
(1982) 03 MAD CK 0033
In the Madras High Court

Indian Bank

APPELLANT

Vs

V.A. Balasubramania Gurukkal and Others

RESPONDENT

Date of Decision : 31-03-1982

Acts Referred:

Usurious Loans Act, 1918 — Section 3(1)

Citation : (1984) 56 CompCas 41 : (1982) 95 LW 477

Hon'ble Judges : V. Ratnam, J;P.R. Gokulakrishnan, J

Bench : Division Bench

Advocate : A.L. Somayajee, for Aiyar and Dolia and A.S. Thambuswamy, for the Appellant; R.S. Venkatachari, for the Respondent

Judgement

Ratnam, J.—This civil revision petition has come before us on a reference made by Sethuraman J. The petitioner is a nationalised bank

carrying on the business of banking, subject to the provisions of the Banking Regulation Act, 1949, and the control of the RBI. On October 12,

1971, the petitioner advanced to respondents nos. 1 to 3 herein a sum of rs. 1,850 as agricultural medium term loan, which respondents Nos. 1 to

3 agreed to repay with interest at 4 1/2 per cent. per annum over the official rate of the RBI with a minimum interest of 10 1/2 per cent. per annum

with quarterly rests. A promissory note, exhibit A-1, dated October 12, 1971, was also executed by respondents Nos. 1 to 3 along with the

fourth respondent as a co-obligant. On October 1, 1974, the respondents wrote under exhibit A-3 to the petitioner acknowledging their liability to

repay the amounts as agreed, but nevertheless, no amounts were paid. Thereafter, a notice, exhibit A-4, was issued by the petitioner on May 20,

1975, which was received by all the respondents to which only the first respondent replied with exhibit A-9 on June 28, 1975, praying for some

time to repay the amount due to the petitioner. In spite of this, the respondents did not make any payment, which obliged the petitioner to issue

another notice under Exhibit A-10 on January 16, 1976, to the respondents. Even this notice evoked response only from the first respondent, who

in his reply under exhibit A-15 dated January 29, 1976, prayed for time till April 15, 1976, for paying the amount and since no payment was made

even thereafter by the respondents to the petitioner, the petitioner instituted O.S.No. 386 of 1977 in the District Munsif's court, Thiruvannamalai,

against the respondents herein for the recovery of a sum of Rs. 2,233.10 towards principal, and interest due under the promissory note, exhibit A-

1, In the course of the suit, the petitioner referred to its being a banking company carrying on business under the provisions of the Banking

Regulation Act and the execution of the promissory note by respondents nos. 1 to 4 agreeing to pay interest over the official rate of the RBI with

the minimum of 10 1/2 per cent. per annum with quarterly rests and proceeded to state that though the respondents were agriculturists, yet the

principal and interest, as agreed to be paid by the respondents, would be recoverable in accordance with the statement of accounts filed.

2. In the written statement filed by the first respondent, he admitted having borrowed from the petitioner on the basis of exhibit A-1, but pleaded

that with the borrowed amount and his own, he carried on agricultural operations for the last five years and sustained loss and that was responsible

for his inability to repay the amount due to the petitioner. The charging of interest on interest as disclosed by the memo of calculation, according to

the first respondents, was not valid, in law. The correctness of the first respondents, was not valid in law. The correctness of the calculation was

also disputed and the amounts repaid, according to the first respondent, should be credited towards principal. A plea that the claim was barred by

limitation was raised by the first respondent. The written statement of the first respondent wound up with the plea that as the loan was an

agriculture medium term loan and as he had sustained loss in agricultural operations, no liability could be fastened on him in respect of the loan.

Respondents nos. 1 to 4 herein adopted the aforesaid defenses raised by the first respondent.

