

State Bank of India *v.* M/s. Neeru Plastic Works, Ludhiana and  
others (J. V. Gupta, J.)

Before J. V. Gupta, J.

STATE BANK OF INDIA,—Appellant.

*versus*

M/S. NEERU PLASTICS WORKS, LUDHIANA AND OTHERS,—  
Respondents.

Regular Second Appeal No. 42 of 1983.

October 27, 1983.

Code of Civil Procedure (V of 1908)—Section 34, Order 20 Rule 11  
and Order 34 Rules 4 and 11—Suit for recovery of money by sale  
of pledged goods and mortgaged property—Interest pendente lite—  
Whether payable under Order 34 Rule 11—Payment of interest in

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(1) 1939 I.T.R. 622.

(2) 1982 T.L.R. 804.

*such cases—Guiding principles—Payment of the amount due—Whether could be ordered by instalments—Provisions of Order 20 Rule 11—Whether attracted.*

Held, that section 34 of the Code of Civil Procedure, 1908 has no applicability to a suit for the recovery of money by sale as provided under Order 34 as it is not a simple suit for the recovery of money. In the matter of awarding *pendente lite* interest, ordinarily the contractual rate ought to be allowed unless it appears to be penal or excessive. In such a suit the plaintiff is entitled to interest on the aggregate amount of principal, interest and costs from the date fixed by the Court for payment of the mortgage debts upto the date of realization or actual payment.

(Para 6).

Held, that as regards the payment of amount by instalments, the provisions of Order 20 Rule 11 of the Code are not attracted to a suit for recovery of money by sale of pledged goods and mortgaged property. Where a preliminary mortgage decree is obtained by the decree holder, an order allowing payment of decretal amount by instalments is bad. The provisions of Order 20 Rule 11 could not apply as the decree was not a simple money decree nor they could supersede the provisions of Order 34 Rule 4.

(Para 7).

*Regular Second Appeal from the decree of the Court of the Additional District Judge, Ludhiana, dated the 19th day of August, 1982, modifying that of the Sub-Judge 1st Class, Ludhiana, dated the 29th day of February, 1980 (decreeing the suit with costs of the plaintiff for Rs. 93,347.18 with interest at the rate of 12 per cent per annum from the date of the suit till realization of the amount and further ordering that the plaintiff shall be at liberty to realize that amount by sale of the goods and the machinery belonging to the defendants and pledged with the plaintiff as collateral security and also by sale of the property No. B-XXI-831, Partap Nagar, Ludhiana, fully mentioned in the head note of the plaint, belonging to the defendants, the title deeds whereof are deposited with the bank by way of equitable mortgage as collateral security and also ordering that if the defendants pay the decretal amount through instalments of Rs. 1000. per month, regularly, with interest at the rate of 18 per cent per annum, starting from 15th April, 1980, the plaintiff shall not sell the goods, machinery and the immovable property to the extent of fixing the instalment of Rs. 25000 per annum with 6 per cent future interest on the principal amount of Rs. 80,000 with effect from 29th February, 1980 till the realisation of the entire decretal amount and further ordering that the annual instalments of Rs. 25,000 to be payable by the defendants on 1st November, 1982, 1st November, 1983, 1st November, 1984, 1st November, 1985 and the 5th and final instalment on 11th November, 1986 and in case of*

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default of the payment of any instalment on due date fixed by the court, the remaining outstanding decretal amount would be recovered by the bank in lump sum through the sale of moveable and immovable property belonging to the defendants.

R. K. Chhibbar, Advocate, for the Appellant.

V. P. Sarda, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) The plaintiff, State Bank of India, filed the present suit for recovery of Rs. 93347.18 Paise on account of amount due under the Cash Credit (Factory Type) account with interest upto 25th April, 1977 by sale of pledged goods and the machinery accepted as collateral security towards satisfaction of the aforesaid amount and also by sale of the property, the details of which were given in the plaint.

