A N.M. VEERAPPA

*v.*

CANARA BANK

JANUARY 27, 1998

B [S. SAGIR AHMAD AND M. JAGANNADHA RAO, JJ.]

*Code of Civil Procedure, 1908 :*

*S. 34, Order 34 Rule 11—Suit based on mortgage—Future interest—*
C *Rate of—Held, special provision of Order 34 Rule 11 is applicable and not s. 34—Court's discretion to fix rate of interest—Explained—Provisions of s. 21-A of Banking Regulation Act, 1949 do not effect Order 34 Rule 11—Banking Regulation Act, 1949—21-A.*

*Banking Regulation Act, 1949 :*

D

*21-A—Rates of interest charged by banking companies—Scrutiny by courts—Exclusion of—Held, ss. 21, 21-A and 35 do not affect Order 34 Rule 11 CPC—Act does not intend to override the Code of Civil Procedure—Discretionary power conferred on civil court under Order 34 Rule 11 CPC to cut down of suit and even upto date fixed for redemption is an independent*
E *power—Code of Civil Procedure, 1908—Order 34 Rule 11-Usurious Loan Act, 1918.*

**The respondent-Bank filed a suit based on mortgage against a partnership firm and its partners for recovery of money loaned to them by the Bank. The trial court passed a preliminary mortgage decree, but directed**
F **the decree-holder Bank to file a fresh memo of calculation calculating the contractual interest at 16.5% per annum on the balance of principal amount due from the date of the equitable mortgage at yearly rests till date of suit. As regards the future interest, it was directed that the plaintiff was entitled to future interest at 6% per annum on the principal amount from date of**
G **suit till date of recovery of full amount. The Bank filed an appeal before the High Court, which held that by virtue of s.34 of the Code of Civil Procedure, 1908, the Bank was entitled to future interest also at the contractual rate of interest of 16.5% from date of suit till date of realisation. Aggrieved, defendant No. 2, the Managing Director of the firm filed the present appeal.**

H **It was contended for the appellant that the suit being based on mortgage,**

as regards Interest pendent lite, the provision applicable was Order 34, Rule 11 and not s.34 of the Code and, therefore, the court could exercise discretion to award a lesser rate of interest than the contractual rate. The contention of the respondent was that apart from S.34 of the Code being applicable, if contractual rate of interest for the period the suit remained pending was not applied, Bank's interest would be seriously prejudiced. It was also contended that s. 21-A of the Banking Regulation Act, 1949 would override Order 34 Rule 11 of the Code and, therefore, the court could not reopen the banking transaction nor could it reduce the contractual rate of interest.

Allowing the appeal, this Court

HELD : 1. *Order 34 Rule 11 of the Code of Civil Procedure, 1908 applies to mortgage suits and not s.34 of the Code.* S.34 applies to simple money decrees and payment of interest pending such suits. Order 34 Rule 11 of the Code deals with mortgage suits and payment of interest. Thus so far as mortgage suits are concerned, the special provision in Order 34 Rule 11 alone is applicable and not s.34. The High Court was wrong in holding that s.34 was applicable to the present case. [348-E-F]

*State Bank of Mysore* v. *G.P. Thulasi Bai,* ILR (1985) Karnataka 2976, approved.

2.1 Before 1929, it was obligatory for the court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c)(i) or Order 34 Rule 4(1) or Order 34 Rule 7(c)(i), respectively in suits for foreclosure, sale or redemption. [352-G]

2.2 But after the 1929 amendment, because of the words used in the main part of Order 34 Rule 11, namely that "the Court *may* order payment of interest" it is no longer obligatory on the part of the court while passing preliminary decree from date of suit till the date fixed in the preliminary decree for payment of the amount. The new provision gives a certain amount of discretion to the court as regards *pendents lite* interest and *subsequent* interest. [352-H; 353-A-B]

2.3 It is no longer obligatory to award the contractual rate after date of suit and upto date fixed for redemption even though there *was no question* of the contractual rate being *penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918.* [353-B]