3. On a consideration of the evidence, the learned, District Munsif, Thiruvannamalai, found that the respondents had acknowledged their liability to

pay the amount as claimed by the petitioner-bank and, therefore, the claim is not barred by limitation. Dealing with the right of the petitioner to recover interest at the rate claimed, the learned District Munsif was of the view that since the respondents are agriculturists the provisions of the Usurious Loans Act, 1918, as amended by the Tamil Nadu Act 8 of 1937 (hereinafter referred to as "the Usurious Loans Act") have to be applied and that simple interest at 10 1/2 per cent. per annum would be fair and reasonable and on this basis, after giving credit to the payments made by the respondents, the petitioner bank was granted a decree for a sum of Rs. 1.651.25 with proportionate costs. Aggrieved by this, the petitioner preferred an appeal in A.S.No. 17 of 1979, before the sub-court, Tiruvananthapuram, claiming that a decree as prayed for should have been granted in this favour. The only point debated in the appeal was as regards the usurious nature of the rate of interest claimed by the petitioner bank, particularly in view of the liability of nationalised banks like the petitioner, to charge lower rates of interest owing to the directions issued from time to time by the RBI under the provisions of the Banking Regulation Act. Dealing with this question, the appellate court held that a nationalised bank is not a social parasite to suck the blood of the common man in the form of interest, that in the case of agriculturists like the respondents, different considerations would arise, that the rate of interest charged by the petitioner was excessive and that 10 1/2 per cent. per annum simple interest as allowed by the trial court would, in the circumstances be fair and reasonable. On this conclusion, the appeal was dismissed against which this civil revision petition has been preferred.

4. Sethuraman J. before whom the civil revision petition initially came up for hearing, felt that the question, whether the rates of interest charged by the nationalised banks functioning within the parameters of the Banking Regulation Act would fall within the scope of the provisions of the Usurious Loans Act, is an important one, which is likely to frequently arise with reference to every such bank and therefore, requires an authoritative decision by a Division Bench and that is how the matter has come up before us.

5. Before proceeding to consider the matter on its merits it would be convenient at this stage to deal with a preliminary objection raised by Mr.

R.S.Venkatachari, the learned counsel for the respondents as regards the maintainability of this civil revision petition. He submitted that the suit in

this case laid on the promissory note for recovery of amounts not in excess of Rs. 3,000 would be cognisable by a court of small causes and that

as the only question debated in the appeal related to the rate of interest payable, no question of law arose and, therefore, the appeal in A.S.No. 17

of 1979, was not competent under s. 94(6) of the CPC. Reliance in this connection was also placed on K. Joseph Thompson v. Nallathampi

Nadar [1980] II ML J 389. In meeting this objection the learned counsel for the petitioner drew our attention to s. 96(4) of the CPC and stated

that the question whether notionalised banks, obliged to charge interest at specified rates in accordance with the circulars and derivatives

periodically issued by the RBI under the provisions of the Banking Regulation Act, can be taken out of the category of cases where the

presumption regarding excessive nature of interest under the provision of the Usurious Loans Act can be raised, is a question of law and that only

that question was raised and debated before the lower appellate court and, therefore, the appeal did involve a question of law. Our attention in this

connection has also been drawn to the decision in Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, .

6. At the outset, it has to be remembered that the civil revision petition itself has come up before us, on a reference, by a learned judge, who felt

that the importance of the question raised is such that it deserves a decision by the Division Bench. Even apart from this, a perusal of

the memorandum of appeal filed before the court below and the judgment therein discloses that the appeal was filed and argued on a question of

law, viz., the applicability of the provisions of the Usurious Loans Act, to nationalised banks functioning under the provisions of the Banking

Regulation Act and the scope and effect of s. 3 and the provisions thereunder. Besides, this very question was argued at great length before this

court by the learned counsel for the respondents. No objection regarding the incompetence of the appeal on the score that it involved a question

of fact, was ever attempted to be raised by the respondents in the court below. We are, therefore, of the view that it is too late to urge that no

question of law arose in the appeal before the court below. We are satisfied that the appeal did raise a question of law and was rightly on such a

question of law, entertained under s. 96(4) of the CPC.

7. The decision in K. Joseph Thompson v. Nallathampi Nadar [1980] II MLJ 389, relied on by the learned counsel for the respondents has no

application whatever to the instant case. In that case, in answer to a claim for the recovery of the sum of Rs. 758.42 as principal and interest of Rs.

