



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO.27265 OF 2024
IN
COMMERCIAL SUIT NO.270 OF 2019**

1. Shrinika Infra Limited (Formerly, Lakshmi Properties Ltd.) a Company incorporated Under the Companies Act, 1956, Registered office at Industry House, 159, Churchgate Reclamation, Mumbai.]]]]]]
2. Mr. Yash Birla. Adult, Indian Inhabitant, residing at Birla House, Napeansea Road, Mumbai.]]]]]]

... Applicants

In the matter between:

Rajdhani Textiles Pvt. Ltd. A company incorporated under the Companies Act, 1956 and having its Registered officer at 702, 7 th Floor, Samudra Setu, Near Parsi Agiary, Opposite Anand Bhavan, Opposite B.D. Desai, Mumbai - 400 026.]]]]]]
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... Respondent

V/s.

1. Shrinika Infra Limited (formerly, Lakshmi Properties Ltd.) a Company incorporated Under the Companies Act, 1956, Registered office at Industry House, 159, Churchgate Reclamation, Mumbai.]]]]]]
2. Mr. Yash Birla. Adult, Indian Inhabitant, residing at Birla House, Napeansea Road, Mumbai.]]]]]]

... Defendants

WITH
COMMERCIAL SUIT NO.270 OF 2019
WITH
INTERIM APPLICATION (L) NO.25885 OF 2023
WITH
NOTICE OF MOTION NO.2454 OF 2019
WITH
INTERIM APPLICATION NO.2874 OF 2022
WITH
INTERIM APPLICATION (L) NO.22023 OF 2022
WITH
INTERIM APPLICATION NO.5998 OF 2025

Mr. Girish Godbole, Senior Advocate a/w. Adv. Rubin Vakil, Adv. Punit Damodar, Adv. Akshay Dhayalkar i/by Kanga and Company for the Plaintiff.

Mr. Kevic Setalwad, Senior Advocate a/w. Adv. Siddharth Mehta, Adv. A.S. Pal, Adv. Jehan Lalkoka, Adv. Siddhartha Puthoor i/by Mehta & Padamsey for the Defendants.

Mr. Mahendra Lodha, representative of Plaintiffs.

CORAM : KAMAL KHATA, J.
RESERVED ON : 11th December, 2025.
PRONOUNCED ON : 28th January 2026.

JUDGMENT :

1. The Suit is filed for foreclosure of an English Mortgage also seeks the following reliefs: a) Money decree for Rs. 44,05,62,418/- with interest @ 21% p.a. (compound interest with quarterly rest as per the Loan Agreement) from the date of filing of the Suit till payment or realization together with additional interest as provided in the Loan Agreement until the realization thereof. b) In the event of failure to pay the aforesaid decretal amount, decree for enforcing the mortgage and for that purpose, all necessary orders and directions

including foreclosing Defendant No. 1's equity of redemption and ordering sale of the mortgaged property. c) In the event the attachment of the mortgaged property under MPID Act is vacated either by the Competent Authority or the Court, declaration that the Plaintiff would be entitled to sell the mortgaged property without intervention of the Court.

2. By an Interim Application (L) No. 27265 of 2024 filed on 30th August 2024, the Defendants seeks a preliminary decree under Order XXXIV of the CPC, contending that the suit is a redemption action concerning the mortgaged property. The Defendants admit the Loan Agreement and their obligation as a Guarantors under the Deed of Guarantee dated 22nd March 2012.

3. By an Interim Application No.5998 of 2025 filed on 30th September 2024, the Plaintiff seek a decree on admission considering the admissions made by the Defendants in Interim Application (L) No. 27265 of 2024.

4. The issues that arise for determination are as under:

- i. Whether interest after capitalization partakes the character of principal; and
- ii. Whether the Court should exercise its discretion to reduce the contractual rate of interest;

Issue (i) Whether interest after capitalization partakes the character of principal

5. Mr. Setalvad, learned Senior Counsel appearing for the Applicants/Org. Defendants, in support of the Interim Application seeking a preliminary decree, submits that the Defendants' principal grievance concerns the levy of contractual interest at the rate of 21% per annum with quarterly rests, payable in advance, together with an additional interest of 2% per month on arrears.

