ANDHRA PRADESH HIGH COURT

Dara Radhakrishnayya Lingam

Vs

Talluri Satyanandam

(P.Chandra Reddy, C.J. Venkatesam, J.)

16.11.1961

JUDGMENT

P. Chandra Reddy, C.J.

1. This appeal is filed by the first defendant under Clause 15 of the Letters Patent against the judgment or our learned brother, Manohar Pershad J. in A.S. No 120 of 1955.

2. The appellant executed a simple mortgage for a sum of Rs. 5,000/- in favour of the father of the first plaintiff on 28-1-1938. It was recited in the document that the principal amount of Rs. 5,000/- Should be paid in five equal instalments of Rs. 1,000/- each together with interest at 8 5/8% per annum (simple). It was further stipulated "In case I fail to pay the principal and interest due in respect of an instalment by the respective due date according to the instalments mentioned above, it is settled that without reference to the future instalments the interest accrued up till then shall be added on to the principal and the said amount by principal and interest shall carry compound interest at the rate of Rs. 0-11-6 per cent per mensem with annual rests."It was settled that the mortgagee should recover the entire principal and interest so aggregating in lump sum from the first defendant personally and from the property under the mortgage and from his other movable property, me mortgagor did not pay any of the instalments as per the terms of the bond, in October 1949, he sold a part of the hypothecs for a sum of Rs. 6,000/- to the second defendant and paid Rs. 3,444/- towards the mortgage debt on 19-10-1949. On the same day, he created a second mortgage over the rest of the properties in favour of the second defendant for Rs. 10,000/- under Ex. B-2. Out of this, he paid Rs. 1,500/- towards interest and Rs. 500/-towards principal of the suit mortgage. As no part of the balance of the amount was paid thereafter, the first plaintiff brought the suit out of which this appeal has arisen for recovery of a sum of Rs. 11,140/- being the principal and interest that accrued thereon.

3. Various defences were set up by the defendants but the two with which we are now concerned In this appeal are these namely, (1) the defendants being agriculturists, they are entitled to have the debt scaled down under Section 9 of the Madras Agriculturist? Relief Act, and (2) since the mortgage deed provided a double penalty, namely, making the whole amount due up to that date payable in the event of default to pay an installment in time irrespective of future installments and payment of interest at 8 5/8% compound interest with yearly rests, the mortgagor had to be relieved of the second penalty.

4. The trial court, while disallowing the relief under the Madras Agriculturists Relief Act for the reason that the first defendant was not an agriculturist, agreed with the contention that there was double penalty and that relief should be given to him in that behalf, in the result, the Subordinate Judge granted a decree to the plaintiffs for a reduced amount along with interest at 8 5/8% per annum (simple).

5. Dissatisfied with this judgment, the plaintiffs preferred A.S. No. 120 of 1955. The first defendant preferred a memorandum of cross-objections, contending that the conclusion of the learned Subordinate Judge that he was not an agriculturist and, therefore, was not entitled to the benefits of the Madras Agriculturists Relief Act was erroneous.

6. Manohar Preshad J., who heard the appeal and the memorandum of cross-objections, allowed the appeal of the plaintiffs and dismissed the cross-objection.

7. The learned Judge reached the decision that while double penalty was imposed upon the mortgagor and that he should be relieved against the penalty of payment of COmpound interest, the plaintiff-mortgagee was entitled to a reasonable compensation under Section 74 of the Indian Contract Act. He fixed interest at 12 1/2% per annum as reasonable compensation. It is this Judgment that is now under appeal.

8. Two contentions are urged by Sri Bapi Raju in support of this appeal, (i) having found that there was double penalty in this case, the learned Judge had no jurisdiction to invoke Section 74 of the Indian Contract Act; and (ii) that the finding that the appellant is not an agriculturist is opposed to the material on record.

9. We will first dispose of the point whether the appellant is an agriculturist within the meaning of the Madras Agriculturist Relief Art and whether he could have recourse to Section 9 of that Act.

10. To establish his case that he was an agriculturist, the appellant examined himself and two others, D.Ws. 4 and 8. The testimony of all these witnesses was that the first defendant-appellant was cultivating two plots of land of the fourth defendant and one acre of wet land lying five miles away from Peddapuram where the parses reside and another extent of 7 acres of Arabandbeedu situated at a distance of one mile from Peddapuram. To corroborate their evidence, they produced Exhibits B-6 to B-11 alleged to be the lease deeds executed by the appellant. Having regard to the discrepancies and the artificial nature of their evidence, the trial Court was not inclined to place any reliance on it. While some witnesses pretended that tax was paid actually by the first defendant-appellant, the tax receipts produced showed that taxes were paid by the fourth defendant.It is also noteworthy that the appellant, who is stated to be a very old man, is alleged to have taken one acre of land on lease which lies at a distance of five miles from his place if residence. It cannot also be ignored that this defendant who is supposed to have owned one pair of bulls sold them away one month before he gave evidence. For these and other reasons, the trial Court rejected the evidence of these witnesses. Our learned brother noticed the several infirmities in the evidence of these witnesses and discussed the matter at great length and concurred in the opinion of the trial Court as to the reliability of their evidence. We see no reason to disagree with the concurrent finding that the appellant was not an agriculturist and, therefore, could not claim the advantage of the Madras Agriculturists Relief Act.