98.54 at 12 per cent., per annum from May, 25, 1976 on the footing that this amount was recoverable in respect of payment made for 21 months

as premium on the cessation of the conduct of the chit later, the principal defense raised was that the plaintiff had taken the chit and payment was

also made a to him on November 18, 1976, and a promissory note was also executed for the balance of the installments payable in respect of the

Chit and, therefore, the amount was not recoverable. The learned District Munsif, Kuzhiturai, accepts the oral evidence in support of the defense

and dismissed the suit. However, on appeal, the learned subordinate judge disbelieved the oral evidence on behalf of the defendants and accepted that

of the plaintiff and that both the defendants were liable for the suit amount and decreed the suit. On further revision under s. 115 of the CPC, an

objection was raised that in view of s. 94(4) of the CPC, the appeal before the learned subordinate judge, Kuzhiturai was incompetent and that it

was also not open to the learned subordinate judge to go into question of fact. Dealing with this objection the learned judge first proceeded to

consider the question whether suit was of the nature cognizable by a court of small cause and, after finding that it was so, the learned judge further

held that in view of s. 96(4) of the CPC, the appellate court had no jurisdiction to go into the evidence and other question of facts as in a regular

first appeal. In that view, that order of the appellate court was set aside. In the instant case, the question that had been raised and considered by

the appellate court, as stated earlier, is one of law relating to the impact of the provisions of the Usurious Loans Act on the advance made by

nationalised banks to persons like the respondents. The decision in Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, , relied

on by the learned counsel for the petitioner, dealt with a question of an objection to territorial jurisdiction under s. 21 of the CPC and did not relate

to s. 96(4) of the CPC, as in this case. Therefore, that decision has no application to this case. We have, therefore, no hesitation in holding that the

preliminary objection raised by the learned counsel for the respondent is without substance and in overruling the same.

8. We now proceed to a consideration of the meat of the matter on the merits. The only question which we are called upon to decide is whether

the charging of interest at certain rates by a nationalised bank functioning under the Banking Regulation Act in accordance with the circulars and

directives issued by the RBI periodically, would fall within the scope of the provisions of the Usurious Loans Act. In attempting to sustain Loans

Act will not be applicable the learned counsel for the petitioner first submitted that there is an irreconcilable inconsistency between the provisions

of the Banking Regulation Act 1949, and the provisions of the Usurious Loans Act and that the provisions of the Banking Regulation Act being

later in point of time will prevail over the provisions of the Usurious Loans Act. It was next submitted that even assuming that the provisions of the

Usurious Loans Act would apply, yet on proof of special circumstances which may even be traced to a statute justifying the rate of interest viz., the

particular rate of interest charged being in accordance with the directions and circulars issued by the RBI from time to time under the provisions of

the Banking Regulation Act the provisions of the Usurious Loans Act cannot be invoked.

9. On the other hand the learned counsel for the respondents submitted that S. 2 of the Banking Regulation Act, 1949 will not preclude the

applicability of the provisions of the Usurious Loans Act and that the provisions of Usurious Loans Act having been enacted as a valid piece of

beneficial legislation to free agriculturists from the burden of indebtedness will have to prevail over the provisions of the Banking Regulation Act,

1949. An attempt was made to say that the circulars and directives issued by the RBI acting under the provisions of the Banking Regulation Act,

1949, would be in the nature of executive orders or instructions to the concerned banks and cannot override the specific statutory provisions of the

Usurious Loans Act. The learned counsel further contended that in all cases where the borrower is an agriculturist and a high rate of interest is

charged the presumption that the transaction is unfair is conclusive and that thereafter there is no question of the existence of any special

circumstances which would justify the charging of a high rate of interest as otherwise the very abjection of the beneficial legislation would be

defeated. The construction to be adopted according to the learned counsel for the respondents must be a generous one consistent with the object

of the legislation and if so construed no exception as such can be carved out in favour of nationalised banks from the operation of the provisions of

the Usurious Loans Act.

10. In reply to these connotation the learned counsel for the petitioner submitted that specific provisions has been made in ss.2 and 21 of the

Banking Regulation Act, 1949 to regulate the interest on advances made by the nationalised banks and to the extent to which the provisions has

been so made no other provisions could either apply or prevail and therefore the provisions of s. 21 of the Banking Regulation Act alone relating to

the regulation of the rate of interest will govern. It was also further submitted that special circumstances may be facts which have to be pleaded or

proved or even be regulations or instruction issued pursuant to a statute. In this context the learned counsel for the petitioner contended that the

petitioner is a nationalised banks governed by the Banking Regulation Act and is empowered to charge interest on advances in accordance with

the notifications issued by the RBI from time to time a violation of which would be visited with certain penalties. Attention was also drawn to the

circumstances that all debtors who had availed themselves of similar credit facilities from such nationalised banks were being charged the very