6. He submits that the Applicants are willing to pay the entire suit claim of Rs. 44,05,62,418/- together with interest at the contractual rate of 21% per annum with quarterly rests from the date of filing of the suit. However, he seeks a waiver of pendente lite interest and all other ancillary charges, or in the alternative, a reduction of interest to a nominal banking rate.

7. He submits that the original loan advanced to Birla Power Solutions Ltd. ("BPSL") was in the principal sum of Rs.21 crores, carrying interest at 21% per annum with quarterly rests under the Loan Agreement dated 22nd March 2012. On account of non-payment of interest, the loan attracted further interest at the rate of 2% per month. According to him, BPSL paid an aggregate amount of Rs.12,63,24,478/- during the period between 31st March 2012 to 30th September 2014. Notwithstanding the aforesaid payments, the

Defendants express their willingness to pay the entire sum of Rs.44,05,62,418/-, together with interest on the principal sum of Rs.21 crores at such rate as this Court may determine.

8. Mr. Setalvad submits that the present suit is governed by the provisions of Order XXXIV of the (CPC). He contends that Order XXXIV Rule 7 pertains to the passing of a preliminary decree in a suit for redemption. Under Rule 7(1)(a)(i), the Court is required to direct that accounts be taken of what was due to the Plaintiff at the date of such decree in respect of “principal and interest on the mortgage”. Under Rule 7(1)(b), the Court is required to declare the amount so found due as on the date of the preliminary decree.

9. Placing reliance upon the decision in *Union Bank of India v. Dalpat Gaurishankar Upadyay*,¹ he submits that Rule 7 does not envisage merger of interest into principal or the determination of a consolidated amount representing both. According to him, “principal” and “interest” are required to be separately ascertained and declared under Order XXXIV Rule 7(1)(a)(i).

10. He further submits that Order XXXIV Rule 2 and Order XXXIV Rule 7 are *pari materia*. He contends that although the judgment in *Union Bank of India* (supra) was overruled by the Supreme Court in *Central Bank of India v. Ravindra*² in the context of Section 34 of the

¹ AIR 1992 Bom 482
² (2002) 1 SCC 367

CPC, the findings rendered in relation to Question (d) framed by the Full Bench of this Court, particularly concerning the meaning of the expression “principal” under Order XXXIV Rules 2 and 11, were not disturbed and continue to operate as binding precedent.

11. He submits that under Rule 11(a)(i), interest is payable only on the principal amount found or declared to be due on the mortgage, and under Rule 11(b), interest can be levied only on the aggregate of the principal sums specified in clause (a). He argues that interest accrued prior to the filing of the suit cannot be treated as principal under Rule 11(a)(i) or Rule 11(b), as held in *Union Bank of India* (supra).

12. *Per contra*, Mr. Godbole submits that the Defendant's submissions are contrary to the settled position of law. He contends that in a suit for foreclosure, Order XXXIV Rule 7 has no application. He submits that although the Defendants rely upon *Union Bank of India* (supra) and seek to contend that its overruling by *Central Bank of India* (supra) was confined to issues arising under Section 34 of the CPC, they are attempting to carve out an artificial distinction in respect of the interpretation of the term “principal” under Rule 11 of Order XXXIV. According to him, a plain reading of paragraph 36 of the judgment in *Central Bank of India* (supra) clearly negates such a submission. He submits that the expression “principal” in Rule 11(a)

(i) necessarily includes interest that has been capitalized and has assumed the character of principal. Consequently, the Plaintiff is entitled to interest at the contractual rate of 21% per annum on Rs.44,05,62,418/-, being the amount due as on the date of filing of the suit.

