IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.1448 of 2011
and
Miscellaneous Petition No.1 of 2011

The Purasawakam Permanent Fund Ltd.,
Rep. by its Administrative Director,
No.173, Vinaitheertha Mudali Street,
[Vellala Street] Purasawakam,
Chennai – 600 084. ... Appellant

-Vs-

1. Mrs. Mahajabeen

2. Mr. Mukkaram ... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 29.09.2010 in A.S.No.713 of 2007 on the file of the Second Fast Track Court, City Civil Court, Chennai, modifying the Judgment and Decree dated 27.04.2007 in O.S.No.1210 of 2004 on the file of the learned III Assistant Judge, City Civil Court, Chennai.

For Appellant	:	Mrs. M. A. Lakshmipathi
For R1	:	Ms. S. Deepika For Mr. D. Paarvendhan

For R2 : No appearance

JUDGMENT

The appellant is the defendant/mortgagee. The plaintiffs have initiated the suit for redemption of mortgage made in favour of the appellant herein namely the Purasawakam Permanent Fund Ltd. According to them, they have borrowed a sum of Rs.3,00,000/- and a sum of Rs.1,65,000/- respectively by way of two simple mortgage and there was a huge claim made by the defendant. Even though, the plaintiffs were ready to pay the entire mortgage loan to avoid payment of exorbitant interest, defendant refused to accept and discharge the mortgage, hence, they have come forward with the suit for redemption of mortgage.

2. The suit was resisted by the appellant/defendant on the ground that the plaintiffs have to pay monthly installments regularly and in default they are liable to pay the interest at the rate of 22% for the unpaid installments also. The installments were made irregularly and subsequently, no installments were paid. They have calculated the total amount payable by them as Rs.9,73,744.50/- as on 30.04.2004 and the plaintiffs failed to pay the same and prays to direct the plaintiffs to pay above sum of

Rs.9,73,744.50/- along with future interest.

3. The Trial Court after framing issues relating to payments to be made by the plaintiffs for redeeming the mortgage and the interest portion to be paid, passed preliminary decree, directing the plaintiffs to pay a sum of Rs.2,74,536.36/- with interest at the rate of 9% per annum from 01.11.2005 to till the date of repayment in full in respect of the first loan and to pay a sum of Rs.1,00,079.32/- with interest at the rate of 9% per annum from 01.11.2005 to till the date of realization in full in respect of the second loan, within a period of 60 days from the date of Judgment.

4. Aggrieved over the fixation of repayable mortgage amount for the redemption of mortgage, the appellant-mortgagee has filed the First Appeal and the Appellate Court has once again verified the accounts and has held that the plaintiffs liable to pay a sum of Rs.4,48,920/- with interest at the rate of 6% per annum from 30.04.2004 till the date of realization. Aggrieved over the rate of interest fixed for repayment, the appellant-mortgagee once again filed this Second Appeal.

5. At the time of admission of this Second Appeal, my predecessor framed the following substantial questions of law, to be decided in this appeal:

> *"1) Whether in the mortgage, the Court is right in reducing the interest rate to the extent of 6% or 9% which is lower than the agreed rate of interest entered in the mortgage loan?*
>
> *2) Whether the Courts are right in directing the fixation of payment of rate of interest than the rate payable to the depositors of the appellant-Purasawakam Permanent Fund Ltd.?"*

6. The learned counsel appearing for the appellant submits that the appellant is the Permanent Fund used to collect deposits from various members and paying the interest originally at the rate of 12% per annum and subsequently, now it has been reduced to 8% per annum whereas, the Courts have fixed the rate of interest payable by the debtor i.e., the plaintiffs herein to the extent of 6% by the Trial Court and 9% from the Appellate Court which is drastically affected the interest of the benefit fund. Thereby, the

benefit fund will not be in a position to repay its depositors and it will prevent it from achieving its objects. He also submitted that as per Section 34 of the Civil Procedure Code, (CPC hereafter) the agreed rate of interest is liable to be payable by the plaintiffs therein. According to him, agreed rate of interest is 22% and the same has been reduced drastically, by the Courts below and same is not permissible and prays to direct the plaintiffs to pay agreed rate of interest.

7. Per Contra, the learned counsel appearing for the plaintiffs submits that, it is true that the agreed rate of interest @ 22% per annum and it is also prescribed that in case of default, it also attracts additional interest. Order 34 Rule 11 of CPC empowers the Civil Court to prescribe the rate of interest payable from the date of filing of the suit till the date of realization as it may deem fit. Thereby, the Courts below have fixed the rate of interest considering the nature of transaction and thereby, there is no merit in the appeal and the same is liable to be dismissed.