A **2.4.** *The word 'may' introduced in the main part of Rule 11 of Order 34, by 1929 amendment confers discretionary power on the court under clauses (a) and (b) of Rule 11 in regard to future interest.* **After the 1956 Amendment, clause (b) has been amended so as to provide for subsequent interest on the amount awarded under Order 34 Rule 11(a)(1) and (iii) -upto the date of realisation or payment, at such rate as the court 'may' deem reasonable. The word 'may' governs both clauses (a) and (b) of Rule 11 of Order 34. [349-H; 351-C]**

B

*Soli Pestonji Majoo & Others* **v.** *Gangadhar Khemka,* **[1969] 3 SCR 3, relied on.**

C *Jaigobind Singh* **v.** *Lachmi Narain Ram,* **AIR (1940) FC 20, referred to.**

**2.5.** *Interest upto date fixed in preliminary decree is dealt with in Clause (a) of Rule 11 of Order 34.* **Under Clause (a) the court** *may* **order**
D **payment of interest upto the date on or before which payment of interest upto the date on or before which payment of the** *amount found or declared due as per the preliminary decree,* **in regard to two distinct amounts : firstly, under sub-clause a(i) interest can in the court's** *discretion,* **be directed to be paid on "the principal amount found due on the mortgagor"—at the rate payable on the principal or where no such rate is fixed, at such rate as the**
E **court deemed reasonable; and secondly, under sub-clause (iii) interest can, in the court's** *discretion,* **be directed to be paid on costs, charges and expenses at such rate not exceeding 6% per annum as the court may deem reasonable . In both these situations the discretion is to be exercised subject to the above provisions. [351-F-G]**

F **2.6. Even if the court otherwise wants to award interest, the position after the 1929 and the 1956 amendments is that the court has discretion to fix interest under order 34 Rule 11(a)(i) from date of suit upto date fixed for payment in the preliminary decree, the same rate as agreed in the contract, or, if no rate is so fixed, such rate as the court deems reasonable — on the**
G **principal amount found or declared due on the mortgagor. [353-C]**

**2.7. The court has also power to award from date of suit under Order 34 Rule 11(a)(iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate not exceeding 6%. This is the position of the discretionary power of the court, from date of suit upto**
H **date fixed in the preliminary decree as the date for payment. [353-D]**

**2.8.** *Clause (b) of Order 34 Rule 11 deals with interest for the period -after the date fixed in the preliminary decree* **and upto date of payment, on the aggregate of sums mentioned in clause (a). Here too, the court could in its** *discretion,* **direct payment of interest at such rate as it deemed reasonable. [351-H; 352-A]** A

*K. Manickchand & Others* **v.** *Elias Saleh Mohamed Sait & Another,* **[1969] 2 SCR 1061, relied on.** B

*Jagannath Prasad Singh Chowdhury* **v.** *Surajmul Jalal,* **(54 I.A. 1) and** *Srinivasa Vardachariar & Others* **v.** *Gopala Menon & Others,* **[1967] 1 SCR 721, referred to.**

**3.1.** *Provisions of sections 21 and 21A of the Banking Regulation Act. 1949 do not affect Order 34 Rule 11 of the Code.* **The effect of the "non obstante clause" in Section 21-A is to override the Central Act, namely, the Usurious Loans Act, 1918 and any other "law relating to indeptedness in force in any State". By no stretch of imagination can the Code of Civil Procedure, 1908 be described as a 'law relating to indebtedness in force in any State". Therefore, the provision of Section 21-A of the Banking Regulation Act cannot be held to have intended to override a Central Legislation like the Code of Civil Procedure or Order 34 Rule 11 of the Code. [355-B-D]** C D

*Bank of Baroda* **v.** *Rednam Nagachava Devi,* **[1989] 4 SCC 470, distinguished.** E

