1st defendant mortgagee had taken steps to auction the property and total amount due



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under the mortgages comes to Rs.12,39,982/-. The Trial Court, after framing necessary issues concluded that the 1st defendant mortgagee would be entitled to a sum of Rs.4,62,099/- together with interest at 12% per annum on Rs.1,88,882/- from the date of suit i.e., 21.03.2006 till the date of realisation.

3.The only grievance that is projected by the learned counsel for the appellant is the rate of interest that has been granted after the suit. Relying upon the judgment of this Court in **The Purasawakum Permanent Fund Ltd., Rep. By its Administrative Director Vs. G.Kamalam and Others** made in **S.A.No.549 of 2015**, Mr.V.Ragupathi, learned counsel for the appellant would vehemently contend that the appellant would be entitled to 15% interest per annum after the decree. He would also point out that the appellant, being a benefit fund surviving on the interest income and it has to pay the interest to the depositors also. Mr.V.Ragupathi, learned counsel for the appellant would also point out that the judgment of this Court made in S.A.No.549 of 2015 dated 26.09.2018 has been affirmed by the Hon'ble Supreme Court.



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4.Contending contra, Ms.Vasudha Thiagarajan, learned counsel for the respondents would submit that the Trial Court had given a valid reasons for granting 12% interest and the discretion to grant interest is vested in the Trial Court under Section 34 of C.P.C. The said discretion need not be interfered with in the appeal. We have considered the rival submissions.

5.No doubt, a discretion is vested in the Court to grant pendente lite interest but, such discretion is to be exercised judiciously. In a case of this nature, where the mortgagee is a financial institution, which seek deposits from public at a rate of interest and lends it to a needy at a little higher interest cannot be treated on par with a regular money lender. Therefore, we are in agreement with the conclusions arrived at by this Court in S.A.No.549 of 2015, on the reasonings therein to grant interest at 15%. We therefore, conclude that the appellant would be entitled to interest at 15% interest from the date of suit till date of realisation on a sum of Rs.1,88,882/-. To that extent, the appeal is allowed. But, the controversy does not end there.



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6.It is seen that the respondents 1 and 2 had offered the sum of Rs.6,44,435/-, being the amount due as per the decree of the Trial Court on 15.04.2014 and the same has been refused to be received by the appellant. There upon, they had also filed an application in M.P.No.2 of 2014, seeking a direction to deposit the said sum into Court. Unfortunately, the said application was not ordered. Therefore, we are have to decide what would be the effect of the conduct of the appellant in refusing to receive the money that was in discharge of the decree amount.

7.Mr.V.Ragupathi, learned counsel would contend that the refusal to receive was because of the pendency of the appeal and therefore, the appellants shall not be affected by such refusal. We find it difficult to agree with the submission of the learned counsel for the appellant. A judgment debtor is entitled to offer the sum due under the decree to the decree holder at any point of time and the decree holder is bound to accept it. If the decree holder refuses to accept payment, the decree holder will have to necessarily bear the consequences on such refusal. Therefore, the running of interest on Rs.1,88,882/- will stop with 15.04.2014, since the respondents 1 and 2 have



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offered to pay that amount on the said date. We cannot mulct the liability to pay the interest on the judgment debtor, who has offered to pay the money and in fact paid the money. The liability to pay interest would have ceased but for the unjust refusal made by the appellant. Therefore, the benefit of that ceasure must be given to the respondents 1 and 2.

8.If we are to calculate the amount due as on date, if interest is to be applied 15% per annum on Rs.1,88,882/-, in view of the modification made by us, the amount due under the decree as on 15.04.2014 i.e., the date on which the tender was made would have been Rs.6,90,936/-. If we deduct amount tendered on Rs.6,44,435/-, the balance amount would be Rs.46,501/-. Therefore, the appellant would be entitled to 15% interest on Rs.46,501/- from 16.04.2014 till date of realisation. We therefore, disposed of this appeal on the following lines:-

i) The interest payable on Rs.1,88,882/- is enhanced from 12% to 15%.

ii) 15% interest will be payable only on Rs.46,501/- from 16.04.2014 till date of realisation.



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9.The Appeal is disposed of on the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

(R.S.M.,J.) (R.K.M.,J.)
10.07.2023

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To:-

The V-Additional City Civil Court,
Chennai.

R.SUBRAMANIAN, J.
and



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R.KALAIMATHI, J.

KKN

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