13. I find merit in the submissions advanced by Mr. Godbole. The Supreme Court in *Central Bank of India* (supra) was considering whether interest capitalized upon periodical rests assumes the character of principal. Although the opening portion of the judgment is in the context of Section 34 of the CPC, the discussion on the capitalization of interest is founded on first principles and is provision-neutral. It therefore applies to all provisions where the expression “principal” is employed, including those contained in Order XXXIV. In paragraph 35, while advertiring to the decision in *Union Bank of India* (supra), the Supreme Court observed that the judgment proceeded on the erroneous assumption that principal can never include interest, irrespective of the agreement between the parties. This assumption was expressly disapproved. Paragraphs 29 to 36 deal with Question (d) concerning the inclusion of interest in principal, and in paragraph 36, the Supreme Court unequivocally held that “interest once capitalized, sheds its colour of being interest and becomes a part of the principal.” Having considered and

disagreeing with all the submissions advanced by Mr. Setalvad, in my view, interest upon capitalization partakes the character of principal.

Issue (ii) Whether in the present case the Court must exercise its discretion in reducing the Contractual rate of Interest;

14. Mr. Setalvad, placing reliance on the decisions in *N.M. Veerappa v. Canara Bank*³ and *Soli Pestonji Majoo v. Gangadhar Khomka*,⁴ submits that the use of the word “may” in Order XXXIV Rule 11 of the CPC makes it clear that the Court is not bound to award pendente lite and subsequent interest on the “principal” at the contractual rate. He submits that this discretion subsists irrespective of whether the contractual rate is penal, excessive, or substantially unfair within the meaning of the Usurious Loans Act, 1918.

15. He further submits that while determining the rate of pendente lite and post-decree interest, due regard must be had to the value of the security. In support of this proposition, reliance is placed on the decision in *Dawoodbhai Kassamji Matiwalla v. Shaikhali Alibhoy*.⁵

16. He submits that the following circumstances warrant a reduction in the rate of pendente lite and subsequent interest:

(i) The Defendants were not the principal borrowers. The principal borrower was BPSL, and the Defendants have

³ 1998 2 SCC 317

⁴ 1969 1 SCC 220

⁵ ILR 1953 Bom 29

not derived any benefit from the amounts advanced by the Plaintiff.

(ii) There were continuous, without-prejudice settlement discussions between the parties, which, however, did not fructify.

(iii) The suit is at a nascent stage. Trial has not commenced. The Plaintiff has taken no effective steps to have the suit proceeded with, thereby permitting interest to continue to mount.

(iv) The Defendants, solely with a view to bring quietus to the dispute without entering upon the merits of the defences available to them, have filed the present Interim Application seeking redemption, thereby seeking to curtail the entire trial.

(v) Even otherwise, the Plaintiff stands to recover more than double the principal amount advanced, and has not suffered any demonstrable loss.

(vi) An amount of Rs.12,63,24,478/- has admittedly been received by the Plaintiff during the period between 31st March 2012 and 30th September 2014.

17. He submits that in the aforesaid circumstances, this Court ought to exercise the discretion vested in it under Order XXXIV Rule 11 of the CPC to reduce the rate of pendente lite and post-decree interest.

18. In support of the submission that Courts have, in appropriate cases, reduced the rate of interest notwithstanding contractual stipulations, reliance is placed on the following decisions:

- i. N.M. Veerappa vs. Canara Bank: 1998 2 SCC 317
- ii. Soli Pestonji Majoo VS. Gangadhar Khomka :1969 1 SCC 220
- iii. LIC of India vs. Vaila Lakshmi Bai :2003 SCC Online

AP 163

- iv. Anaparthi Satyanarayana VS. Majeti Panduranga Rao : 2022 SCC Online AP 696
- v. Dawoodbhai Kassamji Matiwalla VS. Shaikhali Alibhoy : ILR 1953 Bom 29
- vi. Kalaanjaneya vs. K Shakshavali : 2023:KHC-D:8897
- vii. Srinivasavarachariar & Ors VS. Gopal Menon : 1966 SCC Online SC 250
- viii. M. Venkata Reddy vs. SBI : 2024: APHC:22059
- ix. PNB vs. Prem de Vastra : 2000 SCC Online Del 882