*Aswini Kumar Ghosh* **v.** *Arabindo Bose,* **[1953] SCR 1, relied on.**

**3.2. The discretionary power conferred on the Civil Court under Order 34 Rule 11 to cut down the contract rate of interest for the period from date of suit and even upto the date fixed for redemption by the court is very much there. This is an independent power and the power is neither traceable to Section 74 of the Contract Act nor to any power in the Usurious Loans Act nor to any State Statutes permitting a court to scale down contractual rates of interest. [355-F; 356-B]** F G

**3.3. Since Section 21-A of the Banking Regulation Act does not come to the aid of Banks vis-a-vis Order 34 Rule 11 of the Code, the Question whether for the period during the pendency of mortgage suits in courts, the courts' discretion should continue or whether it should be fettered and if so, to what extent and to what rate of interest and whether there should be any** H

**distinction between different kinds of debtors - these are all matters of policy for the legislature and it will be for Parliament to lay down its policies and bring forward such legislation as it may deem fit in accordance with provisions of the Constitution of India. [356-H; 357-A]**

**4. The rate of interest fixed at 6% by trial court from the date of suit is restored. So far as interest prior to suit is concerned, the trial Judge reduced that rate also and that part of the judgment has become final. As regards future interest, the trial court did not rely on D.S. Gowds's case,* therefore, reversal of that case subsequently** has no bearing.**

**D.S. Gowda* **v.** *Corporation Bank,* **AIR (1983) Karnataka 143 and** ***Corporation Bank* **v.** *D.S. Gowda,* **[1994] 5 SCC 213, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 467 of 1998.

From the Judgement and Order dated 10.3.97 of the Karnataka High Court in F.A. No.1/88.

Lalita Kaushik for the Appellant.

Pradeep Dewan, Ms. Amita Kapur and P.B.Aggarwala for the Respondents.

The following Judgment of the Court was delivered by :

**M. JAGANNADHA RAO J.** Leave granted.

The appellant (Managing Partner) is the 2nd defendant in the suit. The 1st respondent-Bank filed a suit O.S. 101/1980 based on mortgage for recovery of Rs. 7,82,881.78 against M/s. Shiva Rice Industries (a partnership firm) (1st defendant), the appellant (defendant 2) and defendants 3 to 10 (partners) on the file of the Principal Civil Judge. Shimoga. These defendants had taken a loan of Rs. 5 lakhs on 7.4.1976 agreeing to repay in 52 monthly instalments each of Rs. 8000 from 7.4.1977 with interest at the end of each quarter. The plaint schedule properties were offered as security and an equitable mortgage was created as per Ex. P. 4 by deposit of title deeds. The defendants paid Rs. 75,000 on 6.11.1984, Rs, 40,000 on 21.12.1984, Rs. 15,000 on 22.1.1985, Rs. 20,000 on 8.7.1985 and Rs. 10,000 on 14.11.1985, in all Rs. 1.60,000 . The trial court passed a preliminary mortgage decree on 4.7.1982 with proportionate costs but the decree-holder Bank was directed to file a fresh memo of calculation calculating the interest on the balance of principal amount due at

16.5% per annum from the date of the equitable mortgage at yearly rests till date of suit. The amounts paid after suit by the defendants were to be deducted as on the respective dates of payment and interest was to be paid as per judgment and these figures were directed to be computed. It was further directed, so far as *future interest from date* of suit was concerned, as follows:-

> "The plaintiff is entitled to future interest from the date of suit at 6% per annum on the principal amount due from the defendants till date of recovery of full amount".

In other words, future interest from date of suit was to be only 6% per annum and not at the contractual rate of 16.5%.

The plaintiff Bank filed an appeal in the High Court as Regular First Appeal No. 1 of 1988 and a learned Single Judge of the High Court allowed the appeal and held that the plaintiff was entitled to future interest also at the contractual rate of interest of 16.5% from date of suit till date of realisation with costs because of Section 34 CPC. However, the defendants could, if they so desired, move the Circle office of the Bank for reduction of this rate of interest and it would then be for the Bank to consider it favourably but in accordance with law.