(2) The suit was contested on behalf of the defendants-respondents. Ultimately, the trial Court decreed the plaintiff's suit and passed a decree in the following terms:—

“In the light of my findings on the above issues, the suit of the plaintiff is decreed for Rs. 93,347.18 with interest at the rate of 12 per cent per annum from the date of the suit till realization of the amount. The plaintiff shall be at liberty to realize this amount by sale of the goods and the machinery belonging to the defendants, and pledged with the plaintiff as collateral security and also by sale of the property No. B-XXI-837, Partap Nagar, Ludhiana, fully mentioned in the head-note of the plaint, belonging to the defendants, the title deeds whereof are deposited with the bank by way of equitable mortgage as collateral security. However, if the defendants pay the decretal amount through instalments of Rs. 1000 per month, regularly, with interest at the rate of 18 per cent per annum, starting from 15th April, 1980, the plaintiff shall not sell the goods, machinery and the immoveable property.”

The plaintiff Bank was dissatisfied with the said decree of the trial Court as to the rate of interest allowed as well as the instalments

allowed by the trial Court, and therefore, filed appeal. No appeal or cross-objections were filed on behalf of the defendants. In appeal the learned Additional District Judge reduced the rate of interest from 12 per cent to 6 per cent though no cross-objections were filed on behalf of the defendants. However, as regards instalments, the decree of the trial Court was modified to the extent that the plaintiff will pay the same instalments of Rs. 25,000 per annum with 6 per cent future interest on the principal amount of Rs. 80,000 with effect from 29th February, 1980 till the realization of the entire decretal amount. It was also ordered that in case of default of payment of any instalments on due date, the remaining outstanding amount of decree would be realized by the Bank in lump sum through the sale of moveable or immoveable property belonging to the defendants. With these findings and observations, the appeal filed on behalf of the plaintiff-Bank was dismissed.

(3) Still dissatisfied with the decree passed by the lower appellate Court, the plaintiff has filed this second appeal in this Court.

(4) The learned counsel for the appellant vehemently contended that the present suit was not a simple suit for the recovery of money but was a suit for the recovery of money by sale of the moveable or immoveable property as contemplated under Order 34 of the Civil Procedure Code. Thus urged the learned counsel that the plaintiff was entitled to the rate of interest not under Section 34 of the Civil Procedure Code but under Order 34 Rule 11 thereof. It was also contended that the words in Order 34 Rule 11, "on the principal amount found or declared due on the mortgage," not only means the principal amount but also amount due on interest, which has become part of the principal. In support of this contention he referred to *Jafar Hussain vs. Bishambhar Nath*, (1), *Mangat Rai vs. Babu Singh and another*, (2), and *The Punjab and Sindh Bank Ltd vs. Roora Mal Sodhi and another*, (3).

(5) The other contention raised on behalf of the appellant is that no instalments could be allowed under Order 20 Rule 11 of the Civil Procedure Code, because that only applies to the simple money decrees, whereas the present being a decree by sale of the property mortgaged and pledged, the question of instalments as

(1) AIR 1937 Allahbad 442.

(2) AIR 1927 Lahore 445.

(3) 1969 P.L.R. 310.

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such did not arise. The plaintiff was entitled to the sale of the property under Order 34 Rule 5 on the failure of the defendants to pay the decretal amount by the period to be fixed by the Court. In support of this contention he referred to *N. Shantila v. A. Sankarasubha Mudaliar*, (4), *Basant Kumar Mitra v. Chota Nagpur Banking Association, Ltd.*, (5), *Mangat Rai vs. Babu Ram and another* (6). On the other hand the learned counsel for the plaintiff-respondent cited (*Machullathil*) *Chandukutty Nayar vs. Kuruvathancheri Keezana Narayana Nayar and others*, (7) and *Ramaswamy Nayudu v. K. N. S. Subbaraya Thevar and others* (8).

(6) After hearing the learned counsel for the parties, I am of the considered opinion that there is merit in the contentions raised on behalf of the plaintiff-appellant. Unfortunately the trial Court did not pass the decree keeping in view the provisions of Order 34 Rule 4 C.P.C. and therefore, no time as such was fixed for making the payment after the expiry of which the plaintiff could apply to the Court for sale of the property as provided under Order 34 Rule 5 and 6 of C.P.C. In any case, Section 34 of the Civil Procedure Code has no applicability to the present suit as it was not a simple suit for the recovery of money but was a suit for the recovery of the money by sale as provided Under Order 34. For payment of interest in such a suit Rule 11 of Order 34 provides under:—

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:—

- (a) interest upto the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—
  - (i) on the principal amount found or declared due on the mortgage—at the rate payable on the principal, or,

(4) AIR 1979 Madras 13.

