

**KARNATAKA HIGH COURT**

H.P. Krishna Reddy

Vs.

Canara Bank

First Appeal No. 75 of 1975

(K. Jagannatha Shetty and M.P. Chandrakantaraj Urs, JJ.)

28.02.1985

**JUDGEMENT**

**K. Jagannatha Shetty, J.**

1. This appeal has been preferred against the Decree and judgment dated December 17,1974, made by the Additional Civil Judge; Bangalore, in O.S. No. 42/1972.
2. The appellant was defendant against whom the respondent-Canara Bank (the "Bank") instituted the suit for recovery of a sum of Rs. 23,940-97 with current interest at 13 per cent per annum on the following averments : -

"On June 19, 1969, the defendant availed of a loan of Rs. 15,500/- on the security of immoveable properties with the deposit of title deeds so as to create an equitable mortgage in favor of the Bank. In order to ensure prompt repayment of the loan, the defendant also executed an on Demand Promissory Note for a sum of Rs. 15,500/- in favor of the Bank. On October 14, 1969; the defendant gain availed of another loan of Rs. 10,500/-by extending the said security and on executing another Promissory Note for a sum of Rs. 10,500/-. The defendant also hypothecated his crops and live-stock by executing necessary agreements. In all, the defendant had taken Rs. 26,000/- as loan from the Bank."

The loan was not repaid as agreed upon and on March 31, 1972, the defendant was found due in a sum of Rs. 23,940-97, with interest at the rate of 13 per cent per annum as per rules of business, trade, usage and custom.

The particulars of the amount claimed in the plaint are :

(a) liability of defendant in aggregate	Rs. 23,241-74
---	---------------

interest of the two loans as on 31-3-1972	
(b) interest on the above at the rate of 13 per cent per annum from 1-4-1972 till 16-6-1972	Rs. 699-23
Total :	Rs. 23,940-97

3. The defendant while resisting the suit has admitted the creation of equitable mortgage by deposit of title deeds of his properties as security for the loan taken from the Bank. He has also admitted the execution of the Promissory Notes as alleged in the plaint. But he has denied the liability to pay interest at the rate of 13 per cent per annum. He has also disputed the liability of charging higher rate of interest and the validity of the suit claim without furnishing the details of the aggregate interest charged.

4. Arising out of the pleadings, the trial Court framed the necessary issues.

- (1) Whether the plaintiff has paid Rs. 15,500/- to the defendant on the transaction of equitable mortgage of 'A' schedule properties?
- (2) Whether the plaintiff has paid Rs. 10,500/- on the hypothecation of C and D schedule properties?
- (3) Whether the plaintiff is entitled to claim interest at 13 per cent?
- (4) Whether the accounts furnished by plaintiff are correct?
- (5) Whether the defendant was liable only in a sum of Rs. 6537-53 on both these transactions as on 17-12-1971?

5. On behalf of plaintiff, Mr. Nagesh Rao - the Agricultural Extension Officer of the Bank has been examined as P.W. 1. He was the only witness on behalf of plaintiff. The documentary evidence produced consists of the relevant loan papers. The defendant in turn has examined himself as D.W. 1 and produced two documents as Exhibits D1 and D2.

6. P.W. 1 after producing the extract of loan account Exhibit-P7 has stated that it contained all the debit and credit entries up to filing of the suit, with charging of interest on interest on quarterly rests. He has stated as follows :

"9. Reserve Bank rate of interest was 5% per annum on the dates (page 6) of Exhibits P2 and P-5.

10. We have claimed interest on interest on quarterly rests.

.....

13. ....

Rate of (page 7) interest is charged at 9% in the beginning and later at 9% then 10% then 11% and at 13% from June 6,1972 when the account is transferred to Loan (not

clear) rest due account. Defendant upon the increase of rate of interest by the Reserve Bank.

.....  
16. Rate of interest is not mentioned in Exhibit-P13 and Exhibit-P14 also."