Against the above said judgment of the High Court, this appeal has been preferred by the Managing Partner, the 2nd defendant contending that the High Court erred in interfering with the discretion exercised by the trial Court in so far as *pendente lite* interest was concerned.

It is argued for the appellant that the suit being one based on mortgage, the provision applicable so far as *pendente lite* interest was concerned, was Order 34 Rule 11 CPC and not Section 34 CPC, as wrongly held by the High Court. It is pointed out that under Order 34 Rule 11 the Court could exercise discretion, if there were good reasons for doing so, to award a rate of interest which was not necessarily the contractual rate but something less.

We have heard the learned counsel for the respondent-Bank. Apart from contending that Section 34 CPC is applicable, learned counsel contends that if the contract rate of interest for the period during which the suit was pending is not applied the Bank's interests would be seriously prejudiced and therefore the High Court rightly applied the contract rate of interest. Learned counsel for the Bank relied also on Section 21-A of the Banking Regulation

A Act. 1949 to contend that Section 21-A overrides Order 34 Rule 11 CPC and hence Courts cannot reopen the Banking transactions nor reduce the contractual rate of interest. Counsel placed reliance upon a judgment of this Court in *Corporation Bank* v. *D.S. Gowda & Another,* [1994] 5 SCC 213 in support of the above contention.

B Before adverting to the issues arising under Order 34 Rule 11, we may state that the trial court considered the matter in some detail and noted in para 11 of its judgment, a ruling of the Karnataka High Court *State Bank of Mysore* v. *G.P. Thulasi Bai,* ILR (1985) Karnataka 2976 that the Court has a discretion under Order 34 Rule 11 for not granting contractual rate of interest for the C period after suit. The trial Court expressly held in para 11 that it was exercising discretion to grant interest only at 6%. On the other hand, the High Court held relying only on Section 34 C.P.C.—and without referring to Order 34 Rule 11 CPC- that the proviso to section 34 CPC enabled the Court to grant interest at more than 65% pending suit, where commercial transactions were involved. This conclusion was arrived even after noticing that the trial court had said D in para 11 of its judgment that it had discretion so far as *pendente lite* interest was concerned because of *State Bank of Mysore* v. *G.P.Thulasi Bai,* ILR (1985) Karn. 2976.

*Section 34 does not apply to mortgage suits :*

E Section 34 of the Code of Civil Procedure applies to simple monies decrees and payment of interest pending such suits. Order 34 Rule 11 CPC deals with mortgage suits and payment of interest. It is obvious that so far as mortgage suits are concerned, the special provision in Order 34 Rule 11 alone is applicable and not Section 34. This has been laid down in several F decisions of this Court and also by the Karnataka High Court in *Thulasi Bai's* case.

*Order 34 Rule 11 CPC*

We shall next refer to the provisions of Order 34 Rule 11 CPC, as G amended in 1929 and 1956.

> "O.34 R.11: 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 mortgages as follows, namely:
>
> H (a) interest up to 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, where no such rate if fixed, at such rate as the Court deems reasonable, A

(ii) xx xxx xxx B

(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 up to 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 6 per cent per annum as the Court deems reasonable, and C

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

The word 'may' used in the main part of the Section was introduced by the 1929 amendment.

*Interest provisions under Order 34 Rule 11.* E

*Fixation of a date for payment.*

It will be noticed that under Order 34 deals with suits for foreclosure, sale and redemption of mortgage and the passing of a preliminary decree and final decree in each of these cases. Order 34 Rule 2(c)(i) which deals with suit for *foreclosure*, requires the Court, to specify while passing a preliminary F decree for the payment of the amount due as mentioned in the provision that payment be made before a particular date. Likewise, Order 34 Rule 4(1) which deals suits for *sale* requires the fixation of a time for payment to be fixed. Then Order 34 Rule 7(c)(i) requires in suits for *redemption*, a date to be fixed for payment of the amounts specified in the provision. G

*Interest under Order 34 Rule 11; word may' introduced by 1929 amendment confers discretionary power on Court under clause (a) and (b) of Order 34 Rule 11 in regard to future interest;*

The introduction of the word 'may' by the 1929 amendment in the main H

A part of Order 34 Rule 11 has been explained by this Court in the under-mentioned case.

