

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

APPEAL SUIT No.666 of 2000

JUDGMENT:

The parties in the present appeal are referred as they are arrayed in the suit. The plaintiff filed a suit for recovery of Rs.2,63,832/- with subsequent interest at 30% p.a., compounded on a yearly basis.

2. The case of the plaintiff is:

A. The 1st defendant and her husband had borrowed a sum of Rs.90,000/- from the plaintiff on 08.09.1992. This money was to be repaid with interest @ 30% p.a. compounded on a yearly basis. As security for repayment of the said money, the defendants created a mortgage, in favour of the plaintiff, on the plaint schedule property. Thereafter, the 1st defendant and her husband repaid a sum of Rs.24,000/- on 05.01.1993 towards part payment of principal and interest and had thereafter, defaulted in repayment of the debt.

B. The husband of the 1st defendant, after some time, passed away. The 1st defendant sold the mortgaged suit schedule property to the 2nd defendant. After purchasing the property, the 2nd defendant called on the plaintiff to bring the title deeds of the plaint schedule property and receive the remaining debt amount from the 2nd defendant. However, the 2nd defendant did not make any payment despite the plaintiff having approached the 2nd defendant, for receiving the said payment, promised by the 2nd defendant.

C. As the defendants had not paid the amount due to the Plaintiff, he filed O.S. No.55 of 1997, in the court of Senior Civil Judge, Pithapuram against the 1st and 2nd defendants for recovery of Rs.2,63,832/- with subsequent interest @ 30% p.a. compounded on a yearly basis, against the defendants. The 2nd defendant passed away during the pendency of the suit and his legal heirs, defendants 3 to 6 were impleaded as defendants in the suit.

3. The defendants contested the suit by filing a written statement. In the written statement, the defendants do not appear to have disputed the loan transaction or the mortgage of the property. However, the defendants claimed that the 3rd defendant had obtained two demand drafts for Rs.45,000/- and sought to deliver these two demand drafts along with cash of Rs.75,000/- for a full and final settlement of the deed. As the plaintiff insisted for payment of interest calculated at 30% p.a. compounded interest from the date of mortgage, the debt could not be cleared. The defendants also took the stand that interest @ 30% compounded annually is usurious as per A.P. Act 26 of 1961 and the plaintiff cannot claim more than 18% p.a. as defendants are agriculturists and further, the receipt issued by the plaintiff in the monies paid by the 1st defendant on 05.01.1993 demonstrates that the rate of interest was only 24% p.a. and not 30% p.a.

4. On the basis of these pleadings, the trial Court framed the following issues:

1. Whether the interest claimed is usurious?
2. Whether the plaintiff demanded 30% compound interest when D.3 approached him with Rs.75,000/- on 03.07.1997?
3. Whether the defendants 3 to 6 are entitled to the benefits of Act 4/38?
4. To what relief?

5. After a trial in the matter, the trial Court decided all the three issues in favour of the plaintiff and passed a preliminary decree, dated 11.10.1999 in the suit as prayed for.

6. Aggrieved by the said judgment and preliminary decree dated 11.10.1999, the 3rd defendant filed the present appeal.

7. Heard Sri N.Vijay, learned counsel for the appellant and Sri E.V.V.S.Ravi Kumar, learned counsel for the defendants.

8. A perusal of the case papers including the judgment and preliminary decree would show that there is no real dispute as to the fact that the 1st defendant and her late husband had borrowed Rs.90,000/- and had executed a deed of mortgage giving the suit schedule property as security for repayment of the debt along with interest @ 30% compounding annually.

9. The only issue that remains before this Court is whether the plaintiff is entitled to recovery of the unpaid principal amount along with interest @ 30% p.a compounded

annually. There is no dispute that the said rate of interest had been stipulated in the contract of mortgage.

10. Sri N.Vijay learned counsel, appearing for the appellant would submit that the aforesaid rate of interest @ 30% p.a. compounded annually is clearly usurious and an unfair rate of interest which cannot be permitted.

11. The power of the Court to alter the contractual rate of interest in a mortgage suit had come up for consideration before the Privy Council in **Jagannath Prasad Singh Vs Surajmal Jalal**¹. The Privy Council took the view that the rate of interest fixed in a contract cannot be altered as long as it remains within the domain of contract law. However, once a decree is passed, the matter moves out of the domain of contract law to that of judgment and the rights of the mortgagee will depend, not on the contents of his bond, but the directions in the decree. On that basis, it was understood that even though the Court would not alter the rate of interest prior to the filing of the suit or passing of judgment, the rate of interest could be altered from the date fixed for redemption onwards.

