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**(1986) 10 MP CK 0009**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** F. A. No. 55 of 1980

Ramdevi

APPELLANT

Vs

State of M. P. and others

RESPONDENT

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**Date of Decision:** Oct. 22, 1986

**Acts Referred:**

- Contract Act, 1872 - Section 74

**Citation:** (1987) MPLJ 392

**Hon'ble Judges:** N.K. Singh, J

**Bench:** Single Bench

**Advocate:** A.M. Naik, for the Appellant; Arvind Dudawat, Additional Govt. Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

N.K. Singh, J.

This First Appeal is directed against the dismissal of late plaintiffs suit for declaration and permanent injunction by the IVth Additional District Judge, Gwalior, under latter's Judgment and decree dated 18-8-1980. The following points arise for decision thereunder :-

- Whether respondent-defendant-Government was entitled to charge and recover compound interest on the arrears said to be remaining due from late plaintiff-Narayan Singh, predecessor-in-title of the present appellants, in respect of the housing loan, advanced to him (late Narayan Singh) by the said Government ?
- Whether under the law, penal interest could be charged at double the rate of normal interest, on the defaulted instalments, under the terms of the agreement dated 22-3-1956 (Ex.P.1), admittedly entered into between the parties ?

The learned counsel for the appellant Shri A. M. Naik did not raise any other point, besides those indicated above in course of his arguments in the appeal.

The facts, relevant to the disposal of the present appeal, which are not in dispute, are as follows :-

Under the "Low Income Group Housing Scheme" of the Government of India a sum of Rs. 8,000/- was advanced as loan to late Narayan Singh for building a house in Azad Nagar locality of Morar, a suburb of Gwalior, in pursuance of the agreement dated 27-3-1956 (Ex.P. 1), entered into between the Collector Gwalior, on behalf of the Raj-Pramukh and borrower Narayan Singh. The loan was advanced in three approximately equal instalments, which were paid to the borrower between 24-3-1956 to 20-2-1957. Under the terms of the agreement, the borrower was liable to pay interest at the rate of 5 1/2% per annum, commencing from the date of payment of the first instalment of the loan by the State Government, and was repayable in thirty annual equated instalments, the first instalment being due twelve months after the date of first loan advance. As a security for the repayment of the loan and the interest, the housing site, alongwith the house to be constructed thereon, were to remain charged by way of a mortgage and the remedies in the case of a simple mortgage were to be available to the creditor-State Government, without intervention of the court. Other terms of the agreement can be readily collected from a reading of the agreement dated 22-3-1956 (Ex.P.1), but in this appeal, we are primarily concerned with Column No. 9 thereof, which reads as follows :-

In the event of the borrower failing to pay any instalment on the due date, the borrower shall be liable to pay interest on the amount of that instalment at double the rate of interest prescribed for that year from the date on which the instalment became due to the date that instalment is actually paid.

It is also not in dispute that there were defaults, either partly or fully, in the payment of some initial instalments and, thereafter, the repayments have been made in larger amounts, so that by 28-5-1976 the appellant had paid, in all, Rs. 11,087.73 Paise towards the repayment of the loan, including the interest after which, according to the appellant, nothing remained due to be paid. On the other hand, in accordance with the calculations made on behalf of the State Government by the concerning Department, a sum of Rs. 9,150/- inclusive of penal interest was still due to be recovered from the appellant. Therefore, under the terms of the loan agreement, the house, constructed by the appellant, was sought to be put to auction sale on 21/22-12-1976 for the recovery of this amount. On 21-12-1976, the appellant brought the present suit in the lower Court, seeking the declaration that no amount was due as against him and also seeking a permanent injunction to restrain the respondent-defendant from putting the house to sale. The Civil Suit having been dismissed by the trial Court, the appellant-plaintiff has filed the present appeal against the dismissal.

