THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 10.02.2026	Judgment pronounced on : 13.03.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.628 of 2023
and CMP. No.21647 of 2023

S.Mythili ..Appellant

Vs.

K.Aswinikumar ..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree in O.S. No.163 of 2018 on the file of Additional District Court (Fast Track Court), Kancheepuram, dated 31.03.2023 in respect of suit schedule property and allow this First Appeal with costs through the proceedings.

For Appellant : Mr.A.M.Ilango

For Respondent : Mr.N.Ramanujam

JUDGMENT

The defendant in O.S. No.163 of 2018, is the appellant in the present appeal.

II. PLEADINGS:

2 (1). Plaint in brief:

The defendant had borrowed a sum of Rs.5,00,000/- on 18.06.2014 from the plaintiff, agreeing to repay the same together with interest on 24% per annum. The defendant mortgaged the suit property to the plaintiff on 18.06.2014, by executing a mortgage deed as security for the debt, agreeing to pay interest at 24% per annum. The defendant did not pay any amount either towards interest or principal. The defendant gave evasive replies whenever the plaintiff demanded the payment of the amount due and payable by the defendant. Hence, suit for recovery of sum of Rs.10,34,932/- on the mortgage title.

2(2)**. Written Statement filed by the defendant in brief:**

It is true that the defendant borrowed a sum of Rs.5,00,000/- and executed a mortgage deed in favour of the plaintiff. However, it is incorrect to state that the defendant did not pay any interest or principal. The defendant has been paying interest at Rs.15,000/- periodically upto May, 2015 and in all, the defendant has paid Rs.1,17,000/-. Only because of trust and confidence in the plaintiff, the defendant did not insist upon an endorsement regarding the said payments. Plaintiff is a professional money lender who is in the habit of obtaining signatures in blank papers to coerce borrowers. The defendant is a victim of one such transaction. The claim for interest is excessive and the suit amount is also calculated erroneously, without deducting interest paid by the defendants.

2(3) Issues:

Based on the pleadings, the Trial Court has framed the following issues:-

i. Whether the plaintiff is entitled to recover the suit amount due under mortgage deed?

ii. Whether the plaintiff is entitle to decree as prayed for?

iii. To what relief the parties entitled?

2(4). Trial:

On the side of the plaintiff, the plaintiff himself examined as P.W.1 and Ex.A1 to A9 documents were marked and on the side of the defendant, defendant's brother Tr.Udhaya Shankar, was examined as D.W.1 and no documents were filed.

2(5). Decision of the Trial Court:-

The Trial Court found that the plaintiff has proved the suit claim and granted a decree as prayed, with a direction to the defendant to pay interest at 24% per annum from the date of plaint, till the date of decree and thereafter, at

6% till the date of realization on the principal borrowed amount of Rs.5,00,000/-, granting two months time to the defendant.

3. The present APPEAL:-

I have heard Mr.A.M.Ilango, learned counsel for the appellant and Mr.N.Ramanujam, learned counsel for the respondent.

4**. Arguments of the learned counsel for the appellant:-**

The learned counsel for the appellant would state that the Trial Court erred in not accepting the defence regarding payment of interest at Rs.15,000/- per month. He would further state that the Trial Court erred in granting interest at the rate of 24% per annum, from the date of plaint, till date of decree and he would further state that when the defendant had expressed his readiness to pay the mortgage money, if the interest of Rs.1,17,000/- paid was deducted, has not even been taken note of by the Trial Court. He would further state that the suit was filed only in the year 2018 and if really, the defendant had committed default from 2014, then the plaintiff would not have waited for such a long period to initiate proceedings for recovery of money. He would therefore state that the evidence of D.W.1, regarding payment of interest was more probable which has not been judiciously considered by the Trial Court. The learned counsel would therefore pray for the appeal being allowed.

5**. Arguments of the learned counsel for the respondent:-**.

Per contra, Mr.N.Ramanujam, learned counsel for the respondent/plaintiff would state that the suit was filed based on the mortgage and the mortgage clearly stipulates the rate of interest to be 24% per annum and in such circumstances, the appellant cannot be entitled to any concession regarding payment of interest. As regards the alleged payment of Rs.1,17,000/-, the learned counsel for the respondent would state that the claim of such payment remained only on paper and the appellant has not established any such payment. He would therefore state that the Trial Court has not committed any error in granting the decree as has been done by the Trial Court warranting interference in appeal.

