

A SECRETARY/GENERAL MANAGER CHENNAI CENTRAL
COOPERATIVE BANK LTD. & ANR.

v.

S. KAMALAVENI SUNDARAM
(Civil Appeal No. 14 of 2011)

B

JANUARY 4, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

Code of Civil Procedure, 1908:

C

s. 34 – Interest – Plaintiff re-presented five years and six months after its return – Interest on principal amount – HELD: Interest is awardable pendente lite taking into consideration the facts and circumstances of the case and not as a matter of course – Section 34 does not empower the court to award pre-suit interest which would ordinarily depend on the contract between the parties – Direction of the High Court to pay interest for the period from return of the plaint to its representation set aside – Rent Control and Eviction.

D

E

The respondent landlady, after the eviction of appellant-2, the tenant, filed a suit on 9.9.1998 for recovery of arrears of rent and for 18% interest thereon. The plaint was returned on 20.1.2000 because of certain defects. It was re-presented after a gap of about 5 years and 6 months on 20.7.2005. The suit was decreed on 24.3.2008, with 6% interest from 9.9.1998 to 21.1.2000 and from 21.7.2005 to the date of payment. On appeal by the landlady, the High Court allowed 12% interest from the date of filing of the suit till the date of decree and 6% interest thereafter till realisation of principal amount of rent.

F

G

Partly allowing the appeal filed by the tenant, the Court

H

HELD: Interest is awardable *pendente lite* taking into consideration the facts and circumstances of the case and not as a matter of course. Section 34 CPC empowers the court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money. It does not empower the court to award pre-suit interest, which would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage. In the instant case, the plaint after its return on 20.1.2000, was not re-presented immediately nor within reasonable time. As a matter of fact, the matter remained dormant in the hands of the landlady and the plaint was re-presented after five years and six months on July 20, 2005. Obviously, the landlady cannot derive any advantage of her inaction or lack of diligence in re-presenting the plaint. The direction of the High Court to the tenant to pay interest @ 12% per annum on the due rent for the period January 20, 2000 to July 20, 2005 is set aside. [para 10-12] [70-G-H; 71-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of 2011.

From the Judgment & Order dated 11.3.2010 of the High Court of Judicature at Madras in A.S. No. 990 of 2008.

K.V. Viswanathan, Mary Mitzy, G.S. Chauhan, Shiv Prakash Pandey for the Appellants.

S. Aravindh, V. Balachandran for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. The short question for consideration in this appeal, by special leave, is whether the Single Judge of the Madras High

A Court was justified in directing the 2nd appellant to pay interest @ 12% per annum on the arrears of rent from September 9, 1998 to the date of decree dated March 24, 2008.

3. Brief facts leading to the present controversy are these.

B The respondent—S. Kamalaveni Sundaram (hereinafter referred to as 'the landlady') let out ground floor of her property situate at MRC Nagar, South Beach Avenue, Chennai to the 2nd appellant (hereinafter referred to as 'the tenant') in the month of February, 1990 on a monthly rent of Rs. 5600/- payable according to the English calendar month. The tenancy was for non-residential purposes viz., for running the banking business. C The landlady filed the suit for fixation of fair rent against the tenant in 1996. The Small Causes Court, Chennai vide its order dated March 27, 1998 fixed the fair rent at Rs. 32,356/- per month with effect from October 28, 1996. In September 1998, D the tenant vacated the leased premises. However, the tenant was in arrears of rent at the time of vacation of premises. The landlady sent a notice through her lawyer and called upon the tenant to pay a sum of Rs. 5,71,832/- towards difference in rent upto May, 1998 and also rent for the months June, July and E August, 1998 after giving adjustment of sum of Rs. 33,600/- paid by the tenant in advance. The tenant failed and neglected to comply with the notice sent by the landlady.

F 4. The landlady then filed a suit in the month of December, 1998 against the tenant for recovery of Rs. 6,83,346/- in the City Civil Court, Chennai. The landlady also claimed interest @ 18% per annum on Rs. 5,71,832/- (the principal amount of rent) due against the tenant.