8. I have considered the submissions made on both sides and also perused the records.

9. Before considering the rate of interest payable by the respondents, it is apposite to consider the legal provisions relating to power of Civil Court in awarding interest. Section 34 and Order 34 and its Rules are relevant for considerations in this case. Order 34 of CPC, deals with suits relating to mortgages of immovable property and Rule 7 of Order 34, mandates passing preliminary decree in a suit for redemption. Rule 11 of Order 34 CPC deals with the power of Court in ordering payment of interest in a suit for foreclosure, sale or redemption. It reads as follows:

> *“11. Payment of interest.—In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—*
>
> *(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—*
>
> *(i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,*
>
> *2* * * * * and*

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties or, failing such rate, 3 [at such rate not exceeding six per cent. per annum as the Court deems reasonable]; and 4

[(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable.]"

10. Section 34 of CPC, deal with power of Civil Court in ordering interest while passing decree. This Section applies to all the suits i.e., suit in general. It 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."

11. The plaintiffs relied on Order 34 Rule 11 of CPC and according to them, the suit for redemption is particular suit in nature, hence, this Order is applicable to fix interest is the mortgage suits. Hence, Section 34 of CPC is not applicable. The power of Court in ordering payment of interests in mortgage suits are no longer *res integra* and same is covered by the Apex Court judgment in (1) ***Soli Pestonji Majoo vs. Gangadhar Khemka (1969 AIR 600)*** (2) ***N.M.Veerappa vs. Canara Bank and others (1998 (2) SCC***

317).

12. The question arose for consideration of Apex Court is whether special provision in Order 34 to be preferable to the general provision in Section 34 of CPC. It has been held that, Section 34 being a general provision is applicable while ordering interest to all suits for the period from the date of the suit till the date of payment. However, Rule 11 of Order 34 shall be applicable to the suits relating to mortgage of immovable property. The observation of the Apex Court in ***Soli Pestonji Majoo vs. Gangadhar Khemka (1969 AIR 600)*** reads as follows:

> *"**5 .** We pass on to consider the second contention raised on behalf of the appellants, namely, that even if the respondent is entitled to institute a second mortgage suit the High Court ought not to have granted interest to the respondent at the rate of 12 per cent per annum with monthly rests even after the date of the suit and the maximum interest which should have been allowed was not more than six per cent per annum simple on the principal sum adjudged. In our opinion this argument is well-founded and there was no justification for the High Court to allow interest at the contractual rate from the date of the suit on the amount adjudged. Prior to 1929 the legal position was that under Section 34 of the Civil Procedure Code in granting a decree for payment of money the court had full discretion to order interest at such rate as it deemed reasonable to be paid on the principal sum adjudged from the date of the suit onwards.*

But Order 34, Rules 2 and 4, which applied to a mortgage suit enjoined the court to order an account to be taken of what was due to the plaintiff at the date of such decree for principal and "interest on the mortgage". The special provision in Order 34 has therefore to be, applied in preference to the general provision in Section 34. Till the period for redemption expired therefore the matter was considered to remain in the domain of contract and interest had to be paid at the rate and with the rests specified in the contract of mortgage but after the period for redemption had expired the matter passed from the domain of contract to that of judgment. The right of the mortgagee would henceforth depend not on the contents of his bond but on the directions of the decree. (See the decision in Jagannath Prosad Singh Chowdhury v. Surajmul Jalal) MANU/PR/0001/1926. By Act 21 of 1929, Order 34 of Civil Procedure Code was amended and a new Rule 11 was inserted which deals specially with interest and which states :

"11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the court may order payment of interest to the mortgagee as follows, namely -

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage -

(i) on the principal amount found or declared due on the mortgage - at the rate payable on the principal or, where no such rate is fixed, at such rate as the court deems reasonable,

(ii) on the amount of the costs of the suit awarded to the mortgagee at such rate as the court deems

reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security up to the date of the preliminary decree and added to the mortgage money at the rate agreed between the parties or, failing such rate (at the same rate as is payable on the principal, or failing both such rates, at nine per cent per annum); and

(b) subsequent interest up to the date of realisation or actual payment at such rate as the court deems reasonable -

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under Rule 10."