In *Soli Pestonji Majoo & Others* v. *Gangadhar Khemka,* [1969] 3 SCR 33, the suit was filed on 5.8.1955 and a preliminary decree was passed on 10.7.1958 for a sum of Rs. 41,172.60 due as on 2.6.1958 and on appeal, the B Division Bench fixed the amount at Rs. 38.207 by judgment dated 17.1.1962 and granted interest at 12% per annum with monthly rests even after the date of suit. Before this Court, it was argued for the mortgagor that the High Court ought not to have fixed the rate at 12% p.a. with monthly rests even after the date of suit and that the maximum rate which should have been fixed was 6% C simple on the principal sum adjudged. This Court held that before 1929 the position was that till the period for redemption expired, the matter was considered to be in the domain of contract and therefore interest had to be paid at the rates agreed to in the contract and that it was only after the expiry of the redemption period, the matter would pass into the domain of the Court from the domain of the contract. The rights of the mortgagee would thereafter D depend not on the contents of the bond but on the directions in the decree. This Court referred to what was stated by the Privy Council in *Jagannath Prasad Singh Chowdhury* v. *Surajmul Jalal,* (54 I.A. 1). But after 1929, a new Rule 11 was introduced, which used the words; "the Court *may* order payment of interest". The new Rule was explained by the Federal Court in *Jaigobind* E *Singh* v. *Lachmi Narain Ram,* AIR (1940) FC 20 and it was held that his provision gave a certain amount of discretion to the Court so far as interest after date of suit was concerned and it was no longer obligatory after the 1929 Amendment on the Courts to direct interest at the contractual rates upto the date of redemption in all circumstances *even if there is no question of the rate being penal, excessive or substantially unfair within the meaning of the* F *Usurious Loans Act. 1918.* Approving the above observations of the Federal Court, this Court held on facts, that the mortgagee should be granted interest on the principal sum at the contractual rate till date of suit and only simple interest at 6% p.a. on the principal sum adjudged from the date of suit till date of preliminary decree and again at same 6% p.a. from date of preliminary G decree till date of realisation.

*The 1956 Amendment :*

Before the Amendment of CPC in 1956 clause (a) had three sub-clauses (i) (ii) and (iii). After the Amendment of 1956, clause (i) was retained, clause H (ii) was omitted and in clause (iii) the maximum rate was reduced from 9% to

6%. So far as clause (b) is concerned, before the 1956 Amendment, it had two sub-clauses (i) and (ii) which read as follows:-

> "(b) subsequent interest upto the date of reduction or actual payment at such rate as the Court deems reasonable—
>
> (i) on the aggregated of the principal sums specified in clause (a) and of the interest thereon, as calculated in accordance with that clause; and
>
> (ii) on the amount adjudged due to the mortgage in respect of said further costs, charges and expenses as may be payable under Rule 10."

After the 1956 Amendment, clause (b) has been amended so as to provide for subsequent interest on the amount awarded under Order 34 Rule 11 (a) (i) and (iii) - upto the date of realisation or payment, at such rate as the Court may deem reasonable.

*'May' governs both clause (a) & (b) of Order 34 Rule 11*

*(A) Interest upto date fixed in preliminary decree; Clause (a):*

In view of what the Federal Court has said in *Jaigobind* case and what this Court has held in *Soli Pestonji Majoo's* case, it is clear that the word 'may' in the main part of Order 34 Rule 11 governs all sub-clauses of Order 34 Rule 11.

