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**(2001) 08 GAU CK 0006**

**Gauhati High Court**

**Case No:** F.A. No. 56 of 1992

State of Bank of India

APPELLANT

Vs

Swapan Basak and Another

RESPONDENT

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**Date of Decision:** Aug. 13, 2001

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 34 Rule 11

**Citation:** AIR 2002 Guw 48 : (2001) 3 GLT 19

**Hon'ble Judges:** P.G. Agarwal, J; J.N. Sharma, J

**Bench:** Division Bench

**Advocate:** B. Kalita and L.R. Dutta, for the Appellant; G.N. Sahewalla, for the Respondent

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### **Judgement**

J.N. Sarma, J.

This appeal has been filed by the State Bank of India against a portion of the judgment with regard to payment of interest. That portion of the judgment is quoted below :

"6. In the result, I am constrained to hold that the plaintiff-bank is not entitled to claim the amount of Rs. 2,62,079.30 With further interest thereon @ 12.5% p.a. from the date of filing of the suit till realisation of the decretal amount. The plaintiff bank is entitled to claim the principal amount due to it after adjustment of all the deposit made by the defendants. The plaintiff-bank shall also be entitled to claim simple interest @ 12 1/2% p.a. till filing of the suit on the principal due and further interest @ 8% from the date of filing of the suit till realisation of the decretal amount."

2. This matter is no longer res Integra in view of the decision of the Apex Court in [N.M. Veerappa Vs. Canara Bank and Others](#), wherein the Apex Court pointed out that in a mortgage suit, the matter is covered by Order 34, Rule 11 of the CPC. The apex court pointed out that the court has a discretion with regard to grant of future interest, but has no discretion with regard to interest before filing of the suit and pendente lite in view of Order 34, Rule 11(a)(i) which clearly states as follows ;

"(i) on the principal amount found or declared due on the mortgage, at the rate payable on the principal, or where no such rate is fixed at such rate as the court deems reasonable."

3. So, where the rate is fixed, the court is bound to grant that rate of interest, In view of that matter, the decree shall stand modified and rate of interest till the date of the decree shall be 12 1/2% being the contractual rate at quarterly rest. The future interest, however, we say shall be 6% simple interest from the date of the decree till realisation of the amount.

4. With this modification, this appeal shall stand disposed of.

5. The bank may now apply for final decree in terms of the modified judgment passed by this court.