

M/S Everest Industrial Corporation and Others

Vs

Gujarat State Financial Corporation

Civil Appeal No. 1446 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

21.07.1987

JUDGMENT

VENKATARAMIAH, J. -

1. The short question which arises for consideration in this case is whether the rate of interest chargeable on the amount payable under an order passed under Section 32 of the State Financial Corporations Act, 1951, (63 of 1951) (hereinafter referred to as "the Act") from the date of the said order is governed by Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"), or whether it is payable at the contractual rate.

2. Appellant 1 - M/s. Everest Industrial Corporation Private Limited, Baroda and its directors had borrowed from the Gujarat State Financial Corporation (hereinafter referred to as 'the Corporation') a sum of Rs. 6 lakhs for the acquisition of fixed assets, namely, land bearing Original Survey No. 163 and not bearing Survey No. 949 of Baroda measuring 1 acre and 3 gunthas and the factory building to be constructed thereon and for purchasing plant and additional machinery under a deed of hypothecation dated April 24, 1970 hypothecating all machinery and equipment situated at the factory premises situated on Survey No. 949. They also created an equitable mortgage mortgaging the said land and factory building by depositing the original title deeds of the properties with the Corporation by signing the letter evidencing the said deposit of title deeds. Under the said transaction the loan of Rs. 6 lakhs had to be repaid within a period of 8 years by half yearly instalments, such first half yearly instalment of 1/13th of the loan being payable at the end of 24 months of the disbursement of the first instalment of the loan and subsequent half yearly instalments of 1/13th of the loan to be paid each half year and the last half yearly instalment of 1/13th of the loan to be paid on April 24, 1978. According to the said agreement, the first instalment of Rs. 46,153 was to be paid on April 27, 1972 and the second instalment of Rs. 46,153 was to be paid on October 27, 1972. The appellants were liable to pay interest at 8.5 per cent per annum and that was to be calculated on charged at the end of every half year and was payable on 31st of March and 30th of September in each year. The appellants committed default in payment of instalments and interest due to the Corporation. Hence the Corporation filed an application on August 9, 1973, under section 31 of the Act before the District Judge, Baroda, in Civil Miscellaneous Application No. 123 of 1973 claiming that in view of the default, the entire outstanding loan, interest and commitment charges amounting to Rs. 6,73,390.42 paise had become due and payable. In the said proceedings the appellants having admitted the claim of the Corporation, a compromise was arrived at under which appellant 1 - M/s. Everest Industrial Corporation undertook to pay a sum of Rs. 15,000 every month towards the claim of the Corporation and further agreed that if there was a default in payment of any two instalments at a time, then the Corporation could recover the entire outstanding amount then due forthwith. On the basis of the above compromise an order was passed on April 29, 1977 by

the learned Joint Judge, Baroda, before whom the case was pending at that time. The operative portion of the order read as follows :

Order

Claim of the applicant is decreed. Opponent 1 to pay the amount of Rs. 15,000 (fifteen thousand) per month through the Bank of Maharashtra to the applicant towards his claim. If two instalments of Rs. 15,000 each at a time are not paid by opponent 1, then the applicant shall be entitled to recover the remaining amount then due at a time. Decree to be drawn on payment of court fees by the applicant. 2/3 of the court fee amount be refunded to the applicant advocate. Costs to be borne by opponent 1. Costs to be assessed after deducting the amount of court fees refundable to the applicant.

3. Because appellant 1 failed to pay the amount as ordered by the court an application was filed by the Corporation under Section 32(8) of the Act before the District Judge, Baroda requesting that the property hypothecated in favour of the Corporation be directed to be sold by the commissioner appointed by the court and the amount so realised might be appropriated towards the dues of the Corporation. Accordingly an order directing the sale of the properties was passed on February 8, 1980. Before the property could be sold the appellants raised an objection regarding the actual amount which could be realised by the Corporation by the sale of the properties mortgaged in its favour. The objection which related to the amount of interest payable by the appellants was formulated thus : Since under the order dated April 29, 1977, which was described as a decree, the court had not expressly directed payment of any interest on the decretal amount, the Corporation was not entitled to recover any amount by way of interest due on the principal amount for the period subsequent to the date of the order. It was further submitted that since the question of payment of interest on the amount due for the period subsequent to the date of the decision of the court is governed by Section 34 of the Code the appellants were not liable to pay any interest because the court had not ordered payment of any amount by way of interest to be paid as required by that section. In other words the contention of the appellants was that when the "decree" was silent about the payment of interest for the period between the date of the "decree" and the date of payment the Corporation was not entitled to recover it. It may be mentioned that the Corporation had claimed interest at the rate agreed upon under the transaction, i.e., 8.5 per cent per annum and that had not been disputed by the borrowers. The said objection was overruled by the joint judge by his order dated February 25, 1983. He determined that Rs. 9,35,547.84 paise was due as on February 8, 1983 and that thereafter interest at the rate of Rs. 178.60 per day would be accruing. Aggrieved by the order of the joint judge, the appellants filed an appeal in First Appeal No. 1474 of 1983 before the High Court of Gujarat. That appeal was dismissed by the learned single judge on February 2, 1984. Under Letters Patent Appeal No. 94 of 1984 filed by the appellants, a Division Bench of the High Court affirmed the judgment of the learned single judge by its decision dated January 2, 1985. This appeal by special leave is filed against the judgment of the Division Bench of the High Court.

