

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 1st DAY OF APRIL, 2010

PRESENT

**THE HON'BLE MR.JUSTICE N.KUMAR
AND
THE HON'BLE MR.JUSTICE V.JAGANNATHAN**

R.F.A. NO. 14 OF 2005

BETWEEN

1. N.SUB-RAMANYAM,
HINDU, MAJOR,
NO.52, 4TH CROSS,
MALLESWARAM
BANGALORE-3.
2. M/S PUSHPA PRINTERS
A PROPRIETOR CONCERN OF
SRI.N.SUBRAMANYAM,
NO.52, 4TH CROSS,
MALLESWARAM,
BANGALORE -3

..APPELLANTS

(BY SRI.S.K.V.CHALAPATHY, SR.COUNSEL)

AND:

CORPORATION BANK,
A BANKING CO. GOVERNED BY THE
PROVISIONS OF BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT 1980 HAVING
ITS H.O. AT MANGALORE AND ONE
AMONGST ITS VARIOUS BRANCHES AT
A.P.M.C.YARD, YESHWANTHAPUR



BANGALORE, REP. BY ITS MANAGER
AND GPA HOLDER SRI.U.S.BALWALLY.

..RESPONDENT

(BY SRI.V.B.RAVISHANKAR, ADV.)

THIS RFA IS FILED U/S 96 CPC AGAINST THE JUDGMENT AND DECREE DATED 1.9.2004 PASSED IN O.S. NO.3380/1994 ON THE FILE OF THE XXIX ADDL.CITY CIVIL & SESSIONS JUDGE, BANGALORE (CCH-30), DECREEEING THE SUIT FOR RECOVERY OF MONEY.

THIS RFA COMING ON FOR FINAL DISPOSAL THIS DAY, **N.KUMAR J.**, DELIVERED THE FOLLOWING:


JUDGMENT

It is defendants' appeal challenging the judgment and decree of the trial court which has decreed the suit of the plaintiff-Bank with interest of 21% from the date of suit till the date of relaisation.

2. For the purpose of convenience, the parties are referred to as they are referred to in the Original Suit.

Defendant No.1 the proprietor of the 2nd defendant concern opened a current account in the plaintiff Bank bearing Account No.168 with an initial deposit of Rs.2,000/- on 11.5.1991. After operating the account

for sometime, he started over drawing without getting the TOD sanction by the competent Officer of the plaintiff Bank. One Ganesh Kaduva was the manager during the said period. He was involved in several fraudulent deeds, misappropriation of funds of the bank, falsification of accounts. After the said fraud was detected after an audit, he committed suicide on 25.5.1992. Thus overdrawing by the defendant without the same being sanctioned was on account of the assistance extended by the said manager. Therefore, the plaintiff Bank contends there was a collusion between the plaintiff and the said manager. On the day the Bank realised these transactions, the 1st defendant had overdrawn a sum of Rs.58,812/- as on 4.5.1992. Therefore, they contended that as no documents were taken from the 1st defendant, there was no written agreement and in those circumstances they charged 21% interest on the aforesaid amount outstanding, which was prevailing rate of interest at the relevant time in respect of commercial transactions. They called upon



the defendant to pay the aforesaid amount in all amounting to Rs.1,20,705/-. The defendant did not repay the money. Therefore, the plaintiffs were constrained to file a Suit for recovery of the said amount.

3. After service of summons the defendants entered appearance, filed a detailed written statement. He denied collusion between the Manager of the plaintiff-bank and the defendant, as alleged. He contended that he has not overdrawn any amount from his current account. He disputed the entries in the ledger accounts. He also denied the creation of an equitable mortgage by deposit of title deeds and therefore, he sought for dismissal of the Suit. On the aforesaid pleadings, the trial court has framed as many as 9 issues. To substantiate the claim, plaintiff-Bank examined its Manager as PW-1 and produced 202 documents marked as Exs.P1 to P202. Defendant did not enter the witness box or produced any evidence.

