

Kewal Chand Vs. Chand Mal

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Court : Rajasthan

Decided On : Aug-09-1974

Reported in : 1974WLN618

Judge : V.P. Tyagi and; J.P. Jain, JJ.

Appeal No. : D.B. Special Appeal No. 92 of 1973

Appellant : Kewal Chand

Respondent : Chand Mal

Disposition : Appeal dismissed

Judgement :

J.P. Jain, J.

1. This is a special appeal against the judgment of a learned Single Judge of this Court by which he affirmed the order the Civil Judge, Ajmer in execution case No. 85 of 1970.

2. The facts leading to this appeal are these: One Hari Ram and his four sons including the appellant took a loan of Rs. 7,000/- from respondent Shri Chandmal. By way of security, properties situated at Beawar were mortgaged with Chandmal respondent vide mortgage deed dated 28-5-1949. Interest payable under this dated was 12% per annum. Stipulated period for payment of the debt having

expired, the mortgagee claimed the entire amount. The mortgagors wanted some remission in the interest and asked for sometime to make the payment. The parties agreed and appointed Shri Durga Prasad of Bawar to decide their dispute for determining the liability of the mortgagors and to fix time for payment of the amount due. This agreement was reduced into writing by the parties on 28-10-1953. In consequence of this agreement Shri Durga Prasad gave an award fixed the liability of the mortgagors to Rs. 10,071/3/9. He also awarded interest 12 per annum upto 9 8 1954, and thereafter the interest allowed was at the rate of 9% per annum. Award was referred to the Court and the Sub Judge, Beawar by its order dated 18-3-1957 made the award a rule of the Court. It is this decree which came for execution before Civil Judge, Ajmer. Kewal Chand appellant, one of the debtors raised objections under Section 47 CPC before the executing court but they were rejected on 28-7-1972 Kewal Chand then preferred an appeal before this Court and the learned Single Judge by his order dated 30.3.1973 dismissed the appeal.

3. The only contention raised before us on behalf of the appellant is that in view of the provision contained in Section 25 of Bombay Money Lenders Act, 1946 (hereinafter referred to as 'the Act') the arbitrator or for that matter the Sub Judge, Beawar was not empowered to award interest at the rate of more than 6% per annum. It has been submitted that since interest has been allowed at the rate of 9 percent per annum after 9.8.54 the decree to that extent is a nullity. It appears that there were four objections raised before the learned Single Judge As regards this objection, learned Single Judge observed as follows:

So far as the other objections are concerned, they relate to pre-decree matters and as held by their Lordships of the Supreme Court in Bahadur Singh and Anr. v. Muni Subratdass and Anr. (1), it is not open to the parties to raise any objection as to the validity of the award which could have been raised and determined by the court under Section 30 of the Arbitration Act. In that case, their Lordships observed: After a decree is passed on the award, it is not open to the parties to the reference to raise any objection as to the validity of the award. As between them, the decree conclusively determines 'hat the award is valid. Nor can the decree be pronounced to be a nullity on the ground that the award was invalid.

I may further add that in a mortgage suit, interest pendente lite and future interest could be awarded at the rate of nine percent per annum under Order 34, Rule 11 CPC. The learned Counsel for the appellant also failed to show that under Section 25 of the Bombay Money Lenders Act, interest could not be awarded at the rate of 9% per annum on secured debts '

4. There is no controversy between the parties that the Bombay Money Lenders Act was made applicable to the erstwhile State of Ajmer of which Beawar was a part, by notification No C/9/6/52 H.S. & R. dated 25 10-1952, Gazette of India Part III 1st November, 1962 was appointed as the date on which the Bombay Money Lenders Act, 1940 was brought into force in the State. The same notification further prescribed maximum rate of interest at 6 percent per annum in case of secured loans and Rs. 9 percent in case of unsecured loans under Section 25 of the Act. Section 25 of the Act reads as follows:

25 (1) The Government may from time to time by notification in the Official Gazette fix the maximum rates of interest for any local area or class of business or money-lending in respect of secured and unsecured loans:

XX XX XX XX XX XX(2) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the minimum rates fixed by the Government under Sub-section (1) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

(3) If any money-lender or a person advancing a loan specified in Sub-clause (g) of Clause (9) of Section 2 makes an oral or written demand or charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Government under Sub-section (1), he shall, for the purposes of Section 34, be deemed to have contravened the provisions of this Act.

(Itlacs is ours)

5. Learned Counsel appearing for the appellant has urged that Section 25 is applicable to the case out of which this appeal has arisen. According to him the

interest awarded by the Arbitrator and then by the decree of the Court was not permissible under Section 25(2) of the Act notwithstanding an agreement between parties. According to Sub-section (2) of Section 25, Court is not empowered to award interest exceeding the rate fixed under Sub-section (1) of Section 25 in any area to which this Act applies. Expression 'suit to which this Act applies' has been defined in Section 2 Clause (17) which reads as follows:

2 (17) 'suit to which this Act applies' means any suit or proceeding--

(a) for the recovery of a loan made after the date on which this Act comes into force;

(b) for the enforcement of any security taken or any agreement made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or

(c) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date;

6. It is common ground that Clauses (a) and (c) have no application to the facts of the present case. It has however been contended by Mr. Singhvi that Clause (b) applies to the circumstances of the case but it is disputed by Mr Bhargava. From the plain reading of this clause it is apparently clear that a suit to which this Act applies means any suit or proceeding which must be for (he enforcement made after the date on which this Act comes into force irrespective of the fact whether loan was actually advanced or made before or after the said date. We have noticed above that the Act came into force on 1-11-1952. The mortgage deed was executed on 28-5-1949. The loan was also made before 1-11-1952. Thus we find that the security was taken or in other words the agreement creating simple mortgage was made prior to 1-11-1952. Clause (b) is not therefore auracted. Mr. Singhvi has however referred to the agreement dated 28-10-1953. His submission is that this agreement was made after the Act came into force and this was the basis of the proceedings before the arbitrator. A copy of this agreement was placed in this Court. We perused this agreement with care. It also refers to the loan and the security created on 28.5.1949. It has further been recorded in it that

the stipulated period of payment had expired and the mortgagee wanted to recover the entire amount due to him. Dispute between the mortgagors and the mortgagee was that the mortgagors waved some concession in the interest and some time for making the payment. Instead of seeking relief from the Court, they agreed to appoint Shri Durga Prasad as their Arbitrator with a view to fix liability of the mortgagors. It was also agreed that after the award is given it would be submitted in the Court concerned for making it a rule of the Court. This agreement was given effect to and in consequence of the same Durga Prasad gave his award on 9-2-1957 and the award was then made a rule of the Court by the Sub-Judge, Beawar on 18.3.1957. From this agreement we are unable to spell that it, in any way related to the loan or the security. It was, really speaking, an agreement between the parties to choose a special forum to get their dispute decided. Instead of going to the Court straightway they thought fit to place the matter in the hands of Shri Durga Prasad. In our judgment this agreement is not one, on the basis of which it may be said that the award was the enforcement of the security executed on 28-5-1940. It was not a case of enforcement of the agreement dated 28-10-1953. Besides this, there was no breach of this agreement and as such the question of enforcing this agreement did not arise. We are clearly of the opinion that in the facts and circumstances of the case Section 25 has no application. The contention was not raised before the learned Single Judge in the manner in which it was canvassed before us. However, we have dealt with the matter and according to our finding it is not open to the appellant to invoke the provisions of Section 25 of the Act in this case. We are unable to interfere with the decree under execution.

7. Accordingly the appeal fails and it is hereby dismissed. In the circumstances of the case parties will bear their own costs of this appeal.