19. *Per contra*, Mr. Godbole submits that the present suit is one for foreclosure under Order XXXIV Rule 2 of the CPC and not a suit for redemption, as contended by the Defendants. He submits that the Defendants cannot claim a reduction of interest as a matter of right. The power under Order XXXIV Rule 11 of the CPC is discretionary and its existence is not in dispute. He submits that discretionary relief can be granted only where the facts of the cases relied upon are substantially identical. In the present case, the conduct of the party seeking such discretion assumes decisive significance and warrants close scrutiny.

20. Mr. Godbole submits that to persuade the Court to exercise discretion under Rule 11(a) and award interest at a rate lower than the contractual rate, the mortgagor must plead and establish circumstances justifying a lenient view. Such circumstances, according to him, would include: (i) cogent material demonstrating

such dire financial incapacity of the borrower as would render performance of the contract impossible; and (ii) conduct of the borrower reflecting honesty, fairness, and bona fides in its dealings with the lender. Reliance is placed on the judgment of the Karnataka High Court in *Syndicate Bank v. M. Jeevandar Kumar*⁶, particularly paragraphs 16 to 20 thereof.

21. He submits that while the existence of discretionary power under Rule 11 cannot be disputed, the exercise of such discretion cannot be claimed as a matter of entitlement. Being equitable in nature, the exercise of discretion necessarily depends upon the facts of each case, including the conduct of the party seeking relief, the nature of the transaction, and the financial means available to such party. The very invocation of equitable discretion presupposes that the party seeking such relief establishes a factual foundation warranting its exercise.

22. It is submitted that no discretionary relief can be sought merely by citing judicial precedents unless it is demonstrated that the facts of the cases relied upon are substantially identical. In the present case, the Defendants have conspicuously refrained from placing any material facts before the Court that would justify the exercise of discretion in their favour. The facts of the case and the conduct of the party seeking equitable relief are required to be examined in their

⁶ ILR 1994 Kar 3603

entirety.

23. Mr. Godbole further submits that the conduct of the Defendants in the present case disentitles them from any relief by way of reduction of the contractual rate of interest. The present suit has been filed, inter alia, seeking a decree directing the Defendants, as guarantors, to pay a sum of Rs.44,05,62,418/- together with interest at the rate of 21% per annum in respect of the loan advanced by the Plaintiff to BPSL under the Loan Agreement dated 22nd March 2012. The suit was instituted in the year 2019. After service of summons, the Defendants first filed an Interim Application seeking condonation of delay in filing the written statement, followed by another Interim Application seeking rejection of the plaint on frivolous grounds. During inspection of documents, objections were raised as to the validity and genuineness of the Plaintiff's documents. Having adopted such inconsistent and obstructive positions, the Defendants have now, under the present Interim Application, admitted the claim and sought waiver of interest.

24. He submits that Defendant No. 2, Mr. Yash Birla, is the head of a corporate group comprising several companies, including BPSL (now in liquidation), Zenith Birla (India) Limited, Birla Shloka Edutech Limited, Birla Cotsyn (India) Limited, and other entities including Shrinika Infra Limited, Defendant No. 1 herein.

25. In the year 2012, BPSL availed of a bridge loan of Rs.21 crores from the Plaintiff for meeting urgent requirements relating to completion of a project for launching diesel pump sets and power tillers and for setting up a solar project. The loan carried an agreed rate of interest at 21% per annum with quarterly rests, payable in advance. At the relevant time, the credit rating of the group companies was extremely poor, with BPSL being rated 'CARE C' and 'CARE D', indicating a very high risk of default.

