

(2017) 05 MAD CK 0012

MADRAS HIGH COURT

Case No: 217 of 2009

Indian Bank (Main
Branch), Dindigul North
Car Street, Dindigul
through its Zonal
Manager, Trichy

APPELLANT

Vs

M/s.C.Muthu Agencies
by its Sole Proprietor
C.Muthu, & Anr.

RESPONDENT

Date of Decision: May 18, 2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 34](#), [Order 7Rule 1](#), [Order 34Rule 11](#) - Interest

Citation: (2017) 05 MAD CK 0012

Hon'ble Judges: C.V.Karthikeyan

Bench: SINGLE BENCH

Advocate: C.V.Karthikeyan

Final Decision: Allowed

Judgement

1. The Plaintiff in OS.No.33 of 2004 has filed this appeal, aggrieved by the judgement and decree dated 26.03.2008 passed by the Principal

District Judge, Dindigul, wherein the said suit had been decreed with costs, but however, interest at the rate of 6% alone had been granted. The

Appellant seeks interest at the rate of 19.85% with compound quarterly rests.

2. The above said suit had been filed by the Appellant herein, namely, Indian Bank, Main Branch, Dindigul, through its Zonal Manager against the

Respondents herein, namely, M/s.C.Muthu Agencies, through its Sole Proprietor C.Muthu and C.Muthu in his individual capacity under Order 7

Rule 1 of CPC, seeking a preliminary decree, directing the Respondents, who are the Defendants, to pay a sum of Rs.7,35,640/- together with

interest at 19.85% p.a with compound quarterly rests from the date of the plaint till the date of realisation and for a further preliminary decree for

Rs.48,785/- with further interest at 19.85% p.a. with compound quarterly rests till the date of realisation and for permission to apply for final

decree for sale of the properties mortgaged and for costs.

3. On consideration of the pleadings and the oral and documentary evidence, the court below had decreed the suit as prayed for with costs, but

had granted interest at the rate of 6% p.a. from the date of the suit till the date of realisation. This appeal has been filed, challenging the award of

interest at 6% p.a. With respect to the decree, seeking a sum of Rs.7,35,640/- and a further sum of Rs.48,785/-, there was no cross appeal filed

by the Respondents, challenging the grant of said amounts. Consequently, the issue in this appeal is narrowed down to the grant of interest at the

rate of 6% p.a. Since the issue has been narrowed down to the rate of interest that has to be granted, the facts of the case are not gone into at

depth.

4. The learned counsel for the Appellant had pointed out that the Appellant is a Nationalised Bank and a contract had been entered into between

the Appellant and the Respondents, wherein money was advanced and the advance was agreed to be repaid with interest at 19.85% p.a. with

compound quarterly rests. Since there is a binding agreement between the parties, the learned counsel stated that the Court should uphold the said

agreement also with respect to the grant of interest. In this connection, the learned counsel for the Appellant placed reliance on the decision of the

Honourable Supreme Court reported in 1999 2 SCC 375 (State Bank of India Vs. Yasangi Venkateswara Rao) wherein the Honourable

Supreme Court had held in paragraph 8 as follows:-

8. We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of

mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of

contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be

paid, we fail to understand as to how the court can possibly interfere and reduce the amount of interest agreed to be paid on the loan

so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest

to be charged.

5. On the contrary, the learned counsel for the Respondent, who appeared for the Defendants, has fairly admitted to the decree passed by the

court below with respect to the amounts, but stated that the grant of interest at 6% p.a is reasonable. The learned counsel placed reliance on the

decision of the Honourable Supreme Court reported in 2009 11 SCC 60 (C.K.Sasankan Vs. Dhanalakshmi Bank Limited) wherein after

observing the provisions of Section 34 of CPC, the Honourable Supreme Court had stated as follows:-

12. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal

amount. It is needless to point out that although the amount of interest from the date of filing of the suit till the date of the decree and

thereafter till realisation is in the discretion of the court as is confirmed by the use of the word `may" but such discretion has to be

exercised by the court properly, reasonably and on sound legal principles and not arbitrarily and while doing so the court is also to

consider the parameter, scope and ambit of Section 34 of Code.

13. The aforesaid scope and ambit of Section 34 of the Code has been the subject of discussion in many cases of this Court.

14. We are inclined to refer to the decision in Clariant International Ltd. v. Securities & Exchange Board of India, (2004) 8 SCC

524, where it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also

be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by

way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a

written demand is mandatory. It was further held that in absence of any agreement or statutory provision or a mercantile usage,

interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying

exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice

of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has

been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in

Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9, H.S. Ahammed Hussain v. Irfan Ahammed (2002) 6 SCC

52 and United India Insurance Co. Ltd. v. Patricia Jean Mahajan (2002) 6 SCC 281 and it was observed that even in cases of

victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

Direction to pay such rate of interest is also found to be reasonable and fair as the plaintiff was deprived to utilize and roll its money in

commercial transaction and kept out of it due to wrongful withholding of the same by the defendant.

15. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and

future interest is exorbitant and thus we direct that pendent lite and future interest at the rate of 9% shall be paid which is found to be

just, proper and reasonable. The appeal stands allowed to the aforesaid extent.

6. Section 34 of CPC is 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.

7. In this case, the Respondents herein have not challenged the decree, in so far as the principal amount is concerned. The suit as stated above has

been filed under Order 7 Rule 1 of CPC. It is actually a suit on mortgage wherein Order 34 of CPC is attracted.

8. Order 34 Rule 11 of CPC deals with payment of interest in a decree and it is 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 such rate at the

Court deems reasonable, and

(ii) [Omitted].

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of

the mortgagee-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 such rate not exceeding six per cent, per annum as the Court deems reasonable; and

(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 the such rate as the Court deems reasonable.

9. In both Section 34 and Order 34 Rule 11, discretion is granted to the court to award interest at a reasonable rate. The court below had thought

it fit to grant interest at the rate of 6% p.a. The Appellant is unsatisfied with it. It is, as contended by the learned counsel for the Appellant, an

advance for commercial transaction.

10. In 2009 11 SCC 60 (C.K.Sasankan Vs. Dhanalakshmi Bank Limited) it had been held that interest at 9% p.a. pendente lite and future interest

was just and reasonable. In this case, I would also adopt the same reasoning and I hold that this appeal can be partly allowed, revising the rate of

interest at 9% p.a.

11. In the result, this appeal suit is partly allowed with costs. Accordingly, the impugned judgement and decree is modified to the extent that

interest at 9% p.a. from the date of the institution of the suit till the date of realisation is granted. In all other respects, the impugned judgement and

decree is confirmed.