(5) AIR 1948 Patna.

(6) AIR 1927 Lahore 445.

(7) AIR 1925 Madras 1083.

(8) AIR 1925 Madras 1101.

where no rate is fixed, at such rate as the Court deems reasonable,

\* \* \* \* \* , and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security upto the date of the preliminary decree and added to the mortgage-money, at the rate agreed between the parties, or failing such rate, (at such rate not exceeding six per cent per annum as the Court deems reasonable); and

(b) subsequent interest upto the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable.

The provisions of Order 34 Rule 11 were considered by the Division Bench of this Court in *Punjab and Sindh Bank Ltd's* case (supra) and it was held therein that in the matter of awarding *pendente lite* interest, ordinarily the contractual rate ought to be allowed unless it appears to be penal or excessive. It was further held that the plaintiff was entitled to interest on the aggregate amount of principal, interest and costs from the date fixed by the Court for payment of the mortgage debts upto the date of realization or actual payment. In *Mangat Rai's* case (supra) it was held that in passing a preliminary decree on a mortgage deed the Court has no power to award interest at a rate other than the contractual rate upto the date fixed for payment unless of course it is penal. It was further held therein that Section 34 of the Civil Procedure Code applies only to a decree for the payment of money and has no applicability to a suit brought to recover the amount due on the foot of the mortgage deed executed for the purpose. It was also held therein that a provision for charging compound interest at the same rate, on failure of the mortgagor to pay the principal or interest on the due date is perfectly legal and cannot be relieved against on the mere ground or hardship. Thus keeping in view the dictum laid down by this Court, I am of the considered opinion that the plaintiff was entitled to the agreed rate of interest at the rate of 18 per annum. It could not be held to be

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excessive in any manner keeping in view the present market position. Thus the plaintiff is entitled to this rate of interest on the decretal amount from the date of the mortgage till the payment of the decretal amount within six months' thereof.

(7) As regards the payment of amount by instalments, the provisions of Order 20 Rule 11 C.P.C. are not attracted in such a case. It was held in *N. Shantilal's case* (supra) that where a preliminary mortgage decree was obtained by the decree holder, an order allowing payment of decretal amount by instalment was bad. The provisions of Order 20 Rule 11 C.P.C. could not apply, as the decree was not a simple money decree nor they could supersede the provision of Order 34 Rule 4. Similarly, in *Basanta Kumar Mitra's case* (supra) it was held that Order 20 Rule 11 applies to a money decree and not to mortgage decree and hence in the case of mortgage deed the decretal amount cannot be made payable in instalments Under Order 20 Rule 11 C.P.C. No judgment taking the contrary view was cited at the bar. In view of these provisions of the statute, and the case law, the defendants were not entitled to any instalments under Order 20 Rule 11 C.P.C.

(8) As a result of the above discussion, this appeal succeeds and is allowed with costs. The judgment and decree of the lower appellate Court, are set aside and a preliminary decree for a sum of Rs. 93,347.18 paise is passed in favour of the plaintiff. As contemplated under Order 34 Rule 4, C.P.C. the defendants are allowed six months' time from today to deposit or pay the decretal amount as provided Under Order 34 Rule 4. The plaintiff will be entitled to the interest at the rate of 18 per cent on the decretal amount from the date of the suit till the date i.e. 26th April, 1984 which is being fixed by the Court for payment of the mortgage debts. After that date, the plaintiff will also be entitled to interest at the rate of 12 per cent per annum on the aggregate amount of principal, interest and costs upto the date of realization or actual payment. However, in case the defendants fail to comply with the said decree, the plaintiff will be entitled to move the Court for a final decree under Order 34 Rule 5 and 6 of the Civil Procedure Code.