same rates of interest and all other banks similarly placed like the petitioner were also obliged to charge the same rate of interest in accordance

with the directions issued by the RBI from time to time. In addition it was also submitted that the provisions of the Usurious Loans Act did not

contemplate a nationalised bank or a banking company regulated by the Banking Regulations Act but only an ordinary creditor who has a freedom

of sharing different rates of interest for different types of debtors. Referring to the provisions of several State enactments dealing with debt relief the

learned counsel for the petitioner further submitted that in all these enactments passed with the avowed object of affording relief to indebted

agriculturists nationalised banks and the debts due to them have not been in any manner touched upon and that also is an indication that

nationalised banks were intended to be treated and are actually treated on a footing different from the other creditors and that would also justify the

exclusions of the nationalised banks from the preview of the provisions of the Usurious Loans Act regarding the rate of interest charged on advances.

11. Very wide in range as these arguments are it is unnecessary to deal with all of them if the limited scope of the reference is borne in mind. But in

order to answer the question referred it is necessary to notice the relevant provision of the usurious Loan's Act. The Usurious Loans Act, 1918

conferred additional power on courts to deal with cases of usurious loans of money or kind. Section 2 contains the definition of the expressions

used in that Act. Under S. 3(1), if the court has reason to believe that the interest is excessive or that the transaction was as between the parties

thereto substantially unfair the court may exercise all or any of the following powers namely, (i) to reopen the transaction take an account between

the parties and relieve the debtor of all liability in respect of any excessive interest; (ii) notwithstanding any agreement purporting to close previous

dealing and to create a new obligation reopen any account already taken between them and relieve the debtor of all liability in respect of any

excessive interest and if anything has been paid or allowed on account in aspect of such liability order the creditor to repay any sum which it

considers to be repayable in respect thereof; and (iii) set aside either wholly or in part or revise or alter any security given or agreement made in

respect of any loan and if the creditors has parted with the security order him to indemnify the debtor in such manner and to such extent as it may

deem fit: Provided that (i) in the exercise of these powers the court shall not reopen any agreement purporting to close previous dealing and to

create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the

date of the transaction and (ii) do anything which affects any decree of court. The explanation proceeds to set out the meaning of the expression

transaction"" for purposes of S. 3(1)(i) when a suit was brought about on a series of transaction. Section 3(2)(a) of the Usurious Loans Act, 1918

set out the content of the expression ""excessive"" as meaning "" in excess of that which the court demands to be reasonable having regard to the risk

incurred as it appeared or must be taken to have appeared to the creditor at the date of the Loan"". Section 3(2)(b) of the Act laid down the

circumstances to be taken into account by the court in considering the question whether the interest is "excessive" under this section. The court shall

in this connection take into account any amounts charged or paid whether in money or in kind for expenses inquiries fines, bonuses, prima,

renewals or any other charges and if compound interest is charged the periods at which it is calculated and there total advantage which may

reasonably be taken to have been expected from the transaction. Section 3(2)(c) of the Act set out the circumstances to be taken into account in

considering the question of risk like the presence or absence of security and the value thereof the financial condition of the debtor the result of any

previous transaction of the debtor by way of loan so far as they were known or must be taken to have been known to the creditor. Section 3(2)(d)

provided that in considering whether the transaction was substantially unfair the court shall take into account all circumstances materially affecting

the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities

of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor. The explanation to s.

3(2)(d) of the Act provided that interest may of itself be sufficient evidence that a transaction was substantially unfair. Section 3(3) declared the

applicability of s. 3 to all suits irrespective of the form where the recovery of a loan or the enforcement of an agreement or security in respect of a

loans or for redemption of such security was substantially sought for Under s. 3(4) the right of a bona fide transfer for value without notice were

saved. section 3(5) affirmed the additional nature of the powers by stating that nothing in s. 3 shall be construed as derogating from the existing

power or jurisdiction of any court . Section 4 declared the applicability of s. 3 to proceedings in insolvency.

12. By the Tamil Nadu Act 8 of 1937, the provision of the Usurious Loans Act, 1918 were amended. In the statement of objects and reasons for

the amendment (vide Fort St. George Gazette dated November 24, 1936 Part IV p. 360-61) it was any degree of uniformity and that it was

therefore necessary to make it obligatory on court to exercise such powers. It was also further stated that the unfairness of a transaction should be

presumed if the rate of interest charged is found to be excessive though this could be rebutted by proof of special circumstances justifying the high

rate of interest and that as regards agriculturists if compound interest is charged on loans advanced to them, such interest should be presumed to be

excessive. In order to give effect to the above by the Tamil Nadu Act⁸ of 1937, amendment were made in s. 3 of the Usurious Loans Act, 1918.