The trial Court on a consideration of the evidence has determined all the above said issues in favor of the Bank. On the question of charging compound interest every quarter, the Court observed :

"The learned counsel for the defendant contended during his arguments that the plaintiff has gone on compounding interest for every quarter and that this he is not entitled to do. He also contends that such a mode of calculating interest is not permissible under the Usurious Loans Act. In the pronote executed by the defendant he has agreed for the compounding of interest at every quarter. As such he cannot now say that the plaintiff is not entitled to charge compound interest. The defendant has not taken up a plea that the interest claimed by the plaintiff is excessive or it is barred under the Usurious Loans Act. The interest charged by the plaintiff which is between 9% and 13% depending upon the increase in the Reserve Bank rate cannot be considered to be excessive. The learned counsel for the defendant has not placed before me any authority to show that charging of compound interest is unfair or is excessive. There is no provision in the Usurious Loans Act which prohibits charging of compound interests."

The Court finally decreed the suit as follows :

"The defendant should pay to the plaintiff a sum of Rs. 23,940-97 together with costs and current interest at 13 per cent per annum from April 1,1972, to the date of decree and at 6 per cent per annum from the date of decree till payment, within a period of six months, failing which, the amount due shall be recovered from such mortgaged properties, and the balance, if any, shall be recovered personally from the defendant."

Being aggrieved by the Judgment and Decree, the defendant has appealed to this Court.

7. In the light of the submissions made by Counsel on both sides, the following points arise for consideration.

(1) Whether the Court below was justified in awarding interest from April 1, 1972, to the date of the decree at 13 per cent per annum on Rs. 23,940-97; and

(2) Whether the Bank is entitled to recover interest with quarterly rests?

8. Re : Point No. (1) :

On the first question, Mr. H. Lakshmanaswamy, learned Counsel for the appellant has invited our attention to schedule-E to the plaint which contains particulars of the claim of the Bank. He urged that the interest awarded by the Court from April 1, 1972, till the date of decree at 13 per cent per annum on Rs. 23,940-97 was erroneous. This contention, in our opinion, is correct and must be accepted. In the plaint the interest at the rate of 13 per cent from April 1,1972, till June

16,1972, in all Rs. 699-23 has been included in the suit claim itself. The Court, therefore, could not have awarded interest again from April 1, 1972. The Court, however, could have awarded interest at the rate of 13 per cent per annum from June 17, 1972, up to the date of decree on Rs. 23,241-74 and not on Rs. 23,940-97. On the future interest from the date of decree till realisation, the rate of 6 per cent is justified in view of the constraint imposed by explanations 1 and 2 to proviso to Section 34 of the Civil Procedure Code since the loan was admittedly for agricultural purposes.

9. Re : Point No. (2) :

Plaintiff has claimed interest at the rate of 13 per cent as per rules of business, trade, usage and custom. But no evidence has been produced in proof of such trade practice, usage or custom. All that P.W. 1 in the course of his evidence has stated was :

"We have claimed interest on interest on quarterly rests."

We have not been referred to any book on "Banking Law and Practice" to show that the interest on interest on quarterly rests has been the recognised banking practice. On the contrary, this Court, in *Gowda, D. S. v. Corporation Bank*<sup>1</sup> after referring to most of the commentaries on the practice and law of banking, has held as follows :

"It is thus clear that the ordinary practice or custom of banks was only to charge interest with yearly or half yearly rests and that too only on over-draft amounts and unsecured loans. The monthly or quarterly rests, therefore, does not appear to be the recognized banking practice. It may be that some banks as in the present case, might have charged interest with quarterly rests or monthly rests on some transactions, but to state that it was a banking practice generally accepted or universally followed by all banks, in our opinion, is far from truth."