26. As security for the said loan, land bearing Survey No. 35, Hissa No. 1, CTS Nos. 569 and 568/1 to 568/13, situated at Birla Lane, Village Juhu, Taluka Andheri, Mumbai, admeasuring approximately 6,460 square metres and comprising three bungalows standing thereon, namely Bungalow Nos. 1, 3 and 4, together with an outhouse and three closed garages, and subject to right of way in favour of the owners of Bungalow No. 2 (hereinafter referred to as "the mortgaged property"), was offered as security. A registered English mortgage was executed on 22nd March 2012 along with related documents. The mortgaged property is one of the most prime properties in Juhu, abutting the seashore and comprising three bungalows. A brief note on the conduct of the Defendants, placed at Annexure D to the written submissions, demonstrates that far from making out any case for reduction of interest, the conduct of the Defendants, both

prior to and subsequent to the filing of the suit, disentitles them from any equitable relief. Even the Defendants' own assertions regarding the value of the mortgaged property demonstrate their financial capacity to discharge the mortgage in accordance with its terms.

27. Mr. Godbole further submits that Parliament has enacted the Commercial Courts Act, 2015 with the object of improving efficiency and expediting disposal of commercial disputes. The Statement of Objects and Reasons emphasises that early resolution of commercial disputes is intended to foster investor confidence in the Indian legal system. The conduct of the Defendants in protracting the present proceedings, he submits, ought to disentitle them from any relief in exercise of discretionary jurisdiction, as grant of such relief would place a premium on dilatory conduct and defeat the legislative intent underlying the enactment.

28. He further refutes the contention of the Defendants that the decision in *State Bank of India* (supra) is *per incuriam* on the issue of absence of any correlation between the value of the mortgaged property and the rate of interest. He submits that the judgment of the Supreme Court in *Jayant Verma v. Union of India*⁷ holds that the observation in paragraph 7 of *State Bank of India* (supra) cannot be treated as binding on the interpretation of Section 21-A of the Banking Regulation Act, 1949. There is no discussion or disapproval

⁷ 2018 4 SCC 743

of the principle laid down in paragraph 8 of the said judgment, which is the principle relied upon by the Plaintiff.

29. In the aforesaid circumstances, it is submitted that the Defendants' Interim Application is liable to be dismissed and that the Plaintiff is entitled to a decree on admission in terms of prayer clauses (a) to (c) of the plaint, based on the unequivocal admissions contained in Interim Application (L) No. 27265 of 2024 filed by the Defendants.

30. I find merit in the submissions advanced by Mr. Godbole. Order XXXIV Rule 11 of the CPC vests a discretion in the Court to provide for payment of interest at a rate lower than the contractual rate on the amount found or declared due under a preliminary decree. Clause (a) of Rule 11 deals with interest payable up to the date on or before which payment is ordered under the preliminary decree, commonly referred to as the date fixed for redemption. Clause (b) of Rule 11 governs interest payable thereafter, that is, from the date fixed for redemption until realization or actual payment.

31. A plain reading of Rule 11(a) indicates that the discretion conferred on the Court while awarding interest in mortgage suits operates at two levels. First, where no rate of interest is stipulated in the contract, the Court may award interest at such rate as it deems reasonable. Second, even where the contract stipulates a rate of

interest, the Court retains a discretion to award interest at a rate different from the contractual rate. However, the existence of such discretion does not imply its routine exercise. The power to override the contractual rate must be exercised sparingly, on sound judicial principles, and for cogent reasons.

32. This discretionary power is a result of the statutory amendment to Order XXXIV Rule 11 introduced by Act 21 of 1929. The scope and nature of this discretion was recognised by the Federal Court in *Jai Gobind Singh & Ors. v. Lachmi Narain Ram & Ors*,⁸ and subsequently followed in *Soli Pestonji Majoo* (Supra). The same position stands affirmed by the Supreme Court in *N.M. Veerappa* (supra).

33. Where the contract fixes the rate of interest, the normal rule is that the Court will respect the contractual bargain and award interest at the agreed rate up to the date fixed for redemption, as contemplated under Rule 11(a). Any departure from the contractual rate, therefore, must be an exception and not the rule. The discretion under Rule 11(b), which relates to interest payable after the passing of the preliminary decree, is comparatively wider, though it too must be exercised on well-recognised equitable considerations.

