Syndicate Bank Vs R. Veeranna and athers

Court: Karnataka High Court

Date of Decision: Feb. 18, 1994

Acts Referred: Banking (Regulation) Act, 1949 â€" Section 21
Civil Procedure Code, 1908 (CPC) â€" Section 96

Citation: (1995) 82 CompCas 179(1) : (1994) ILR (Kar) 1129 : (1994) 2 KarLJ 79

Hon'ble Judges: M.M. Mirdhe, J; K.H.N. Kuranga, J

Bench: Division Bench

Advocate: Tukaram S. Pai, for the Appellant; S.G. Bhat, S.G. Raikar, C.V. Shamanna and T.S. Ramachandra, for the Respondent

Judgement

M.M. Mirdhe, J.
This appeal is preferred by the appellant who was the plaintiff in the trial court u/s 96, Civil Procedure Code, against the

decree and judgment dated August 27, 1986, passed by the Second Additional City Civil Judge, Bangalore City, in O. S. No. 8174 of 1980 in

not decreeing the suit of the appellant in respect of the interest as prayed for by it.

2. We have heard learned counsel for the appellant and learned counsel for the respondents and perused the records of the case fully.

3. The appellant as a plaintiff filed the suit for the recovery of a sum of Rs. 5,70,324.15 in respect of the loan account No. OSL 27/72; a sum of

Rs. 7,91,203.35 in respect of the loan account No. OSL 20/73, and a sum of Rs. 2,53,563.55 in respect of the overdraft facility availed of by the

respondent in SOD account No. 248, dated January 6, 1975. The defendants resisted the suit on several grounds including the ground regarding

charging of interest as done by the plaintiff. The trial court has decreed the suit of the appellant for Rs. 9,82,963.47 with current interest at the rate

of 11 per cent. per annum. from the date of suit on the balance amount of Rs. 2,48,502.57 under the first account and the balance amount of Rs.

4,60,137.20 under the second account and on the balance of Rs. 2,35,843.70 under the overdraft facility loan account availed of by the

respondents.

4. The first loan under OSL account No. 27/72 was availed of by the respondents for commercial purpose under exhibit P-1 dated August 28,

1972, for Rs. 3,00,000 with interest at 5 per cent. above the Reserve Bank of India rate of interest with a minimum of 11 per cent. Exhibit P-3 is

the equitable mortgage in respect of that amount and exhibits P-14 to P-18 are the acknowledgments in respect of these debts. The second loan of

Rs. 2,50,000 was availed of for commercial purpose only under exhibit P-5 dated June 13, 1973, by executing an article of agreement. Exhibit P-

7 is the deed of equitable mortgage, exhibits P-10 and P-9 are the extracts of the ledger account and exhibits P-16 and P-17 are the

acknowledgments executed by the defendants in favour of the plaintiff-bank. The third loan is the overdraft facility loan availed of by the

respondents under exhibit P-11. The pronote dated January 7, 1975, is at exhibit P-11 agreeing to pay interest at 8 1/2 per cent. above the RBI

rate subject to the limit of 17 per cent. Exhibit P-13 is the equitable mortgage and exhibit P-18 is the acknowledgment in respect of this loan.

Though the respondents have suffered a decree they have not challenged the correctness or validity of that decree. It is the plaintiff-bank whose

claim has been decreed by the court in part, who has preferred this appeal, being aggrieved against the granting of interest at the rate of 11 per

cent. on the first two loans and 17 1/2 per cent. on the third loan. The grievance of the appellant is that the court ought to have granted interest at

the contractual rate and not at the rate of 11 per cent. and also it has not properly exercised its discretion in granting 6 per cent. interest from the

date of decree till realisation. It has also made a grievance that the trial court was wrong in not granting the expenses, interest on insurance

premium, etc.