Therefore under Order 34 Rule 11, *sub-clause* (*a*) the Court *may* order payment of interest upto the date on or before which payment of the *amount found or declared due as per the preliminary decree*, in regard to two distinct amounts: firstly under sub-clause a (i) interest can in the Court's *discretion*, be directed to be paid on "the principal amount found due on the mortgagee" - at the rate payable on the principal or where no such rate is fixed, at such rate as the Court deemed reasonable; secondly under sub-clause (iii) interest can in the Court's *discretion*, be directed to be paid on costs, charges and expenses at such rate not exceeding 6% per annum as the Court may deem reasonable in both these situations the discretion is to be exercised subject to the above provisions.

*(B) Interest after date fixed in preliminary decree; clause (b)"*

Then comes *sub-clause* (*b*) of Order 34 Rule 11 which deals with interest

A for the period - after the date fixed as above in the preliminary decree and upto date of payment, on the aggregate of sums mentioned in clause (a), Here too, the Court could in its *discretion*, direct payment at such rate as it deemed reasonable.

*Two more rulings of this Court:*

B

Before summarising the legal position, we shall refer to two other rulings of this Court under Order 34 Rule 11. In Srinivasa *Vardachariar & Others* v. *Gopala Menon & Others,* [1967] 1 SCR 721, this Court was dealing not only with the substantive interest prior to suit (which was reduced to 10% compound) but also with interest after suit. In para 11 of the Judgment, this C Court observed that the discretion exercised by the High Court under Order 34 Rule 11 in that case reducing the interest to 6% from date of suit to date of payment was not liable to be interfered with even though the High Court had not given reasons. It was said that it was obvious, on facts, that the mortgages were executed as far back as 1936 and 1938 and the creditor had D waited till 1956 for filing the suit and would, in any event, get interest substantially exceeding the principal amount of the loans. *K. Manickchand & Others* v. *Elias Saleh Mohamed Sait & Another,* [1969] 2 SCR 1061, also related to question of interest before suit and after suit. So far as the interest after suit was concerned, the High Court had granted interest at 6% from the date fixed for redemption till date of realisation. The date of suit was 10.1.1950. E the date of decree of the trial Court was 27.3.1952. This Court observed that the High Court had arrived at the principal sum as Rs. 37,971.50 and fixed the date for payment as 19.3.1959. So far as interest under Order 34 Rule 11 (a) (i) was concerned, it was to be 9% per annum. So far as interest under *Order 34 Rule 11 (a)* (ii) is concerned, on costs, charges and expenses, interest at F 6% as fixed by the Code would be payable. So far as interest under *Order 34 Rule 11(b)* is concerned, interest from the date fixed in the preliminary decree upto date of realisation was to be 6% as it was a reasonable rate.

*Resulting Legal Position under Order 34 Rule 11 CPC :*

G From the aforesaid rulings the following principles can be summarised. (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c)(i) or Order 34 Rule 4(1) or Order 34 Rule 7(c)(i), respectively in suits for foreclosure, sale or redemption. (b) But after the 1929 Amendment, because H of the words used in the main part of Order 34 Rule 11, namely that " the Court

*may* order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It had been so held in *Jaigobind's* Case by the Privy Council AIR (1940) FC 20 and by this Court in *S.P. Majoo's* Case [1969] 3 SCR 33, that the new provision gives a certain amount of discretion to the Court so far as *pendente lite* interest is concerned and *subsequent* interest is concerned. (c) It is no longer obligatory to award the contractual rate after date of suit and uptodate fixed for redemption as above stated even though there *was no question* of the contractual rate being *penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918.* (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from date of suit under Order 34 Rule 11 (a)(i) upto date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable - on the principal amount found or declared due on the mortgager is concerned. (e) The Court has also power to award from date of suit under Order 34 Rule 11 (a) (iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate no exceeding 6%. This is the position of the discretionary power of the Court, from date of suit upto date fixed in the preliminary decree as the date for payment. (f) Again under Order 34 Rule 11 (b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest upto date of realisation or actual payment, on the aggregate sums specified in clause (a) of Order 34 Rule 11, could award interest at such rate as it deemed reasonable.