G 5. The plaint filed by the landlady suffered from certain defects and the same was returned to her on January 20, 2000 for the rectification of defects. The landlady, however, represented the plaint after a gap of more than five years, to be precise on July 20, 2005. Initially an ex-parte decree was passed against the tenant in the suit but later on the tenant was H

permitted to contest the suit after the ex-parte decree was set aside. A

6. After contest, the III Additional Judge, City Civil Court, Chennai passed a decree on March 24, 2008 in favour of the landlady and directed the tenant to pay to her the arrears of rent amounting to Rs. 5,71,832/- with interest at the rate of 6% per annum from September 9, 1998 to January 21, 2000 and from July 21, 2005 to the date of payment. The tenant was given three months' time to pay the amount from the date of the decree. B

7. The landlady challenged the judgment and decree dated March 24, 2008 before the High Court of Judicature at Madras. The Single Judge of the High Court after hearing the parties allowed the appeal preferred by the landlady in part and directed the tenant to pay interest @ 12% per annum from the date of the filing of the suit, i.e., from September 9, 1998 until March 24, 2008 and @ 6% per annum from March 25, 2008 till the date of realization of the principal amount of rent. C D

8. On July 26, 2010, while issuing notice in the petition for special leave to appeal, the following order was passed by us: E

"Counsel for the petitioners submits that there was no justification for the High Court to grant interest for the period January 20, 2000 to July 20, 2005, when the plaint had been returned to the plaintiff for removal of certain defects. F

Issue notice.

The execution of the decree as per the High Court Judgment shall remain stayed, provided the petitioners deposit a sum of Rs. 7.5 lakhs before the Court below, within four weeks from today." G

9. The landlady—sole respondent—has filed counter affidavit and justified the order of the High Court principally on H

A the ground that on the admitted facts and circumstances of the case, the High Court has struck the balance on equity as between the parties by granting lesser interest than what was claimed by her while granting interest for the entire period of pendency of the suit.

B
C
D
E
F
G
H
10. We heard the learned senior counsel for the tenant and the learned counsel for the landlady. Having regard to the facts and circumstances of the case, we are unable to sustain the order of the High Court to the extent the interest has been awarded to the landlady for the period from January 20, 2000 to July 20, 2005. As noticed above, the plaint was returned by the City Civil Court, Chennai to the landlady on January 20, 2000 for re-presenting the same after rectification of the defects. However, for the reasons best known to the landlady, the plaint was not re-presented immediately nor within reasonable time. As a matter of fact, the matter remained dormant in the hands of the landlady and the plaint was re-presented after five years and six months on July 20, 2005. Obviously, the landlady cannot derive advantage of her inaction or lack of diligence in re-presenting the plaint. Had the landlady re-presented the plaint within reasonable time, the matter would have been decided long back. As the facts reveal, the plaint was re-presented on July 20, 2005 and the suit was decreed by the trial court on March 24, 2008. In the circumstances, therefore, the award of interest for the period January 20, 2000 to July 20, 2005 does not seem to be justified. We are not persuaded by the submission that by not filing the plaint immediately after it was returned or for delay in re-presenting the plaint, the landlady did not gain anything and although she was entitled to interest @ 18% per annum on the arrears of rent, the High Court only awarded interest @ 12% and thereby struck a balance on equity. Whether the landlady gained anything or not by delay in re-presenting the plaint is not material but what is material is that interest is awardable *pendente lite* taking into consideration the facts and circumstances of the case and not as a matter of course.

11. Section 34 of the Code of Civil Procedure, 1908 (CPC) empowers the court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money. Section 34 of the CPC does not empower the court to award pre-suit interest. The pre-suit interest would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage. Be that as it may, we do not find that on equitable considerations the landlady is entitled to interest for the period January 20, 2000 to July 20, 2005.

12. As a result of the foregoing discussion, the appeal is allowed in part and the direction given by the High Court to the tenant to pay interest @ 12% per annum on the due rent for the period January 20, 2000 to July 20, 2005 is set aside. Except the above modification, the decree of the High Court stands. The parties shall bear their own costs.

R.P.

Appeal partly allowed.