The Bank, however, could support the levy of interest with quarterly rests if there was any notification or circular issued by the Reserve Bank of India under the provisions of the Banking Regulation Act. But we have not been referred to any such notification or circular operative at the time of the loan concerned in this case. On the contrary, a circular of the Reserve Bank of India issued on August 17, 1976 which in turn makes a reference to the earlier circular dated October 5, 1974 makes it clear that the banks have been precluded from recovering interest with quarterly rests on agricultural advances. The effect of the said circular was elaborately examined by this Court in *Gowda, D.S's case* 1982(2) Kant LJ 490 wherein it was observed that the circular is binding on all Commercial Banks and Banks are precluded from charging interest contrary to the terms thereof. Mr. Shivakumar, learned Counsel for the respondent-Bank, does not dispute this proposition. He, however, submitted that the restraint imposed by the said circular will be ineffective in view of the recent amendment to the Banking Regulation Act by insertion of Section 21 A, and this amendment takes away the jurisdiction of Courts to re-open the rate of interest charged by Banks.

10. It seems to us, that learned Counsel may not be correct in his submission. Section 21A introduced by the Banking Laws (Amendment) Act, 1983, (Act No. 1 of 1984) reads as follows :

"21 A. Rates of interest charged by Banking Companies not to be subject to scrutiny by Courts. - Notwithstanding anything contained in the Usurious Loans Act, 1918, or any other law relating to indebtedness in force in any State, a transaction between a Banking Company and its debtor shall not be re-opened by any Court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

The mandate of this section is that Courts cannot re-open the account relating to a transaction between a Banking Company and its customer on the ground that the rate of interest charged, in the opinion of Courts, is excessive or unreasonable. The Courts, in other words, cannot exercise jurisdiction under the Usurious Loans Act or any other law relating to indebtedness for the purpose of giving relief to any party. This appears to be

<sup>1</sup>1982 (2) Kant LJ 490 at P. 501

the intent of the Legislature in enacting the Banking Laws (Amendment) Act, 1983.

Section 21A has, however, no bearing on the jurisdiction of Courts to give relief to an aggrieved party when it is established that the Bank in a particular case has charged interest in excess of the limit prescribed by the Reserve Bank of India. The Reserve Bank has enormous power to control advances to be made by Commercial Banks. The Reserve Bank has power to prescribe or regulate the interest rate structure on advances or other financial accommodation to be made by Commercial Banks. Section 46(4) of the Banking Regulation Act confers power on the Reserve Bank to impose penalty for contravention of its order, rule or direction. The interest charged by Banks on transactions should therefore be in conformity with the rate prescribed by the Reserve Bank. Banks are bound to follow the direction or circular issued by the Reserve Bank in that behalf. If, in any case, it is proved that the Bank has charged interest in violation of the direction of the Reserve Bank, the Court could give relief to the aggrieved party notwithstanding Section 21A of the Banking Regulation Act. The interest charged beyond the rate prescribed by the Reserve Bank would be illegal and void. We cannot, therefore, allow the claim of the Bank on quarterly rests on agricultural loans.

11. The Counsel for the appellant next urged that the suit claim of Rs. 23,241-74 carrying interest at 13 per cent per annum would be against the agreed terms in as much as the contractual rate of interest was 9 per cent per annum. He, therefore, urged that the Bank must be directed to re-calculate the interest.

12. We do not find any merit in this submission. The contractual rate of interest at 9 per cent was

subject to escalation depending upon the rate of interest prescribed from time to time by the Reserve Bank. It is apparent from the suit claim and also from the evidence adduced in the case that the interest has been charged on the loan at varied rates approved by the Reserve Bank, and 13 per cent interest has been claimed only for the period from April 1, 1972 to June 16, 1972.

13. In the result, we allow the appeal in part and modify the decree of the Court below. The Bank shall re-calculate the interest on the advance given to the appellant at varied rates, but without quarterly rests and file a memo accordingly in this Court. The Bank is entitled to 13 per cent interest per annum from April 1, 1972 till the date of decree and thereafter at 6 per cent per annum till the date of realization. The Bank should also give adjustment to payment, if any, made by the appellant after filing of the suit. The decree shall be drafted as per the memo to be filed by the Bank. Memo must be filed within 60 days. In the circumstances of the case, we make no order as to costs in this appeal.

Appeal partly allowed.