5. The main point to be considered in this case is whether the respondents can be fastened with the liability to pay interest at the contractual rate of

interest when the contractual rate of interest becomes increased in view of the Reserve Bank of India circulars. Section 21 of the Banking

Regulation Act, 1949, gives power to the Reserve Bank of India to control advances by banking companies. Under that power the banks are

required to raise their interest on advances to their customers in accordance with the Reserve Bank of India rate. In this case, it cannot be disputed

that the defendants have agreed to pay interest at the RBI rate of interest subject to a certain minimum. It is the contention of the appellant that the

RBI rate of interest was increased from time to time and, therefore, the plaintiff-bank also increased its rate of interest in consonance with the RBI

rate of interest and the defendants are liable to pay at the rate of interest as increased with the RBI rate of interest in view of the contract between

the parties. No doubt, if a party has entered into an agreement to pay interest at a particular rate, it is bound to pay it and if it has also agreed to

pay the rise in the interest in view of the rise of rate by the RBI, the party is bound to pay it. But the question in this case is whether the bank can

automatically charge the increased interest in view of the rise in interest on account of the RBI directives without bringing to the knowledge of the

debtor about the rise in the rate of interest and obtaining his consent. That is the point that is required to be decided in this appeal.

6. Learned counsel for the appellant submitted that the directions issued by the RBI u/s 21 of the Banking Regulation Act, 1949, have got the force

of law, and, therefore, it will be binding on the debtors even if the bank has not brought to their notice specifically the rise in the rate of interest

from time to time by virtue of the directions issued by the RBI. It is also argued that because these directions have got the force of law, the debtors

cannot plead ignorance of this direction because no one can plead ignorance of law. Broom in his classic book Legal Maxims has dealt with this

aspect on page 169. No doubt ignorance of fact can be a good excuse but ignorance of law cannot be an excuse. The learned author has

observed that ignorance of a material fact may excuse a party from the legal consequences of his conduct but ignorance of law which every man is

presumed to know does not afford any such excuse. Though under the maxim ignorance of law cannot be an excuse, knowledge of the increase in

the rate of interest by the RBI may be attributed to the debtors, but what was the proportion rise in the rate of interest and from what date it has

come into force are the material facts and the debtors cannot be presumed to know these material facts. Unless and until the debtors are made

known about the rise in the rate of interest and the date from which it has been made operative, they cannot be fastened with the liability on the

basis of the maxim that ignorance of law is no excuse. This court in Bank of India v. Raosaheb Krishnarao Desai [1982] Kar LJ 495 has held that

the debtor in that case could not be charged with the increased rate of interest, but a perusal of the facts in that case goes to show that there was a

condition stipulated for increasing the rate of interest to the effect that the bank shall notify to the borrower about such increase and the bank shall

also obtain the consent. No doubt in the contract between the plaintiff and the defendant in this case, there is no such stipulation that the bank

should intimate the debtors about the increase in the rate of interest by the RBI. Learned counsel for the appellant contended that the bank can

charge the increased rate of interest even without bringing to the notice of the debtor about the increase in the rate of interest due to the RBI

circular and also without obtaining any consent. Learned counsel relied on section 29 of the Indian Contract Act and contended that the agreement

between the parties is not void on account of any uncertainty and, therefore, it must be in force. The question is not whether the contract between

the parties is void in view of section 29 of the Contract Act, on the ground that it is vague or uncertain but the question is whether the plaintiff-bank

is empowered to charge the increased rate of interest in pursuance of the RBI directives, even though it has not brought the rise in the rate of

interest to the notice of the debtors and obtained their consent. Section 29 of the Contract Act cannot be an answer to this case. Learned counsel

for the appellant also relied on Syndicate Bank Vs. A.K. Ahmed Bawa, wherein it has been held by this court that under Order 34, rule 11, the

court has discretion in awarding interest from the date of suit till the date fixed for redemption. But, this discretion has to be exercised judiciously

and not arbitrarily. He also relied on Vijaya Bank v. S. Bhatija [1995] 82 Comp Cas 161 wherein the same proposition has been reiterated

holding that if the facts of a particular case warrant reduction of interest, the court may reduce the contract rate of interest by giving reasons

justifying such reduction.

