

(1999) 09 AP CK 0033

Andhra Pradesh High Court

Case No: Appeal No. 935 of 1986

Andhra Bank, Nuzvid

APPELLANT

Vs

Atluri Sesharao and others

RESPONDENT

Date of Decision: Sept. 1, 1999

Acts Referred:

- Banking Regulation Act, 1949 - Section 21
- Civil Procedure Code, 1908 (CPC) - Order 34 Rule 11
- Constitution of India, 1950 - Article 12, 226
- Industrial Disputes Act, 1947 - Section 10(2)
- Payment of Bonus Act, 1965 - Section 10, 16(2)

Citation: (1999) 6 ALD 328 : (1999) 6 ALT 667 : (2001) 103 CompCas 843

Hon'ble Judges: I. Venkatanarayana, J

Bench: Single Bench

Advocate: Mr. D. Gopala Krishna, for the Appellant; M/s. G. Suryanarayana for Y.B. Tata Rao, Mr. A. Srinivasa Prasad and Ex parte in Lower Court, for the Respondent

Judgement

1. The plaintiff-Nationalized Bank is the appellant before this Court. The suit OS No. 45 of 1984 was filed by the plaintiff on the file of the learned Subordinate Judge, Nuzvid for recovery of a sum of Rs.25,160/- based on a mortgage. The trial Court decreed the suit with subsequent interest thereon at 12% per annum from 28-12-1984 till the date of realisation. The trial Court also granted the benefit of Act 4 of 1938 and scaled down the interest on the loan. Hence the appeal.

2. For the sake of convenience the parties to this appeal would be referred to in accordance with their status before the trial Court.

3. The only question that falls for consideration in this appeal is:

Whether in view of insertion of Section 21-A in the Banking Regulation Act, 1949 by Banking Law (Amendment Act 1983) (Act 1 of 1984) Courts are precluded from

subjecting transactions entered into between the Banks and borrowers from scrutiny under the provisions of Act IV of 1938 or Usurious Loans Act 1918 with a view to giving relief thereunder and if so, whether such relief is permissible?

While decreeing the suit of the plaintiff-Bank, the trial Court has held that the defendants are entitled to the benefit of Act IV of 1938 and that the debt is liable to be scaled down due to the plaintiff-Bank. It is the settled legal position that after the introduction of Section 21-A in the Banking Regulation Act, 1949 by Amendment Act 1 of 1984, Courts have no power to scale down the interest in respect of debts due to Banks. A Full Bench of this Court in [State Bank of Hyderabad and Vs. Advath Sakru and another](#), considered the question elaborately and held that Section 21-A of Banking Regulation Act, 1949 applies to all transactions entered into between the Banking Company and its debtor, whether the transaction was entered into prior to its commencement or after, and that Section 21-A applies to pending appeals irrespective of the fact whether a decree was passed giving relief to the debtor or not. It was also held that Section 21-A makes no distinction between an advance made for agricultural purpose or for commercial purpose and it equally applies to both. It further held that the provisions of Act IV of 1938 A.P. (Andhra Area) Agriculturists Relief Act 1938) and Usurious Loans Act (Act 10 of 1918) as amended by the Usurious Loans (Madras Amendment) Act 8 of 1936, Section 3 of Madras Agriculturists Relief Act were not applicable to the advances made by the Banks to the agriculturists. The Supreme Court has also had an occasion to uphold the validity of Section 21-A of the Banking Laws Amendment Act 1 of 1984 in *Slate Bank of India v. Y. Venkateswara Rao*, 1999 (1) Scale 131. The Supreme Court has also upheld the validity of the amendment of Section 21-A as inserted by Banking Laws Amendment Act 1 of 1984 and has held that the Court cannot interfere and reduce the amount of interest agreed to be paid on the "loan so taken. A learned single Judge of this Court (Sri Justice C. V.N. Sastri) in *Andhra Bank, Chilakaluripeta v. Inturi Narayana*, 1997 (6) ALD 443 = 1997 (3) APLJ 423, following the above Full Bench decision *State Bank of Hyderabad v. Advath Sakru* (cited supra), allowed the appeal filed by the Bank, holding that after the introduction of Section 21-A in the Banking Regulation Act, 1949, by amending Act 1 of 1984, Courts have no power to scale down the interest in respect of debts due to the Banks.

4. Sri G. Suryanarayana, learned Counsel representing Sri Y.B. Tata Rao, learned Counsel for the respondents brought to my notice a judgment of the Supreme Court in *N.M. Veerappa v. Canara Bank*, wherein the Supreme Court has held that the Court can exercise its discretion under Order 34, Rule 11 of CPC in the matters of levying interest. In this decision the Supreme Court held that the discretionary power conferred on the Civil Court under Order 34, Rule 11 of CPC to cut down the contract rate of interest for the period from the date of the suit and even upto the date fixed for redemption by the Court is there, even if there is no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. In short the Supreme Court has held that there is always

discretion vested with the Court in the matter of levying interest and that Section 21-A of Banking Regulation Act, 1949 does not affect the power of the Court in exercising Order 34, Rule 11 of CPC.

5. The learned Counsel for the respondents also drew my attention to the judgment of the Division Bench in Bank of Baroda v. Shaik Sardar Saheb, 1997 (4) ALD 271 = 1997 (2) An.WR 380 (DB), wherein the Division Bench of this Court has held that under Order 34, Rule 11 of CPC, it is within the discretion of the Court to award interest from the date of the suit till the date of realisation which should be reasonable. If the Court finds that the contractual rate of interest is reasonable it can award the same otherwise it is left to the discretion of the Court.

6. In the present case, insofar as the scaling down of the interest under Act 4 of 1938 is not sustainable in view of the Full Bench judgment of the Supreme Court. Regarding the rate of interest in the present case, the Court has granted interest at 12 1/2% per annum from 1-12-1980 to 28-6-1984, I find the Court has reasonably exercised its discretion.

7. In the result, the appeal is allowed in part, but insofar as subsequent interest is concerned, it shall be at 6% per annum, on principal amount from 28-6-1984 till date of realisation. The Court also shall take into consideration the amounts already paid. No order as to costs. Time for redemption is three months.