The trial Court on appreciation of the oral and documentary evidence on record held that the defendants have overdrawn the amount. The defendant has created an equitable mortgage as security for the suit amount. The accounts produced by the plaintiff Bank are all true and correct and that defendant has overdrawn a sum of Rs.58,312/-. It also held the defendant is liable to pay interest at 21% p.a. on the aforesaid amount of Rs.58,812/-. Thus it decreed the suit of the plaintiff with interest at 21% from the date of suit till the date of relaisation.

4. Aggrieved by the Judgment and decree of the trial court, the defendant is in appeal. Sri.S.K.V.Chalapathy, learned Sr.Counsel submits that this appeal is confined only to a claim with regard to the interest charged at 21%. He submitted that there is no written agreement between the parties. It is the case of the plaintiff that equitable mortgage was created as security for the sum overdrawn by the 1st defendant,

and therefore Order 34 Rule 11 CPC is attracted to the facts of the case. In the absence of any agreement between the parties regarding rate of interest in mortgage suits, interest chargeable is only 6% and therefore, he submits the award of interest at 21% anterior to the date of suit and current and future interest at that rate is illegal and contrary to the aforesaid statutory provisions. Per contra, learned counsel for the Bank supported the impugned judgment and decree.

5. In the light of the aforesaid contentions and the facts of this case, the points that arise for consideration in this appeal are as under:

- I) Whether the trial court was justified in decreeing the suit in a sum of Rs.61,893/- which represented the interest at 21% on the principal amount of Rs.58,812/-?
- II) Whether the trial court was justified in granting current and future interest at 21% p.a. ?

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POINT NO.I:

In the light of the aforesaid material, it is not in dispute that the defendants had availed financial facility from the Bank where they had Current Account facility. They had withdrawn the amount to the extent of Rs.58,812/-. There is no sanction letter. There is no contract entered into between the parties and therefore, there is no written contract stipulating the rate of interest available on the amount overdrawn. In the facts of this case, especially when it was found that the Manager who gave the benefit of this facility to defendant committed fraud and on revelation of fraud, committed suicide, the trial court was of the view that the defendant is liable to pay interest at 21% even in the absence of any written contract as that was the prevailing rate of interest. If 21% is the rate of interest prevailing at that point of time in the facts of this case, we would not have interfered with the order of the trial court but while discussing the prevailing rate of interest at page No.18, the court records a finding that 15.5%



was the prevailing rate of interest at that point of time. If the Bank had claimed at 21% interest, in these circumstances coupled with the fact that it was a commercial transaction, we are of the view that the interest calculated on the principal amount at 21% p.a. is without any basis, on the higher side and it should be reduced to 15.5%. Therefore, the Suit claim insofar as the agreed interest is to be calculated on the basis of 15.5% interest on 58,812/- and by calculating the total interest due, the same shall be added to the principal which becomes the principal sum adjudged in the suit for the purpose of charging current and future interest. To that extent the decree of the trial court requires modification.

POINT NO.2:

Charging current and future interest is governed by Order 34 Rule 11 CPC when there is no written contract between the parties insofar as award of interest is concerned. In those circumstances, it is left to the court to charge interest as the court deems fit. In the

absence of any agreement interest at 12% would be reasonable and therefore, the awarding of the current and future interest at rate at 21% also requires to be interfered with.

In the result, we pass the following order:

ORDER

The appeal is allowed in part. The Judgment and decree is modified as under:

- i) The plaintiff is entitled to interest at 15.5% on Rs.58,812/- till the date of the Suit.
- ii) On the principal sum adjudged i.e. Rs.58,812/- plus (+) interest thereon at 15.5% till the date of the Suit, the plaintiff would be entitled to current and future interest at 12% p.a.
- iii) Parties to bear their own costs.

Sd/-
JUDGE

Sd/-
JUDGE

In.