K. Manick Chand And Ors. vs Elias Saleh Mohammed Sait And Ors. on 3 November, 1968

Equivalent citations: (1969)1SCC52A

Bench: J.M. Shelat, V. Bhargava

JUDGMENT

Bhargava, J.

1. One Khanmull, whose legal representatives are the appellants in the present appeal, instituted Original Suit No. 59 of 1949-50 on 10th January, 1950, for recovery of amounts due to him on the basis of two simple mortgages, dated 12th January, 1937 and 14 June, 1937, in the Court of the District Judge, Civil Station, Bangalohe. Both these mortgages were executed by three brothers, Ahmed Saleh, Mohamed Sait (since deceased), Elias Saleh Mohammed Sait (respondent No. 1) and Mohamed Saleh Mohamed Sait (respondent No. 2), while their mother Rahamatbai alias Bhayabai, joined them in the execution of the mortgage-deed of 14th June, 1937. In the suit in addition to respondent 1 and 2, Hajirabai, widow of the deceased brother Ahmed Saleh Mohamed Sait, and their sisters, Ammenabai and Haneefabai were also impleaded as defendants 3, 4 and 5. Further, Khan Saheb Abdul Gani Saheb and Khan Saheb Abdul Shakoor Saheb were impleaded as defendants 6 and 7 in their capacity of purchasers of the equity of redemption from the mortgagors. On the foot of the first mortgage, the amount claimed was Rs. 51,200/- as principal and interest, while, on the foot of the second mortgage, the amount claimed as principal and interest was Rs. 60,200/-. The contractual rate of interest was 1 per cent. per mensem. The trial Court decreed the suit on 27th March, 1952, after applying the provisions of Section 17 of the Mysore Money Lenders Act No. 13 of 1939 (hereinafter referred to as "the Act"). For the purpose of giving effect to the provisions of section 17 of the Act, the trial Court held that the principal amount of the two loans was Rs. 44,000/-, being the aggregate of the consideration shown in the two mortgage-deeds, and, consequently allowed as arrears of interest of sum of Rs. 44,000/-. The preliminary decree was, therefore, granted for a sum of Rs. 88,000/-, composed of Rs. 44,000/- as principal and Rs. 44,000/- as interest. The excess interest claimed at the contractual rate of I per cent. per mensem was disallowed on the ground of the maximum limit for the grant of the total amount of interest laid down in Section 17 of the act. Thereupon, both the parties filed appeals in the High Court of Mysore. The High Court held that the trial Court had wrongly treated the amounts of Rs. 20,000 and Rs. 24,000 as the principal amounts of the original loans, and recorded a finding that the principal amounts, in fact, were Rs. 15,017-8-0 in respect of the first mortgage-deed, and Rs. 22,954 in respect of the second mortgage-deed. The High Court, thus, worked out the aggregate of Rs. 37,971. 50P. as the principal amount of the two loans advanced under these two mortgage-deeds and, applying Section 17 of the Act, granted a decree for this amount as principal together with the same amount as interest. The High Court further held that this would be the arrears of interest to which

the appellants would be entitled up to the date fixed for payment of the redemption money by the judgment of the High Court, that date being the 19th March, 1959. The High Court also made a direction that the principal amount will carry interest at 6 per cent per annum from the date fixed for redemption till realisation. The appellants have now come up against this decree passed by the High Court by certificate granted by that Court.

2. In this appeal, Mr. Govinda Rao, learned counsel for the appellants, raised only two points. The first point urged was that the High Court was wrong in re-opening the accounts in respect of loans prior to the two mortgage-deeds which formed the consideration for the two mortgage-deeds in suit, and that the High Court should have held that the principal amount was Rs. 44,000 for the two mortgages as decided by the Trial Court. The second point urged by learned counsel was that the High Court was wrong in fixing the dates up to which the arrests of interest could be calculated for being included in the decree and for prescribing future rates of interest. It was urged that the arrears of interest envisaged by Section 17 of the Act should be interpreted to mean arrears only up to the date of the institution of the suit, and the High Court should have granted future interest subsequently instead of granting future interest only with effect from the date fixed for redemption.