34. In the present case, it is not in dispute that the Loan Agreement

⁸ AIR 1940 FC 20

dated 22nd March 2012 expressly stipulates interest at the rate of 21% per annum with quarterly rests. The contract further provides for additional interest at the rate of 2% per mensem, with monthly rests, for the period of default.

35. A mortgage arising out of a commercial transaction stand on a different footing from a mortgage in a non-commercial context. Though Section 34 of the Code has no application to mortgage decrees, it is significant that the Legislature, by the amendment of Section 34 in 1976, has consciously excluded any discretion to reduce the contractual rate of interest in commercial transactions. This legislative policy underscores the principle that commercial bargains, particularly between parties dealing at arm's length, are ordinarily to be enforced according to their terms.

Order XXXIV Rule 11(a) does not permit waiver of Interest

36. In my view, Order XXXIV Rule 11(a) does not contemplate or permit a complete waiver of interest in a mortgage decree. Any such interpretation would run contrary to the plain language of the provision. It would also render Order XXXIV Rule 2 otiose and unworkable, and would amount to the Court rewriting the statute, contrary to legislative intent.

37. Order XXXIV Rule 11 merely regulates the manner and rate at which interest is to be awarded. Order XXXIV Rule 2, on the other

hand, mandates the passing of a preliminary decree directing accounts to be taken of what is due to the mortgagee and declaring the amount so due, which necessarily comprises both principal and interest on the mortgage. Rule 11 cannot, therefore, be read in isolation but must be construed harmoniously with Rules 2 and 3 of Order XXXIV. Significantly, the Defendants have not instituted any independent suit for redemption.

38. The legislative intent governing the award of interest in commercial transactions is further reinforced by the amendment to Section 34 of the Code by the Code of Civil Procedure (Amendment) Act, 1976. By the introduction of the proviso to Section 34, the Legislature expressly empowered Courts, in commercial transactions, to award post-decree interest at a rate exceeding 6% per annum, subject to the contractual rate. This marked a conscious departure from the earlier regime, under which post-decree interest was capped at 6%. Though Section 34 does not strictly apply to mortgage decrees, the underlying legislative policy is unmistakable—commercial obligations are to be enforced in accordance with their terms, and default is to attract stringent consequences. This policy is echoed in the scheme and objects of the Commercial Courts Act, 2015, which seeks expeditious and effective enforcement of commercial rights.

The Master Circular of Reserve Bank of India dated 2nd July 2012 provides for charging of interest at monthly rests and charging of penal rate of Interest.

39. Clause 2.9.1 of the Master Circular dated 2nd July 2012 provides as under:

“2.9 Charging of Interest at Monthly Rests”

2.9.1 Banks were advised to charge interest on loans/advances at monthly rests with effect from April 01, 2002. Interest at monthly rests shall be applied in case of all new and existing term loans and other loans of longer / fixed tenor. In the case of existing loans of longer / fixed tenor, banks shall move over to application of interest at monthly rests at the time of review of terms and conditions or renewal of such loan accounts, or after obtaining consent from the borrower.”

40. Further, Clause 2.5 of the Master Circular dated 2nd July 2012 provides as under:

“2.5 Levying of Penal Rates of Interest”

Banks are permitted to formulate a transparent policy for charging penal interest with the approval of their Board of Directors. However, in the case of loans to borrowers under priority sector, no penal interest should be charged for loans up to Rupees 25,000. Penal interest can be levied for reasons such as default in repayment, non-submission of financial statements, etc.”

Interplay between Prime Lending Rate and Lending Rate

41. It would be apposite to briefly record the submissions advanced by Mr. Godbole explaining the manner in which banks and financial institutions determine lending rates, taking the Prime Lending Rate as the base, and the methodology ordinarily followed for pricing credit.