12. After this judgment had been delivered, a new Rule 11 was introduced in order XXXIV of C.P.C, by way of an amendment in 1929. The relevant part of Rule 11, reads as follows:

¹ AIR 1927 Privy Council page-1

“Rule 11. Payment of interest—in any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the court may order payment of interest to the mortgagee as follows, namely:—“

The Federal Court in the case of **Jaigobind Singh and Others Vs Lakshmi Narain Ram & Others**², taking into consideration Order XXXIV Rule 11 of C.P.C, had held as follows:

By Act XXI of 1929, Or. 34 was amended, and a new Rule 11, was inserted, which deals specially with interest, and provides that the Court “may” order payment of interest to the mortgagee up to the date fixed for payment at the rate payable on the principal. It follows that this special provision, which removes any conflict that there might have been between sec. 34 and Or, 34, rr. 2 and 4, gives a certain amount of discretion to the Court, so far as interest *pendente lite* and subsequent interest are concerned. It is no longer absolutely obligatory on the Courts to decree interest at the contractual rate up to the date of redemption in all circumstances, if there be no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious loans Act, 1918. See *Sripat Singh v. Naresh Chandra Bose* [A.I.R. [1932] Pat. 332 at p. 334: s.c. 140 I.C. 104.] , although in this case when considering Or. 34, r. 2, the Privy Council case of *Jagannath Prosad Singh Chowdhury v. Surajmul Jalal* [L.R. 54 I.A. 1 : s.c. 31 C.W.N. 390 (1926).] was overlooked. In *Jagadish Jha v. Aman Khan* [[1939] F.L.J. 7 at p. 9: C.W.N. 1910 F.B. 12.] interest after the institution of the suit was ordered by this Court to be paid at the rate of 6 per cent. per annum on the principal amount till the date fixed for payment. In my opinion the view then taken as to the power of a Court to reduce interest *pendente lite* was not contrary to law.

This Judgment was followed and affirmed by the Hon’ble Supreme Court in **Soli Pestonji Majoo and Others Vs Gangadhar Khomka**³.

² AIR 1940 Federal Court Page 20

³ AIR 1969 SC 600

13. The erstwhile High Court of A.P in **Sri Panduranga Traders Vs. State Bank of India** ⁴ and **Andhra Bank Vikarabad Vs Manneguda Polishing Stones Industries**, ⁵while considering a similar issue relating to a loan given by a bank had held that the Court has discretion to modulate interest *pendente lite* and post decree.

14. In view of the foregoing decisions, it is clear that even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of contract from the date of the suit till the date of recovery of the amount.

15. In the present case, the contractual rate of interest is 30% p.a compounded annually. The contract was drawn up in the year 1992 and the suit has been filed in the year 1997. Permitting the said rate of interest would result in the debt being multiplied. Further, the rate of 30% p.a is not being charged as a simple interest, but is being compounded on an annual basis. In the circumstances, keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially.

16. To the mind of this Court, a rate of 14% p.a., compounded annually, would be equitable and fair to both sides. The judgement and preliminary decree under appeal is modified to the extent of calculating and collecting interest at

⁴ (2003) 3 ALD 294 (DB)

⁵ (2005) 2 ALD 277

the rate of 14% per annum, compounded annually, from the date of the filing of the suit till payment. The contractual rate of interest of 30%, compounded annually, shall be applied only till the date of the filing of the suit.

17. Accordingly, the appeal is partly allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

25.03.2022

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

APPEAL SUIT No.666 of 2000

25.03.2022

RJS

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Appeal Suit No.666 of 2000**Between:**

Anaparathi Satyanarayana, S/o.Harimohan Rao, Hindu, aged 50 years, business,
Sai Galss Mart, Near Pydavari Choultry, Main Road, Pithapuram.

... Appellant

And

1. Majeti Panduranga Rao, S/o.Satyanarayana, Hindu, aged 59 years,
Occ:Business, Kakinada.

2. Anaparti Veerraju (Died)

3. Yandamuri Sitaramanjayamma, W/o.Veerabhadram, Hindu, aged 55 years,
Occ:House Wife, D/o.No.1-5-37, Mangayammaraopeta, Pithapuram.

4. Medapalli Ratnam,. (Dismissed for default by order dated 19.10. 2011)

5.Puli Krupavathi, W/o.Syama Sundar, Hindu, aged 30 years, R/o.Near Ashok
Theatre, Rajahmundry.

6. Anaparathi Gangadharam, S/o.Hari Mohan Rao, Hindu, aged 29 years,
R/o.Pithapuram.

... Respondents

Date of Judgment pronounced on : 25-03-2022**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:

3. Whether the Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

+ APPEAL SUIT No.666 of 2000

% Dated: 25-03-2022

Anaparthi Satyanarayana, S/o.Harimohan Rao, Hindu, aged 50 years, business,
Sai Galss Mart, Near Pydavari Choultry, Main Road, Pithapuram.

... Appellant

And

1. Majeti Panduranga Rao, S/o.Satyanarayana, Hindu, aged 59 years,
Occ:Business, Kakinada.

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... Respondents

! Counsel for Appellant : N.Vijay

^Counsel for Respondents : E.V.V.S.Ravi Kumar

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>HEAD NOTE:

? Cases referred:

¹ AIR 1927 Privy Council page-1

2. AIR 1940 Federal Court Page 20

³AIR 1969 SC 600

⁴. (2003) 3 ALD 294 (DB)

⁵. (2005) 2 ALD 277

