(1937) 12 PAT CK 0002

In the Patna High Court

Ajodhya Prasad Singh and after his Death Raghubans Prasad Singh	APPELLANT
Vs	
Ramgulam Sahu and Others and Abdhesh Kumar Singh and Others	RESPONDENT

Date of Decision : 01-12-1937

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 44
Usurious Loans Act, 1918 — Section 3

Citation : 174 Ind. Cas. 197

Hon'ble Judges : Wort, J;Manohar Lal, J

Bench : Division Bench

Judgement

Wort, J.—The plaintiff who is the respondent in this case obtained judgment against the defendant appellant for the sum of Rs. 32,634-6-0 on a hand-note dated May 24, 1931. This hand-note was signed by the defendant in renewal of a previous hand-note of June 7, 1928, and that in turn was a renewal of a former hand-note of 1925 which again was in renewal of a hand note, dated August 10, 1922. The question in this appeal is whether the defendant is entitled to relief under the Usurious Loans Act which the Judge in the Court below has declined to give him. There is a cross-appeal with regard to interest pendente lite and interest after the date of the suit with which I shall in a imment deal.

2. Briefly stated the facts are these. A sum of Rs. 10 000 was borrowed by the defendants in the year 1922, a hand-note was signed and interest under the hand note was at the rate of 1 per cent, per mensem. In 1925 the former hand-note was renewed by the execution of another hand-note in which it was stated that a sum in excess of the principal and interest on the former hand-note was due. This was made up by the plaintiff charging the defendants compound interest and not simple interest according to the former hand-note. Again in 1928 there was a renewal of the hand-note of 1925 and again compound interest and not simple interest was charged. Then we come to the hand note on the footing of which judgment has been obtained in this case, that is to say the hand-

note of 1931. In that hand-note which is dated May 24, it is staled that "on account being made up to this date, Rs. 25,096 is found payable by us under the hand note, dated Asarah 4, 1335, for Rs. 19,543, after deducting payments, for which this hand-note is executed"; interest is again reserved at the rate of 1 per cent, per mensem as I have stated. It is upon the footing of that hand-note that judgment has been obtained in this case.

3. Shortly stated the argument advanced on behalf of the appellant by the Advocate-General is that the amount charged by way of compound interest is excessive and that the transaction was substantially unfair and that relief, therefore, should be given u/s 3 of the Usurious Loans Act of 1918. A further argument is addressed to us on the footing of Section 44 of the Negotiable Instruments Act which provides: "When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which the holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced". As I understand the argument of the Advocate-General, it is this that the consideration for the renewals in each case, therefore, the renewal of 1931 has failed, inasmuch as the former hand-note of which the renewal was granted reserved simple interest only and not compound interest and that the consideration, therefore, has failed to the extent of the difference between simple interest and compound interest. That argument, in my opinion, cannot be supported. The position is this that when the renewal was granted in 1931, a new contract was entered into and, although not so expressed, the consideration for the renewal was the implied agreement of the plaintiff not to sue on the former hand-note. The Advocate General contends that consideration is stated to be the amount due on the former hand note with interest and it is not open to the plaintiff now to contend, as he had not so stated either in his pleadings or in his evidence, that the consideration was forbearance, to sue on the former debt. In my judgment, as I have already stated, that argument cannot be supported. No authority is needed for the proposition that consideration need not be stated in the hand-note, and in this case it is perfectly clear from the dealings between the parties that the real consideration for the renewal; in each instance was the forbearance to sue. That being so, there was nothing in law to prevent the defendants from entering into a new agreement evidenced by the execution of the new hand-note and agreeing to pay compound interest in due of simple interest. The weakness of the plaintiff''s case so far as this matter is concerned, is that the plaintiff alleged an agreement from the commencement of the transaction, that is to say, the date of borrowing the original Rs. 10,000, to pay compound interest and not simple interest. That evidence should have been excluded as the original hand-note and the subsequent hand-notes are quite clear that the agreement between the parties was to pay simple interest. But that does not prevent, as I have already held; the defendants when taking the account and entering into a new transaction, from: agreeing to pay compound interest on the amount due. The next question

is whether the defendants are entitled to relief u/s 3 of the Usurious Loans Act. One of the leading cases in England with regard to this matter is the case of Samuel v. Newbold (1906) A.C. 461 : 75 L.J. Ch. 705 : 95 L.T. 209 : 22 T.R. 703. It is unnecessary, however, to refer to the speeches of the Law Lords in that case because much of language which was used in defining the terms of the Money-lenders Act of 1900 which was under consideration in that case has been reproduced in the Act with which we are concerned. Clause 3(1)(a) provides "that the interest is excessive." The explanation says ''Excessive'' means excess of that which the Court deems reasonable having regard to the risk at the date of the loan. The further explanation is that excessive interest may of itself be sufficient evidence that the transaction was unfair. Taking the latter point, there is nothing, in my opinion, which will entitle us; to hold that interest at 12 percent, compound interest per annum in this province is substantially unfair. No authority is needed for that statement. Cases are numerous and the matter in my judgment is perfectly clear. So far as regards the question whether the transaction or excessive interest was substantially unfair having regard to the circumstances of the case, the learned Judge in the Court below has pointed out in a brief statement that there was no evidence upon which any relief in this regard could be granted. His decision under issue No. 9 is as follows:

No question of application of the Usurious Loans Act arises in this suit, in view of the fact that the rate of interest is quite moderate.

4. That in my opinion concludes the matter. As there was no evidence in the case relating to the circumstances of the parties which would entitle either this Court or the Judge in the Court below to come to the conclusion that having regard to those circumstances the transaction was substantially unfair.

5. In my opinion, therefore, the appeal fails and must be dismissed with costs,

6. As regards the cross-appeal, the matter of interest pendente, lite and interest after the date of the suit is a matter within the discretion of the learned Judge, and having regard to the fact that judgment has been obtained in this case for a sum of Rs. 32,000 odd for an original loan of Rs. 10,000 there is nothing upon which we could come to the conclusion that the learned Judge in exercising his discretion has not exercised it judicially. The cross-appeal also fails and must be dismissed with costs.

Manohar Lal, J.

7. I agree.