42. He submits that the Prime Lending Rate constitutes the foundational benchmark for loan pricing, representing the minimum rate at which a bank lends to its most creditworthy borrowers. To this base rate, banks add a risk premium or spread, which reflects the credit risk associated with the particular borrower and transaction. The risk premium represents the additional return required by the lender over and above a risk-free investment, such as government securities, to compensate for the possibility of default.

43. He submits that a borrower's credit rating is a key determinant of the risk premium charged. Credit ratings assess the likelihood of default and directly influence the cost of borrowing. Borrowers with higher credit ratings attract lower risk premiums and correspondingly lower interest rates, whereas borrowers with lower credit ratings are charged higher risk premiums to offset the increased probability of non-payment.

44. Credit ratings, he submits, are assigned by recognised rating agencies based on an assessment of factors such as repayment history, existing debt obligations, cash flows, and overall financial stability. A high credit rating signifies strong creditworthiness and a low risk of default, while a low rating indicates elevated credit risk. The credit risk premium or credit spread is thus the additional interest component built into the lending rate to compensate the lender for assuming such risk.

45. Lenders use risk-based pricing, where they adjust the loan interest rate based on the perceived risk of the borrower.

- High Credit Rating (Low Risk): A borrower with a good credit rating is considered a lower credit risk. This results in a smaller or lower credit risk premium being added to the Prime Lending Rate of the Lender.
- Low Credit Rating (High Risk): A borrower with a poor credit rating is seen as a higher credit risk. They will be assigned a higher risk premium, leading to a significantly higher interest rate on their loan.

In essence, credit ratings act as a key determinant in a lender's decision to charge a risk premium to the Prime Lending Rate.

46. It is submitted, and not disputed, that the credit rating of the principal borrower, BPSL, at the time of availing the loan was CARE

“C”, which denotes the lowest rating category, signifying a very high risk of default in the timely servicing of financial obligations.

47. The reliefs sought in Interim Application (L) No. 27265 of 2024 proceed on an erroneous premise. The present suit is a foreclosure suit seeking a decree for Rs.44,05,62,418/- together with interest at the rate of 21% per annum from the date of filing of the suit till realization, in addition to further contractual interest, and, in the event of default, enforcement and sale of the mortgaged property. It is, therefore, not a suit for redemption governed by Order XXXIV Rule 7, as contended by the Defendants.

48. The Defendants' offer to pay a sum of Rs.44,05,62,418/- with interest computed only on the original principal of Rs.21 crores is wholly inconsistent with the Plaintiff's claim for interest on the amount found due as on the date of filing of the suit. A preliminary decree cannot be sought on the basis of an amount unilaterally chosen by the Defendants, in derogation of the amount claimed by the Plaintiff and supported by the contractual terms.

49. Prima facie, the conduct of the Defendants, as borne out from the pleadings and record, disentitles them from any equitable relief of reduction of interest, particularly after the lapse of more than a decade from the date of borrowing. A bridge loan of Rs.21 crores was availed by BPSL in the year 2012 at a contractual rate of 21% per

annum with quarterly rests, payable in advance, and secured by an English mortgage over the mortgaged property.

50. Persistent defaults in payment of interest culminated in the filing of the suit in the year 2019. Thereafter, the Defendants failed to file their written statement within time, sought condonation of delay, filed an application for rejection of the plaint, raised objections during inspection of documents, and denied liability in their written statement. Such conduct has effectively deprived the Plaintiff of the amounts legitimately due under the contract for a prolonged period.

51. It is only after more than a decade from the date of disbursement of the loan, and nearly five years after institution of the suit, that the Defendants have offered to deposit the amount claimed while simultaneously seeking concessions on interest under Order XXXIV Rule 11. I find merit in the submission of Mr. Godbole that the present attempt appears to be motivated by the desire to secure release of the mortgaged property at a time when property values have substantially appreciated.