11. The only question that survives is whether it is open to the learned Judge to direct payment of reasonable compensation id the shape of increasing the rate of simple interest. The argument presenter! by Sri Bapi Raju on behalf of the appellant is that Section 74 of the Indian Contract Act would not govern the case of double penalty and that its applicability would be confined to a simple case of a stipulation for payment of compound interest by way of penalty for non-payment of instalments in time.

12. In this context, it is convenient to read Section 74 of the Contract Act, which is in these words:

> "When a contract has been broken if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or less is proved to have been caused thereby, to receive from the party who has broken the contract, reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

xx xx x

13. We find no warrant in the language of the Section to confine its operation to ordinary cases of payment of compound interest at the same rate as the simple interest from the date of default. The language is couched in general terms and, in our opinion, it extends to the type of case we are to deal with here.

14. There is abundant authority in support of the view we have taken. In Nageswaraswami v. Viswasundara Rao, , the money lent was to carry interest at 7 1/2% per cent (simple) per annum and the due date of payment of the principal money was 30th September 1933. The interest accruing thereunder was to be paid annually on the 30th September every year in default of which the whole of the principal and interest in arrears would become repayable immediately with interest at 9 per cent compound per annum with yearly rests. In a suit for recovery of the mortgage money on the basis of the terms of that document, the subordinate Judge stated among other things that the provisions relating to payment or compound interests at an enhanced rate in default of payment of the stipulated interest on the due dales was in the nature of a penalty and should be relieved against. But in view of the fact that the interest was being scaled down finder the Madras Agriculturists Relief Act it became unnecessary for him to consider in what manner this relief should be granted under Section 74 of the Indian Contract Act. In the appeals filed by the aggrieved parties, the High Court agreed in holding that the provision relating to payment of enhanced interest in case of default amounted to a penalty and reduced the rate of interest from 9 par cent compound to 7 1/2% compound with yearly rests.When the matter ultimately reached the Supreme Court, their Lordships held that the High Court should not have allowed interest at the rate of 7 1\2% per cent (compound) with yearly rests and that it was proper that the mortgage money payable to the plaintiff should carry interest at the rate of 7 1/2% (simple). It was observed that the High Court was misled by the statement of the trial Judge that the original rate of interest was 7 1/2% (compound) with yearly rests. It is worthy of note that their Lordships did not say that when penalty was relieved against it was not competent to the Court to grant a reasonable compensation under Section 74 of the Indian Contract Act. They seem to have

proceeded on the assumption that such a power exists in the Court but in that case it was reasonable to fix interest at 7 1/2% (simple).

15. *Ramamurthi v. Subba Rao*[1], which is the leading case on the topic, and which has laid down that a stipulation, "And that in default of payment of sums due in any instalment, the sum remaining unpaid on that date snail be added to the principal and the entire amount become payable at once Irrespective of future instalments, the entire sum carrying interest at 1 per cent, per mensem compound with yearly rests."would amount to a double penalty put upon any default in payment of the annual instalments, did not doubt the power of a Court to pay reasonable compensation by in creasing the rate of interest stipulated between the parties.As could be seen from the statement, viz., "The stipulation in question which requires payment of compound interest at 12 per cent, per annum is therefore not binding on the defendants the appellants and we think the proper and reasonable provision to make as regards interest is 12 per cent simple interest as is provided earlier in the document" the learned Judges did not posit that there was lack of authority in a Court to increase the rate of interest as originally provided. In the circumstances of that case they considered that 12 per cent (simple) earlier provided was proper and reasonable.

16. There is the direct authority of this Court in *Ramanna v. Butchamma*[2], A division Bench of this Court ruled in that case similar to the present that Courts have a discretion to allow reasonable compensation to the creditor not exceeding the amount agreed upon between the parties, the amount agreed upon obviously being the enhanced rate of interest in the event of default. It is unnecessary to multiply citations on this topic. In our opinion, the view of the learned Judge that under Section 74 of the Indian Contract Act a Court is competent to award same money by way of reasonable compensation is correct.

17. The only other point for consideration is whether the rate of interest at 12 per cent per annum is proper and reasonable. In our opinion, nothing could be said against the rate fixed by the learned Judge. It is Brought to our notice that all the mortgages executed by the appellant for the discharge of which Ex. A-1 which formed the basis of the present suit, was executed contained stipulation that in default of payment of the instalments on agreed dates the entirety of the debt was to carry compound interest at 25% (compound). Even the second mortgage executed by the appellant in favour of the second defendant under Ex. B-12 carries interest at 10 per cent per annum with yearly rests. In these circumstances, the rate of 12 per cent per annum (simple) cannot be described as excessive or unreasonable.

18. For these reasons, we affirm the judgment under appeal and dismiss this appeal with costs.

Cases Referred.

1(1939) 1 Mad LJ 491 at 492: (AIR 1939 Mad 481 at p. 481)
2(1958) 1 Andh WR 255 : (AIR 195B Andh Pra 598)