6.**DISCUSSION:-**

Based on the arguments advanced by the learned counsel for the parties, I have proceeded to frame the following points for consideration:

(i) Whether the defendant is liable to meet the suit claim?

(ii) Whether he is entitled to any deduction on account of payment of interest of Rs.1,17,000/- as well as reduction in the interest rate?

7.**Points (i) & (ii):-**

Though the learned counsel for the appellant has vehemently contended that the defendant has given acceptable oral evidence with regard to payment of interest, I find from his evidence that he clearly admits to the fact that the payment of interest was allegedly made to the agent of the plaintiff and admittedly, there is no record to evidence the said payments. In the light of the admission of the defendant himself, I do not see how the Trial Court committed an error in disbelieving the appellant's version that he has paid interest as claimed in the written statement. Therefore, I do not see any merit in the said line of argument advanced by the learned counsel for the appellant. Moreso, in the present case, the plaintiff had chosen to issue a pre-suit notice before filing the suit and despite receipt of the said notice, the appellant has not even chosen to send a reply, stating that he has paid interest or that in all, he has paid Rs.1,17,000/-. In such circumstances, I am unable to accept the argument of the learned counsel for the appellant in this regard.

8. Coming to the interest component, it is claimed by the learned counsel for the appellant that the rate of interest at 24% per annum till the date of decree is usurious and contrary to Section 34 of the Code of Civil Procedure, 1908. However Order 34, relating to mortgage suits is a Code by itself and it has provisions regarding payment of interest to be awarded in mortgage suits. Therefore, I do not see how the interest rates prescribed in Section 34 can be applied to the suit on hand. Order 34 Rule 11 CPC, permits the Court to direct payment of interest upto the date on which payment is directed to be made under the preliminary decree, interest being chargeable on the rate fixed or agreed between the parties and in the absence, the Court is empowered to fix a reasonable rate of interest. There is a cap of 6% only in respect of the amount due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security upto the date of preliminary decree and added to the mortgage money, at the rate agreed between the parties and when there is no such rate alone, the Court can fix the rate at maximum of 6% per annum. Subsequent interest upto the date or realization or actual payment is permissible at such rates as the Court deems reasonable. Therefore, applying the mandate of Order 34 Rule 11 CPC, I do not find any error committed by the Trial Court in awarding interest at 6% per annum from the date of decree, till the date of realisation. However, insofar as the direction

regarding interest from the date of filing of the suit till the date of decree, I am of the considered opinion that the interest awarded at the rate of 24% per annum is on the higher side.

9. Order 34 Rule 11 CPC, vests a discretion on the Court only when the parties have not fixed any rate under the contract. In other words, when the parties have agreed upon a particular rate of interest, normally the Court will not interfere atleast upto the date of filing of the suit. The Hon'ble Supreme Court in ***N.M.Veerappa v. Canara Bank,*** **reported in** ***AIR 1998 SC 1101,*** has held in the matter of mortgage claims, the Court can exercise discretion in awarding interest. At the same time, considering that there is a definite contract regarding payment of interest and keeping in mind, Order XXXIV, Rule 11 CPC, I am partly allowing the appeal.

10. RESULT:-

The Appeal Suit is ***partly allowed***, in the manner following:

(i) the judgment of Trial Court is confirmed;

(ii) However, if the appellant pays the entire decreetal amount within a period of three months from today, she shall be entitled to concessional rate of interest at 12% per annum from the date of plaint till the date of decree and thereafter, at the rate of 6% per annum till the date of payment and to proportionate reduction in the costs as well.

(iii) It is however made clear that if the appellant does not settle the mortgage claim, then he shall not be entitled to any concession and the respondent shall be entitled to execute the decree as passed by the Trial Court. Consequently connected Miscellaneous Petition is also closed. No costs.

13.03.2026

Neutral Citation Case: Yes / No
Speaking / Non-speaking order
Index: Yes/No
rkp
To

1. The Additional District Judge (Fast Track Court), Kancheepuram.
2.The Section Officer,
V.R.Section, High Court of Madras.

P.B.BALAJI.J,

rkp

Pre-delivery judgment made in
A.S. No.628 of 2023
and CMP. No.21647 of 2023

13.03.2026