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B. SIVANANDA

v.

THE ANDHRA BANK LTD. AND ANR.

MARCH 18, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Code of Civil Procedure, 1908—Ss.152, 34—Correction of judgment/decre/order—Awarding of interest—Court's power—Held, aggrieved party need not file appeal/review for correction of clerical or arithmetical errors arising in judgment/decre/order; the same may be corrected at any time by the Court on its own or on application of a party to suit—Loan being taken for commercial transaction, loanee should pay interest at contracted rate on principal amount from date of decree till date of realisation.

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The respondent-Bank file a suit seeking a preliminary decree for sale of properties mortgaged to it and a charge on hypothecated properties. A personal decree against the appelland and others for decretal amount with future interest was sought. The suit was decreed ex-parte. Two applications were filed before the trial Court - one by the respondent-Bank claiming interest at the rate of 16½% on the decretal amount and the other by the appelland contending that no interest could be granted since the judgment did not specify the liability relating to payment of future interest. The application of the appelland was allowed. On revision application filed by the Bank, the High Court dismissed appelland's application. Hence the appeal by special leave.

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Disposing of the appeal, this Court

HELD : 1.1. In view of s. 152, C.P.C., it is not necessary that the aggrieved party should file an appeal or a review for effecting correction of clerical or arithmetical mistakes arising from any accidental slip or omission in the judgment or decree or order. The same may be corrected at any time by the court either on its own or on the application of any of the parties to the suit. [162-B-C]

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1.2. In the instant case, the respondent-Bank had sought a relief in the plaint for payment of a specified amount and interest thereon. The claim for future interest at 16½%, which was the contracted rate of interest was made

in the suit itself. The Bank is entitled to claim interest in terms of the contract at 16½% from the date of lending till the date of filing of the suit. The loan was for a commercial transaction. In the facts and circumstances, irrespective of Court's discretion under s. 34, C.P.C., it would be just and proper that the appellant should pay simple interest at the rate of 16½% per annum on the principal amount claimed in the suit from the date of the decree till the date of realisation. This should be confined to the instant case only on the peculiar facts of the case. [p.162-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3659 of 1994.

From the Judgment and Order dated 7.2.1992 of the Andhra Pradesh High Court in C.R.P. Nos. 2827/89 & 3423/89.

A. Subba Rao and A.D.N. Rao for the Appellant.

V.R. Reddy, Additional Solicitor General and P.P. Singh for the Respondent No. 1.

The following Order of the Court was delivered :

Leave granted.

We have heard both counsel.

The respondent filed O.S. No. 74/79 on the file of the Additional Subordinate Judge, Ananthpur, Andhra Pradesh on June 11, 1979 seeking a preliminary decree for sale of properties covered by two simple mortgages, dated July 3, 1976 and December 13, 1976 and a charge on the hypothecated moveables and immoveables, moveables have been mentioned in schedule 'B' and a personal decree against appellant and others was sought for the decretal amount with future interest and costs. The suit was decreed ex-parte on March 13, 1986. Thereafter, two applications were filed- one by the respondent-Bank claiming interest at the rate of 16½% on the decretal amount and another by the appellant. The appellant contended that no interest can be granted since the judgment did not specify the liability relating to payment of future interest. The trial court allowed the application of the appellant and dismissed the application of the respondent-Bank. On revision filed by the Bank, the High Court, by its order dated September 23, 1989 allowed the revision of the Bank and

A dismissed the application of the appellant. Thus, this appeal by special leave.

We need not go, in depth, into the controversy, raised in the case but suffice to state that Bank sought a relief in the plaint for payment of an amount specified and interest on the principal amount of Rs. 5,25,000. With interest accrued thereon till date of suit, the amount came to Rs. 6,89,917.79ps.. Section 152, C.P.C., clearly gives power to the Court to amend clerical or arithametical mistakes in the judgment and decree or order or any errors arising therein from any accidental slip or omission. The same may, at any time, be corrected by the Court either of its own motion or on the application of any of the parties to the suit. Therefore, it is not necessary that the aggrieved party should necessarily file an appeal or review for effecting correction of the judgment or decree or order. But in this case, as seen, that the claim for future interest at 16½% was made in the suit itself which admittedly, is the contracted rate of interest. Therefore, the Bank is entitled to claim interest in terms of the contract at 16½% from the date of lending till the date of filing of the suit. However, the Court has discretion under Section 34 C.P.C. to award interest. Admittedly, the loan was taken for construction of theatre. In other words, the loan was for a commercial transaction. In the facts and circumstances of this case, we consider it just and proper that the appellant should pay simple interest at the rate of 16½% per annum on the principal amount claimed in this suit from the date of the decree till the date of realisation. This should be confined to this case only, on the peculiar facts of this case. It is stated in the appellant's written arguments that as on date, a sum of Rs. 2,53,000 had already been paid and the appellant shall pay the balance amount along with future interest within six months from today. We permit him to make payment accordingly. In the event, any default is committed by the appellant, the benefit of this judgment will not be available to the appellant. The appeal is accordingly allowed to the above extent but in the circumstances, without costs.

R.P.

Appeal disposed of.