*On facts of this case.*

In the present case before us, the trial Court has gone into the facts and stated that the contract rate was not to be granted and that as the Court had discretion to grant interest, it was granting interest only at 6% simple from date of suit. The Court followed *State Bank of Mysore* v. *G.P. Thulasi Bai,* ILR (1985) Karn. 2976. In that case, Jagannatha Shetty, J.(as he then was), speaking for the Bench, observed, referring to *S.P. Majoo* v. *Gangadhar,* [1969] 3 SCR 33, in which this Court referred to the Privy Council decision of 1927 and the Federal Court's decision of 1940, that it was no longer obligatory on the part of the Court to award the contractual rate, even if the rate was not penal, excessive or substantially unfair. In that Karnataka case too, the trial Judge's award at 6% per annum simple from date of suit till date

A of realisation was affirmed. Unfortunately, the learned Single Judge of the High Court, in the present case before us, though he referred to the above Division Bench Judgment, still said that Section 34 CPC was applicable. This was obviously wrong and contrary to the decisions of this Court and of the Karnataka High Court.

B We may here point out that so far interest prior to suit is concerned, the trial Judge in para 9 of his judgment reduced that rate also following *D.S. Gowda* v. *Corporation Bank,* AIR (1983) Karnataka 143. (This aspect we shall refer again when we come to Section 21-A of the Banking Regulation Act, 1949). That part of the judgment has become final. The Judgment in the said C case has no doubt been since reversed by this Court in *Corporation Bank* v. *D.S. Gowda* [1994] 5 SCC 213, but the trial Court in para 11 of its Judgment in the present case did not rely on *D.S. Gowda's* case so far as future interest was concerned. Hence reversal of *D.S. Gowda* case has no bearing on this case so far as future interest from date of suit is concerned.

D *The Banking Regulation Act, 1949: Sections 21, 35 and Section 21-A- do not affect Order 34 Rule 11 CPC.*

Learned counsel for the Bank has contended that if the interest rates from the date of suit could at the discretion of Court be reduced as stated above, serious prejudice would be caused to all Banks particularly because E suits are generally pending in Courts for a long number of years. Learned counsel placed strong reliance also upon the recent decision of this Court in *Corporation Bank* v. *D.S. Gowda & another,* [1994] 5 SCC 213, which dealt with Section 21 and 35 and also Section 21-A of the Banking Regulation Act. 1949.

F We do notice the contention that if the Court has discretion to reduce the interest from date of suit and direct payment at a rate below the contractual rate, there could be considerable financial loss to the Banks. But initially we have to deal with the question as one of law and see if Section 21A of the Banking Regulation Act, 1949, as it now stands, would or would not help the G Bank as against Order 34 Rule 11 CPC.

We shall refer to the provision in Section 21A of the Banking Regulation Act, 1949 as introduced by Act 1/1984, w.e.f. 15.2.84. It reads :

H *"S. 21A: Rates of interest charged by banking companies not to be subjected to scrutiny by Courts* : Notwithstanding anything contained

> in the *Usurious Loans Act. 1918 or any other law relating to indebtedness in force in any State*, a transaction between a banking company and its debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

Firstly, it will be noticed that the effect of the "non-obstante clause" in Section 21-A is to override the Central Act, namely, the Usurious Loans Act, 1918 and any other "law relating to indebtedness in force in any State". Obviously it does not expressly intend to override the Code of Civil procedure among the Central statutes. It is now well settled that the scope and width of the non-obstante clause is to be decided on the basis of what is contained in the enacting part of the provision. *Aswini Kumar Ghosh* v. *Arabinde Bose*, [1953] SCR 1. Further, by no stretch of imagination can the Code of Civil Procedure. 1908 be described as a 'law relating to indebtedness in force in any State'. As stated above, the provision in Section 21A refers, so far as Central legislation is concerned, only to the Usurious Loans Act. 1918 and not to the Code of Civil Procedure, 1908 and it then refers to other laws relating to indebtedness in force in any State. Therefore, the provision of section 21A of the Banking Regulation Act, 1984 cannot be held to have intended to override a Central legislation like the CPC or Order 34 Rule 11 CPC.