3. So far as the first point raised by learned counsel is concerned, it appears to us that it is totally misconceyved, because the language of Section 17 of the Act plainly justifies the view taken by the High Court. Section 17, in prescribing the maximum amount of arrears of interest to be allowed, refers to "the principal of the original loan" and not "the principal of the loan". If the latter expression had been used, it could have argued in the present case that the sums of Rs. 20,000/- and Rs. 24,000/- which purported to be the principal amounts of the two loans evidenced by the two mortgage-deeds in suit, were the principal amounts of the loans to be taken into account in working out the maximum amount of interest permissible under Section 17 of the act, The expression "the principal of the original loan" makes it clear that, in determining the maximum amount of arrears of interest allowable, the Court must got behind the transaction of the loan and find out what was the actual cash originally advanced as principal and ignore all interest that may have been added subsequently to that original advance in order to make up the consideration for the loans in suit. In the present case, therefore, the High Court was justified in looking at the transactions prior to the two mortgage-deeds to find out what were the actual cash amounts originally advanced which together with interest and after adjustment of accounts, formed the principal amounts for the two mortgage-deeds. It was admitted by counsel for both parties before us that the figures accepted by the High Court as the principal amounts of the two loans are correct, if the original cash advances are treated as the principal amounts of the original loans. It is, therefore, clear that, on the plain language of Section 17 of the Act, the High Court was right in holding that the aggregate of the principal amount of the original loans was only Rs. 37,971.50 P and not Rs. 44,000/- and, consequently in awarding arrears of interest only to the extent of the same amount and not a larger amount.

4. On the second question, we are unable to agree with the view of the High Court that the arrears of interest mentioned in Section 17 of the Act mean interest calculated up to the date fixed for redemption. At the same time we are also unable to accept the submission made on behalf of the appellants that the arrears of interest in this section mean arrears of interest up to the date of the

suit. It is to be noticed that the section is in the form of a directive to a Court not to pass a decree on account of arrears of interest for a sum greater than the principal of the original loan. This language clearly gives an indication of the intention of the Legislature. Obviously, the directive is to be carried out by the court at the time of passing the decree and, consequently, it would at the time that the court will see how much it is awarding for arrears of interest. The maximum prescribed for the arrears of interest must, therefore, be held to be the maximum amount in respect of interest payable up to the date of the decree when the court carries out the directive laid down in this section. In the present case, the trial court passed the decree on the 27th March, 1952, and, consequently, the amount of Rs. 37,971.50 awarded as arrears of interest must be the arrears of interest due up to that date. The High Court, in our opinion, was not correct in holding that these arrears of interest will cover interest due up to the date fixed for redemption by the High Court.

5. In this connection, learned counsel for the respondents urged that the arrears of interest envisaged by Section 17 of the Act should be held to include interest due up to the date of the decree by the High Court, because that is the effective decree granting interest to the mortgages; but this argument overlooks the principle of law that the decree of an appellate Court takes effect from the date of the decree of the original court. In this case, therefore, even though the High Court passed the appellate decree at a later date, that decree has to be deemed to have come into effect from 27th March, 1952, which was the date of the decree of the trial Court, so that no question can arise of holding that the arrears of interest under Section 17 of the Act must be computed up to the date on which the High Court passed the decree.

6. The further point that arose was as to the interest which the appellants could claim after the date of the decree, viz. 27th March, 1952, on the amount decreed. On behalf of the appellants, reliance was placed on Order 34, R. 11 of the Code of Civil Procedure and it was urged that the interest should be allowed after that date in accordance with the provisions of that rule. The High Court has expressed the opinion that, if interest is allowed under R. 11 of Order 34, C.P.C., it would be in conflict with Section 17 of the Act; but we are unable to see any such conflict. Section 17 of the Act confines itself to laying down the maximum of arrears of interest to be allowed up to the date of the decree and is not concerned with the interest that is to be allowed for the period thereafter. Admittedly, the Code of Civil Procedure was applicable to this suit and, consequently, interest subsequent to the date of the decree had to be awarded in accordance with Order 34, R. 11 C.P.C. Under R. 11(a)(i) interest would be payable on the principal amount found or declared due on the mortgage, from the date of the decree up to the date fixed for payment, at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court may deem reasonable. In this case, the date of the decree by the trial Court was 27th March, 1952, while the date fixed for payment became 19th March, 1959, as a result of the decree of the High Court. The interest for this period has to be calculated in accordance with R. 11(a)(i) of Order 34, C.P.C. on the principal amount of Rs. 37,971.50P. As regards the rate, it is true that under the mortgage-deeds, the interest was payable @ 1 per cent. per mensem; but under the provisions of the Act, read with the provisions of the Usurious Loans Act (Mysore Act IX of 1923), the fair interest payable on the loan would be 9 per cent. per annum and it is at this rate that the interest must be calculated on this principal amount for this period. In addition, under R. 11(a)(ii) of Order 34, C.P.C., interest @ 6 per cent, per annum has to be allowed on the amount decreed for costs, charges and expenses incurred by the appellants up to the

date of the preliminary decree. A further direction that is necessary is that interest Under R. 11(b) of Order 34, C.P.C., will be payable up to the date of realisation or actual payment on the aggregate of the two principal sums just mentioned @ 6 per cent. per annum which must be deemed to be reasonable as interest at that rate as ordinarily awarded in all decrees in respect of future periods.

7. The result is that the decree passed by the High Court will have to be amended in respect of calculation of interest in the manner indicated by us above. The appeal is partly allowed to this extent. In the circumstances of this case, we direct parties to bear their own costs of this appeal.