Under the amended S. 3(1) of the Usurious Loans Act, 1918 the court was enabled to exercise one or more of the power under s. 3(1)(i)(ii) and

(iii) if it had reason to believe that the transaction was as between the parties thereto substantially unfair. The explanation to s. 3(1) of the Usurious

Loans Act, 1918 was retained but renumbered as Explanation II and another Explanation I was inserted according to which if the interest is

excessive the court shall presume that the transaction was substantially unfair but that such presumption may be rebutted by proof of special

circumstances justifying the rate of interest. To clause (b) of sub-s.(2) of s. 3 of the usurious Loans Act, 1918 a proviso to the effect that in the case

of loans to agriculturist the court shall presume that the interest is excessive, if compound interest is charged was added. The explanation to s. 3(2)

(d) was omitted. On a consideration of the relevant provisions of the Usurious Loans Act it is evident that there is no prohibition as such against the

charging of compound interest. Indeed no provision of law has been brought to our notice which per se prohibits the charging of compound or

evens high rates of interest. Indeed no provision of law has been brought to our notice which per se prohibits the charging of compound or ever

high rates of interest. But where such transaction are sought to be enforced through courts of law, the courts have been charged with the duty of

examining the transaction as a whole and ascertaining whether in a given case the transaction is unfair or the rate of interest is usurious and if that if

found to be so to afford relief to the debtor concerned. This being the principal object of the Usurious Loans Act, we now proceed to consider the

provisions of the Banking Regulation Act, 1949.

13. Section 2 of the Banking Regulation Act, 1949, states that the provisions of that Act shall be in addition, to and not, save as hereinafter

expressly provided, in derogation of the companies Act, 1956 (1 of 1956), and any other law for the time being in force. Section 6 of the banking

Regulation Act which lays down the forms of business in which the banking companies may engage themselves includes the lending or advancing of

money either upon or without security. Section 21(1) of the Banking Regulation Act, 1949, relates to the power of the RBI to control advances by banking companies. Under s. 21(1), where the RBI is satisfied that it is necessary or expedient in the public interest so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company concerned, as the case may be shall, be bound to follow the policy as so determined. Section 21(2)(e) of the Act specifically adverts to the policy with reference to the rate of interest and states that the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given, may be determined by the RBI. Section 21(3) of the Act obliges every banking company to comply with any directions given by the RBI to it under this section. Section 46(4) of the Banking regulation Act, 1949, provides for punishment for a contravention of any of the provisions of the Act or any default in complying with any requirements of this act or of any order rule or direction made or condition imposed thereunder. Section 47A(a)(b) of the Act provides that if a contravention or default of the nature referred to in sub-s. (4) of s. 46 is made by a banking company, then the RBI may impose on such banking company as referred in s. 46(4), a penalty not exceeding two thousand rupees; and where such contravention of default is a continuing one, a further penalty which may extend to one hundred rupees for every day during the continuance of the contravention. A consideration of the aforesaid provisions of the Banking Regulation Act, 1949, clearly points out that a banking company, more particularly, a nationalised bank like the petitioner, has really no free scope for carrying on the business of banking permitted under the provisions of the Banking Regulation Act in any manner it likes, but every activity is hedged in by and subject to the control of the RBI and its orders or directives issued periodically, a contravention of which is also made punishable under the provisions of the Banking Regulation Act. It is, therefore, evident that if a banking company has to carry on the business of banking, it has to carry out the mandates and directions of the RBI issued by it periodically, as enjoined by the statute.

