
(1942) 07 MAD CK 0042
In the Madras High Court

A. Krishnaswami Vandayar

APPELLANT

Vs

The Union Bank, Ltd.

RESPONDENT

Date of Decision : 01-07-1942

Acts Referred:

Citation : AIR 1943 Mad 10 : (1942) 55 LW 560 : (1942) 2 MLJ 346

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises a "question relating to the effect of Section 10(2)(iii) of Madras Act IV of 1938 which excludes from the

purview of Sections 8 and 9 of the Act any liability in respect of any sum due to a public company or a scheduled bank, if the interest payable in

respect of the liability is not more than nine per cent, per annum.

2. The facts of the present case so far as they are necessary are that the appellant borrowed from the plaintiff-bank by way of a, standing

overdraft, secured by the execution of promissory notes. It is common ground that the arrangement was that the appellant should pay interest at the

current rate charged by the bank. The rate at the inception of the dealings was nine per cent. It never exceeded nine per cent. and in later years it

fell to seven per cent. The understanding was that "every half year the interest should be calculated and in accordance with the practice followed in

bank accounts it was treated as having been paid and advanced to the debtor. This arrangement was embodied in a pass-book which passed

between the debtor and the bank. There was no express stipulation for the payment of compound interest. But it is argued, firstly, that the

arrangement between the parties amounts to a contract for borrowing at nine

per cent. compound interest, secondly that the words "" not more than nine per cent. per annum"" in Section 10(2)(iii) of the Act mean ""not more than nine per cent, per annum simple."" Reliance has been placed upon a decision of King,, J., in V. Srinivasachariar and Another Vs. The Conjeevaram Hodgsonpet Dharmarakshaka Nidhi, Limited, . The report of that case does not make it clear whether or not the default rate stipulated, in the contract added on to the simple rate in the contract would amount to more than nine per cent. But the learned Judge seems to have estimated the rate of interest with reference to the"" total amount due at the time of the suit, a procedure regarding the soundness of which we are with great respect, not convinced. However, we doubt very much whether, when a client of a bank borrows under a standing overdraft, agreeing to pay the current rate of interest and the bank, following the usual procedure in calculating interest periodically, treats the interest as paid and the amount due for this interest as an addition to the overdraft, such a contract can properly be described as a contract for borrowing at compound interest. But, assuming for the moment that it can be so regarded, we do not think that the words ""interest payable in respect of the liability is not more than nine per cent. per annum"" should be taken as meaning not more than ""nine per cent. per annum simple interest"". It is to be noted that where the Legislature in this statute intended to indicate simple interest, the words simple interest"" are found and where the word ""interest"" is found without any qualification, it is in other sections of the Act clearly intended to cover both simple and compound interest. Thus in Section 8, when we find that all interest outstanding on 1st October, 1937, is to be cancelled, clearly the term means interest simple or compound. So also in the later clauses of that section. In Section 9 when it is provided that interest shall be calculated at ""five per cent. per annum simple interest, credit being given to all sums paid towards interest"", the last word must clearly cover interest simple or compound and the earlier phrase is clearly confined to simple interest. Similarly in Section 12 the rate at which interest is to be scaled down is expressly defined in terms of simple interest and so also in Section 13. In Section 10, however, the liabilities of banks are excluded from the purview of the Act if the interest payable is not more than nine per cent. per annum. Presumably the Legislature must have been aware

that interest charged by banks on overdraft accounts is normally treated in the manner in which the present account has been treated. It would to

our mind be an anomaly to assume that the Legislature intended by this phrase to exclude interest charged in the ordinary way in which a bank

ordinarily charges it.

3. In the result, therefore, we see no reason to interfere with the lower Court's decision and dismiss the appeal with costs.