4. The main contention urged on behalf of the appellants before this court is that a proceeding under Section 31 of the Act is in the nature of a suit, an order made thereon under Section 32 thereof is a decree and since by sub-section (6) of Section 32 of the Act the District Judge is required to investigate the claim of the Corporation in accordance with the provisions of the Code insofar as the said provisions would be applicable thereto, Section 34 of the Code which governs the question of levy of interest on the amount due from the date of the suit to the date of the decree and from the date of the decree to the date of payment would be attracted to the proceeding instituted under

Section 31 of the Act also. It is urged that since the "decree" passed in this case is silent on the question of payment of any interest on the principal sum from the date of the decree to the date of payment, the court should be deemed to have refused such interest by virtue of sub-section (2) of Section 34 of the Code. In support of the above contention of the appellants, reliance is placed on the decision of the High Court of Karnataka in Karnataka State Financial Corporation, Bangalore v. Sri Nithyananda Bhavan (AIR 1982 Kar 179 : (1981) 2 Kant LJ 321 : ILR (1981) 2 Kant 1347) in which the High Court had applied Section 34 of the Code to a proceeding instituted under Section 31 of the Act. In that case the District Judge had awarded future interest at 6 per cent per annum on the amount payable under a transaction under the Act from the date of the application to the date of payment. The Karnataka State Financial Corporation which was aggrieved by the order of the District Judge filed an appeal against that order before the High Court. In the said appeal the Karnataka State Financial Corporation claimed interest on the principal amount due from the date of the application at the rate of 18 per cent per annum. In deciding the said case the High Court did not go into the question whether Section 34 of the Code would be applicable to a proceeding under the Act. It was assumed on all hands that Section 34 of the Code was applicable. Ultimately, the High Court increased the rate of interest to 11 per cent per annum which was the contractual rate of interest treating that as a reasonable rate of interest that could be awarded under Section 34 of the Code. It may be mentioned here that an earlier decision of this Court in Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. (P). Ltd. ((1979) 1 SCR 372 : (1979) 1 SCC 193 : (1979) 49 Com Cas 187) in which the nature of a proceeding instituted under Section 31 of the Act and of the order passed thereon under Section 32 thereof had been considered was not brought to the notice of the High Court.

5. In Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. (P). Ltd. ((1979) 1 SCR 372 : (1979) 1 SCC 193 : (1979) 49 Com Cas 187) no doubt the question involved was whether court fee was payable on an application made under Section 31 of the Act on an ad valorem basis as if the proceeding was a suit or not. But this Court after analysing the provisions of the Act held that an application for any of the reliefs that can be granted under the Act was not certainly a plaint in a suit for recovery of mortgage loan and that it was not even something akin to a suit by a mortgagee to recover mortgage money by sale of the mortgaged property. The court held that the applicant in such a case could not pray for a preliminary decree for sale of the property or a final decree for the payment of the money nor could it seek to enforce any personal liability even if such a liability had been incurred under the contract of mortgage as the law stood then. This court held that the form of the relief to be granted under the Act did not attract Article 1 or Article 7 of Schedule 1 of the Bombay Court Fees Act, 1959 which required payment of court fee on ad valorem basis on any plaint or application in the nature of a plaint instituted for recovery of mortgage amount. Accordingly it held that the demand for payment of ad valorem court fee was unsustainable. In the course of its judgment the court rejected the contention based on sub-section (6) of Section 32 of the Act which required a District Judge to apply the procedure of the Code to applications made under Section 31 of the Act and ultimately held that the substantive relief in any claim under Section 31(1) of the Act was something akin to the relief that could be granted on an application for attachment of property for execution of a decree at a stage posterior to the passing of the decree. The court further observed that : (SCC p. 201, para 13)

We are unable to appreciate the view taken by the High Court that the proceeding is not in the nature of execution of a decree because the question of enforcement of the order of attachment or sale would arise only after the same is made absolute under sub-section (7).

Even though in the above decision the question which arose for consideration was whether ad

valorem court fee was payable on an application under Section 31 of the Act as if it was a suit, the court has decided the said question after determining the true nature of a proceeding instituted under Section 31(1) of the Act on a detailed analysis of the provisions of the Act.

6. If as held by this Court the proceeding instituted under Section 31(1) of the Act is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree no question of passing any order under Section 34 of the Code would arise since Section 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. It may also be mentioned here that even under the Code the question of interest payable in mortgage suits filed in civil courts is governed by Order 34 Rule 11 of the Code and not by Section 34 of the Code which may be applicable only to cases of personal decrees passed under Order 34 Rule 6 of the Code. The High Court was right in holding that interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed under Section 32 of the Act. We hold that the decision of the Karnataka High Court, referred to above, which has applied Section 34 of the Code to a proceeding instituted under Section 31(1) of the Act, is not correctly decided.

7. It was lastly urged on behalf of the appellants that the amount due and payable to the Corporation has not been properly calculated by the Joint Judge. We do not have all the material before us to enable us to determine the actual amount due. It is also seen that subsequent to the date of the order passed by the Joint Judge a sufficiently long time has elapsed. In the circumstances we feel that the Joint Judge before whom the proceeding for recovery of the amount by sale of the properties has been instituted should be directed to redetermine the amount due and payable to the Corporation in this case.

8. We accordingly affirm the judgment of the High Court holding that Section 34 of the Code of Civil Procedure, 1908 is not applicable to this case but remand the matter to the Joint Judge to redetermine the actual amount due and payable to the Corporation in these proceedings calculating the same as per contract between the parties before directing the sale of the properties. We direct the Joint Judge to determine the amount payable by the appellants within one month from the date of the receipt of a copy of the order of this Court. Both the parties are directed to file their statements of accounts before the Joint Judge within one week from the date of receipt of the copy of this order by the Joint Judge to enable him to decide the case as directed above.

9. The appeal is accordingly disposed of. There shall, however, be no order as to costs.

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