Other pleas raised in the memo of appeal having been given up by the learned counsel for the appellant, the decision in the present appeal is restricted to the

points indicated in para 1 above. On the perusal of the agreement dated 22-3-1956 (Ex.P.I) between the parties, it is crystal clear that there is no stipulation, whatsoever, and in any contingency, for the charging of compound interest on the loan advanced or on default of any instalment thereof. It, therefore, follows that under no circumstances, in view of the terms of the agreement (Ex.P.I) compound interest could be recovered from the appellant. However, while in course of the arguments, the learned counsel for the appellant filed calculation chart in respect of the arrears and the amounts due from time to time till the period 28-5-1976. This chart clearly brings out that after calculating the interest due on the defaulted instalment, the amount of interest has been added to the principal from year to year and further interest thereon has been calculated at the rate of penal interest 11 % per annum, which is obviously by way of compound interest. This calculation chart is made part of the record in the appeal and, on point of fact, it is a true copy of the original chart dated 17-9-1976, filed before the trial Court, purporting to be signed by Land Acquisition Officer on behalf of the Housing Commissioner, M. P. Housing Board. Thus on the face of it, the amount shown as due against the appellant, which includes compound interest, is not valid in view of the terms of the original agreement dated 22-3-1956 (Ex.P. 1) which does not provide for compound interest, and, as such, the whole of it is not liable to be recovered from the appellant there is an obvious need for excluding the liability for compound interest.

The point in regard to the non-liability for the compound interest on the arrears remaining due having been settled, the only point that remains to be decided relates to the appellant's challenge to the charging of the penal interest at double the rate of normal interest, provided in the agreement (Ex.P.I). In this regard, it may be stated that in view of Clause (9) of the agreement, reproduced above in para 2, there is a clear stipulation of charging of interest at double the rate, in case of failure of the repayment of instalment on the due date, from the date of default till its recovery. In this connection, reference is invited to section 74 of the Indian Contract Act, which reads as follows :--

Compensation for breach of Contract where penalty stipulated for. - 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 loss 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.

Explanation. - A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception. - When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law or under the orders of the Central Government or of any State Government, gives any bond for

the performance of any public duty or act in which the public are interested he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation. - A person who enters into a contract with the Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations :

(a) A contracts with B to pay B Rs. 1000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

A reading of the aforesaid provision, alongwith Clause (9) of the agreement, brings out that interest could be charged by way of penalty on the defaulted instalments, and the State Government was obviously entitled to recover interest at 11% per annum on the defaulted instalments, and there is nothing illegal therein. However, there being no stipulation for charging of compound interest, only simple interest at the rate of 11% per annum could be charged on the defaulted instalments from the dates of their defaults.

In support of the arguments, advanced by him on this count, the learned counsel for the appellant cited the cases [Cheruvu Nageswaraswami Vs. Rajah Vadrevu Viswasundara Rao and Others](#), , [Smt. Dayawati and Another Vs. Inderjit and Others](#), and [S. Rajagopalaswami Naidu Vs. The Bank of Karaikudi Ltd.](#), . These cases are not fully applicable in the facts and circumstances of this case, which relates to a Scheme of the Union Government to encourage and facilitate the construction of house by the Lower Income Groups, by the advance of loans at low interest, repayable in easy instalments extending over a long period. They can only be held applicable to the extent the officials of the State Government, in their over-zealousness, have sought to charge compound interest, which is nowhere provided for in the agreement dated 22-3-1956 (Ex.P.1) and, only to that extent, the provisions of the Usurious Loans Act, in the peculiar circumstances of the case, may be deemed to be attracted. Thus to conclude, the charging of simple interest at the rate of 11% per annum from the date of default till its repayment, in case of defaulted instalments is held legal, but the accounts are directed to be re-opened so as to remove the liability for payment of compound interest

The result is, that this appeal is partly allowed. The Judgment and decree of the lower Court dismissing the plaintiffs suit in toto are hereby set aside. Instead, it is directed that the accounts in respect of the dues of the housing loan remaining to be recovered till the date of the suit, i.e.. till 21-12-1976, shall be re-opened and interest charged in accordance with the findings given above, i.e. at the rate of 11% per annum on the defaulted instalments from the date of defaults till their repayment, whatever be the amount arrived at on such calculation, shall be the

amount due to be paid by the appellants to the respondent-State Government. On such calculation having been made, a notice shall be served by the Respondent-State Government upon the appellants for payment/deposit of that amount within a month, and till then the respondent-State Government is restrained from putting the house in suit for auction sale.

In the circumstances of the case, Respondent-State Government is directed to bear the costs incurred by the appellants throughout in addition to its own costs. Pleaders fee according to schedule, if certified.

A decree shall be drawn up accordingly.