6. *This rule further amended by the Code of Civil Procedure Amendment Act, 1956, but we are not concerned with this further amendment in the present case. It is apparent that the new Rule 11 as inserted by the Amending Act 21 of 1929, provides that the court "may" order payment of interest to the mortgagee up to the date fixed for payment at the rate payable on the principal. It was held by the Federal Court in Jaigobind Singh v. Lachmi Narain Ram AIR 1940 PC 20, that the language of the rule gives a certain amount of discretion to the court so far as interest pendente lite and subsequent interest is concerned and it was no longer absolutely obligatory on the courts to decree interest at the contractual rates up to the date of redemption in all circumstances even if there is no question of the rate* *being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. In view of the principle laid down by the Federal Court in this decision we are opinion that in the circumstances of the present case the respondent should be granted interest on the principal sum due at the contractual rate till the date of the suit and simple interest at 6 per cent per annum on the principal sum adjudged from the date of the suit till the date of the preliminary decree and also at the same rate till the date of realisation."*

13. In ***N.M.Veerappa vs. Canara Bank and others (1998 (2) SCC 317)*** case it is observed as follows:

*"**32.** From the aforesaid rulings the following principles can be summarised. (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c) (i) or Order 34 Rule 4(1) or Order 34 Rule 7(c) (i), respectively in suits for foreclosure, sale or redemption. (b) But after the 1929 Amendment, because of the words used in the main part of Order 34 Rule 11, namely that" the Court may order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It had been so held in Jaigobind's Case by the Privy Council MANU/FE/0008/1940 and by this Court in S.P. Majoo's Case MANU/SC/0147/1968 : [1969]3SCR33 , that the new provision gives a certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned. (c) It is no longer*

obligatory to award the contractual rate after date of suit and up-to-date fixed for redemption as above stated even though there was no question of the contractual rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from date of suit under Order 34 Rule 11 (a) (i) upto date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable - on the principal amount found or declared due on the mortgager is concerned. (e) The Court has also power to award from date of suit under Order 34 Rule 11 (a) (iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate no exceeding 6%. This is the position of the discretionary power of the Court, from date of suit upto date fixed in the preliminary decree as the date for payment. (f) Again under Order 34 Rule 11 (b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest upto date of realisation or actual payment, on the aggregate sums specified in Clause (a) of Order 34 Rule 11, could award interest at such rate as it deemed reasonable."

14. On careful perusal of the Judgment of both the Courts, it reveals that the statement of accounts provided by the appellant in the written statement i.e., Rs.9,73,744.50/- as on 30.04.2004 was accepted by the Appellate Court which includes the interest at the rate of 22%. The Appellate Court, after accepting the amount, directed to pay 6% interest for the remaining period i.e., from the date of filing of the suit till the date of

realization.

15. Order 34 Rule 11(b) CPC empowers the Court to fix subsequent interest, up to date of realisation or actual payment on the aggregate of the principal sum stipulated in Rule 11(a) of Order 34, at such rate as the Court deems reasonable.

16. The appellant claims that they are involved in banking business and they pay interest on deposits to the extent of 8% per annum during the relevant period, whereas ordering interest at the rate of 6% per annum, has caused prejudice to their business interest and indirectly affect the depositors. It is admitted case of parties that, the appellants are paying their depositors at the rate of 8% during relevant period. If the borrower of loan allowed to pay lesser interest than the interest paid to depositors, then the business of appellant/benefit fund would be seriously affected. Order 34 Rule 11(b) empowers the Court to fix at the reasonable rate of interest payable as subsequent interest till the date of realisation. Hence, fixation of 6% interest by the Lower Appellate Court is not proper and same is required to be modified.

17. Learned counsel for the benefit fund stated that, though, prior to 2000, the interest paid to the depositors was around 14% it was reduced stage by stage and now it comes around 8%.

18. The Appellate Court in its Judgment after deducting various payments made by the plaintiffs, adjudged a sum of Rs.4,48,920/- as principal amount and payable the same along with interest at the rate of 6% per annum from 30.04.2004 till the date of realisation. I am of the view that ordering payment of interest at 13% per month from the above period i.e., from 30.04.2004 till the date of decree of the Appellate Court would be reasonable and protect the interest of both sides. Though, subsequent interest payable at the rate of 8% from the date of Appellate Court decree till the date of realisation. Accordingly the rate of interest fixed by the Appellate Court alone is modified from 6% to 13%.

19. In the result, this Second Appeal is partly allowed with costs. The plaintiffs are directed to pay a sum of Rs.4,48,929/- along with interest at the rate of 13% per annum from 30.04.2004 till the date of Appellate Court

decree and subsequent interest at the rate of 8% till the date of realisation. The principal amount so adjudged along with interest shall be paid within a period of six weeks from the date of receipt of a copy of this Judgment till the date of realisation. Thereby, Clause 1, 2 and 6 of the decree of the Lower Appellate Court dated 29.09.2010 is modified as stated above in this Second Appeal. Clause 3 to 5 of the decree of the Lower Appellate Court is confirmed. Consequently, the connected miscellaneous petition stands closed.

11.09.2024

ssi
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

To:

1. The Fast Track Judge -II,
   City Civil Court, Chennai.

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

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

K.RAJASEKAR,J.

ssi

S.A.No.1448 of 2011

11.09.2024