52. In *State Bank of India v. Yasangi Venkateswara Rao*⁹, the Supreme Court has authoritatively held, particularly in paragraph 8 thereof, that the value of the security has no correlation with the rate of interest chargeable under a mortgage, since the mortgage is

⁹ (1999) 2 SCC 375

intended only as a security for repayment of the loan. The said principle has been consistently followed by various High Courts, including in *Bank of India v Laldhar Tiwari & Ors*¹⁰.and *Raja Modern Rice Mill & Anr. v. Tamil Nadu Industrial Investment Corporation Ltd. & Anr.*¹¹

53. In view of the above legal position, the reliance placed by the Defendants on *Dawoodbhai Kassamji Matiwalla (supra)* is misconceived. Any approach that seeks to justify reduction of interest solely on the basis of the value of the security would lead to anomalous results, benefitting borrowers with high-value security while prejudicing lenders in cases where the security is of lesser value.

54. At no stage have the Defendants pleaded that the contractual rate of interest was excessive, unconscionable, or otherwise contrary to law. Such a plea is conspicuously absent from the written statement. The explanations now offered, namely liquidity constraints and the pendency of multiple litigations, do not constitute exceptional circumstances warranting any reduction or waiver of pendente lite or future interest. A party that has neither discharged the principal nor serviced interest for over a decade cannot, in the absence of compelling equities, seek indulgence of this

10 2000 SCC Online Cal 479

11 2022 SCC OnLine Mad 5501

Court for reduction of interest. The timing and tenor of the present IA, seeking redemption after prolonged default, indicate that the relief is sought primarily to secure release of the mortgaged property at a time when its market value has appreciated exponentially, rather than to bona fide discharge contractual obligations.

55. In view of the aforesaid discussion, the following Order is passed:

::ORDER::

1. Interim Application (L) No.27265 of 2024 by the Defendant is dismissed.
2. The Plaintiff is entitled to a decree on admission in terms of prayer clauses (a) (without additional interest provided under the Loan Agreement) to (c) of the plaint.
3. Defendants to pay the decretal amount to Plaintiffs within a period of four weeks from the date of uploading of this Judgment on the website of Bombay High Court.
4. In the meantime, Defendants shall not in any manner sell, dispose of, alienate, transfer, or create any right, title or interest in the suit property consisting of four bungalows known as Birla House situated in Birla Lane including ownership of land bearing Survey No. 35, Hissa No.1, CTS Nos.

569,56811 to 568113, situated at Birla Lane, Village Juhu, Taluka Andheri, Mumbai, admeasuring 6460 square meters or thereabout along with all the structures situated on the said land.

5. Preliminary decree shall be drawn up accordingly.
6. List the Commercial Suit No. 270 of 2019, along with Interim Application No. 2874 of 222, Interim Application (L) No.22023 of 2022, Interim Application No.5998 of 2024 and Notice of Motion No.2454 of 2019 on 24th February 2026.

(KAMAL KHATA, J.)

Judgements Relied:

1. Union Bank of India v. Dalpat Gaurishankar Upadyay AIR 1992 Bom 482.
2. Central Bank of India v. Ravindra & Ors. 2002 1 SCC 367.
3. N.M. Veerappa v. Canara Bank 1998 2 SCC 317.
4. Soli Pestonji Majoo v. Gangadhar Khomka 1969 1 SCC 220.
5. Dawoodbhai Kassamji Matiwalla v. Shaikhali Alibhoy ILR 1953 Bom 29.
6. Syndicate Bank v. M. Jeevandar Kumar ILR 1994 Kar 3603.
7. Jayant Verma v. Union of India 2018 4 SCC 743
8. Jai Gobind Singh & Ors. v. Lachmi Narain Ram & Ors AIR 1940 FC 61.
9. State Bank of India v. Yasangi Venkateswara Rao (1999) 2 SCC 375.

10. Bank of India v. Laldhar Tiwari 2000 SCC OnLine Cal 479.
11. Raja Modern Rice Mill & Anr. v. Tamil Nadu Industrial Investment Corporation Ltd. & Anr 2022 SCC OnLine Mad 5501.