7. In this case, it is not disputed that the increase in the rate of interest by the bank due to the direction of the Reserve Bank of India was not

brought to the notice of the defendants and their consent was not obtained. In fact, exhibits D-16 and D-17 are the letters intimating the defendants

about the rise in the rate of interest. The defendants protested against the manner in which the bank has been charging interest. When a person is to

be charged with more liability than that contracted for in the contract, the principles of natural justice are that he must be put on notice. If the rate of

interest is increased by the bank and its intimation is given to the debtor, the debtor may choose either to continue with the contract or to pay off

the dues of the bank and clear off the dues without incurring the liability to pay the increased rate of interest. By virtue of the directions of the

Reserve Bank of India, if the bank goes on increasing the rate of interest without bringing to the notice of the debtor the concerned Reserve Bank

of India Directives, it will amount to violation of the principles of natural justice. This could be allowed only if there were any provision in law

entitling the bank to charge interest in this manner or increase interest in this manner without bringing to the notice of the customers the necessary

circulars of the Reserve Bank of India in this regard. But there is no such law. The plaintiff-bank itself is aware of this principle of natural justice

which it has incorporated in exhibit P-38 circular issued by it to its branches regarding enhancement of interest on advances as per the directions of

the Reserve Bank of India.

8. In that circular, it is mentioned as follows :

In the case of all advance/limits of above Rs. 1 lakh and advances covered by SCC commodities, branches should send intimations to borrowers

that the rates of interest on their borrowing accounts will stand enhanced by 2 per cent. or 3 per cent. as stated above (vide annexure "I"). The

concurrence of the borrowers should be obtained without fail on the acknowledgment portion of the notice and kept affixed to the loan papers. In

the case of small borrowers, a notice may be put up on the notice board of branches intimating the increase in the rate of interest. Draft of this

notice is attached as annexure "II".

9. In cases of all advances, etc., similar instructions are issued by the bank under exhibits P-38, P-39, P-33 and P-34. By these circulars the head

office of the plaintiff has directed its branches to intimate the borrowers about the increase in the rate of interest if the loan is more than Rs. 5,000

and obtain their consent to make it binding on them and in cases where the loan is less than Rs. 5,000, it is sufficient if the intimation is put up on

the notice board. But the plaintiff-bank has not followed the instructions issued by the head office in its circulars. Learned counsel for the appellant

argued when confronted with these circulars that these circulars are between the head office and the plaintiff-bank and the defendants cannot take

any advantage of those circulars. He also submitted that these circulars are issued by the head office by way of abundant precaution. This argument

is an argument of desperation. We have no hesitation to reject it as devoid of any merit. The circulars themselves envisage that the bank should

intimate the debtors about the rise in the rate of interest and obtain their consent if the loan amount is more than Rs. 5,000 and if it is less than Rs.

5,000, it will be sufficient even if it is put up on the notice board. The plaintiff has violated the instructions given by the head office. Therefore, on

this ground, the plaintiff-bank cannot claim rate of interest by virtue of the rise in interest on account of the Reserve Bank of India circulars. The

trial court has rightly considered this aspect of the case and rejected the claim of the plaintiff for the advance rate of interest in this regard.

10. So far as non-levy of interest on insurance premium is also concerned, we find no reason to differ from the view taken by the trial court.

11. Learned counsel for the appellant submitted that on the third loan amount the trial court was wrong in awarding future interest at the rate of 11

per cent. per annum from the date of the suit till the date of decree. The interest awarded by the trial court is at 11 per cent. PW-2 himself in his

evidence has admitted that the rate of interest is not calculated at the rate mentioned either in exhibit P-9 or in exhibit P-10. He has also admitted

that it may be a fact that if interest is calculated at 11 per cent. on the amount of Rs. 3,08,318.10 from January 1, 1973, to August 31, 1973, it will

come to Rs. 8,478.75 and not Rs. 9,503.30 as shown in exhibit P-9. He has further admitted that exhibit P-9 does not reflect the actual rate of

interest charges. In view of these admissions we think that the trial court was justified in awarding interest at 11 per cent. on the third loan from the

date of suit till the date of decree. We do not find any grounds to interfere with the judgment and decree passed by the trial court.

Hence, we proceed to pass the following order :

ORDER

12. The appeal is dismissed with proportionate costs.