Secondly, as stated by the Federal Court in *Jaigobind*'s case AIR (1940) FC 20 and by this Court in *Soil Pistonji Majoo's,* case [1969] 3 SCR 33, the discretionary power conferred on the Civil Court under Order 34 Rule 11 to cut down the contract rate of interest for the period from date of suit and even upto the date fixed for redemption by the Court is very much there, even if there was no question of the rate being penal. Excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. This Court observed in *Soil Pestonji Majoo's,* case [1969] 3 SCR 33, as follows :

> "It is apparent that the new rule as inserted by the Amending Act 21 of 1929 provides that the Court 'may' order payment of interest to the mortgagee upto the date fixed for payment as the rate payable on the principal. It was held by the Federal Court in *Jaigobind Singh* v. *Lachmi Narain,* AIR (1940) FC 20 that the language of the rule gives a certain amount of discretion to the Court so far as interest *pendente lite* and subsequent interest is and it was no longer absolutely

A obligatory on the Courts to decree interest at the contractual rates upto the date of redemption in all the circumstances even *if there is no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act. 1918*".

B In other words, the discretionary power given to the Court under Order 34 Rule 11 is an independent power and the power is neither traceable to Section 74 of the Contract nor to any power in the Usurious Loans Act, 1918 nor to any State statutes permitting a Court to scale down contractual rates of interest.

C Coming to the decision of this Court in *D.S. Gowda's* Case, it turned upon the power of the Court to re-open transactions of loan between Banks and its debtors and it was held that the directives/circulars issued by the Reserve Bank to Banks in respect of rates of interest under Section 21 of the Banking Regulation Act, 1949 could not be declared by the Court as unfair D or excessive and those directives/circulars were not violative of the Mysore Usurious Loans Act, 1923. This Court referred to section 21A of the Banking Regulation Act, 1949 also but said that even if Section 21A was not applicable, there was no evidence adduced by the debtor that interest fixed in the directives/circulars of Reserve Bank of India were not fair. It was held that Courts could not question Reserve Bank directives as being irrational. At the E same time, it was also held that the Banks could not also ignore Reserve Bank directives/circulars and in a given case, a Bank ignored the Reserved Bank circular/directives, the Court could reopen the transaction as to rate of interest, notwithstanding Section 21-A. We may also state that in and earlier case in *Bank of Baroda* v. *Rednam Nagachaya Devi,* [1989] 4 SCC 470, where Section F 21-A fell for consideration, the question which has now arisen before us did not arise. The above two rulings are therefore not helpful to the respondent-Bank.

For the aforesaid reasons, we therefore do not think that the above decision in *Corporation Bank* v. *D.S. Gowda,* [1994] 5 SCC 213 can help the G respondent-Bank to contend that Section 21-A overrides the provision contained in Order 34 Rule 11 CPC.

If, therefore, Section 21A of the Banking Regulation Act, 1949 does not come to the aid of Banks vis-a-vis Order 34 Rule 1 CPC, the question whether H for the period during the pendency of mortgage suits in Courts, the Courts

discretion should continue or whether it should be fettered and if so to what extent and as to what rate of interest and whether there should be any distinction between different kinds of debtors - these are all matters of policy for the legislature and it will be for Parliament to lay down its policies and bring forward such legislation as it may deem fit in accordance with the provisions of the Constitution of India. A B

For the aforesaid reasons, the appeal is allowed and the rate of 6% from date of suit fixed by the trial Court is restored. There shall be no order as to costs.

R.P. Appeal allowed.