14. We may briefly pause to consider the contention of the learned counsel for the petitioner that there is an irreconcilable inconsistency between

the provisions of the Banking Regulation Act, 1949, and those of the Usurious Loans Act. The avowed object of the Banking Regulation Act, 1949, is to consolidate and amend the law relating to banking and thereunder provision is made for the regulation and control by the RBI of the carrying on of the business of banking by banking companies including the rates of interest on advance by banks. Any contravention on the part of the banks to charge interest at the rates specified under s., 21(2)(e) is made punishable under s. 46(4) of the banking Regulation Act, 1949. The primary object of the Usurious Loans Act is to confer a power on the court to afford relief to a debtor, if the court has reasons to believe that a particular transaction between the parties is substantially unfair. No particular rate of interest, as reasonable interest or excessive interest, has been prescribed in the Usurious Loans Act and the reasonableness or otherwise of the rate of interest in any given case has to be decided and determined in the light of the statutory provisions contained therein. In other words, the provisions, of the Usurious Loans Act do not in any manner control or regulate the charging of rates of interest, but are intended merely to afford relief from a claim for excessive interest in case where the transaction is considered to be substantially unfair. IT is obvious that the spheres of operations of these two enactments are very different, in that, one is concerned with the control and regulation of the business of banking including the rate of interest on advances to be made by the banking companies, while the other is intended to secure relief from excessive claims for interest sought to be enforce through courts.

15. On a consideration of the diverse scope of the operation of the provisions of these enactments, we are of the view that the provisions of the Banking Regulation Act, 1949, alone regulate the rate of interest on advances by nationalised banks and that there is no inconsistency between its provisions and the provisions of the Usurious Loans Act. The contention of the learned counsel for the petitioner in this regard has, therefore to be negatived. Equally, the contention of the learned counsel for the respondents that the provisions of the Usurious Loans Act will prevail over the provisions of the Banking Regulation Act. 1949, has also to be rejected.

16. In order to claim the benefits of the Usurious Loans Act, the borrower must establish that the interest payable on the loan is excessive and that

the transaction between the parties thereto is substantially unfair. No hard and fast rule can be laid down as regards the excessive nature of interest

and each case has to be decided on its own merits taking into account a variety of circumstances such as the security obtained by the creditor for

the advance of the amount, the pecuniary position of the debtor, the rate of interest prevailing at the time as well as the advantage the debtor would

derive from the loan.

17. In this case, the petitioner, no doubt, advanced certain amounts to the respondents who, it is not disputed, are agriculturists and such amounts

were repayable by them with compound interest. Under the proviso to s. 3(2)(b) of the Usurious Loans Act referred to earlier, if on an advance to

an agriculturist, compound interest is charged, then the court shall presume that the interest is excessive. This rule of presumption only obviates the

need for the court in the case of an agriculturist to go into the question of the excessive nature of the interest by a consideration of matters like

those whether the rate of interest is reasonable having regard to the risk or it also takes into account any amounts charge or paid, whether in money

or in kind, for expenses, inquiries, fines, bonuses, prima, renewals or any other charges and also the rates at which and the periods at which the

compound interest is calculated and also the total advantage which may be taken to have been expected from the transaction. Therefore, all that

the proviso to s. 3(2)(b) of the Usurious Loans Act states is that instead of the court embarking upon an enquiry into these aspects in relation to an

agricultures, the matter is simplified into these raising a presumption that if compound interest, is charged in respect of a transaction between a

creditor and an agriculturist, then the presumption is that the interest is excessive. Under Explanation I to s. 3(1) of the Usurious Loans Act, if the

interest is excessive then the court shall presume that the transaction was substantially unfair. But this presumption is not absolute but a rebuttable

one by proof of special circumstances which justified the rate of interest charged in a particular case. If the transaction is substantially unfair, only

then and in that event only, the court is empowered to exercise one or more of the powers enumerated under s. 3(1)(i) to (iii) of the Usurious

Loans Act. A conjoint reading of this integrated provisions as a whole would establish that in the case of an advance to an agriculturist debtor

where compound rate of interest is charged, the rate of interest is presumed to be excessive but if that is rebutted by proof of special circumstances

justifying the rate, then the transaction will not be a "substantially unfair" one despite the charging of excessive interest in order to enable the court

to proceed under s. 3(1)(i) to (iii) and offered relief. In this case, it is not in dispute that the petitioner had charged compound interest on the

advance made to the respondents and respondents being agriculturists, the charging of compound interest on the advances made by the petitioner

would by itself give rise to the presumption that the interest is excessive and also that the transaction was substantially unfair. But merely raising

such a presumption would not make it a "substantially unfair" transaction in order to enable the court to exercise the powers under s. 3(1)(i) to (iii)

of the Usurious Loans Act. the court must be also satisfied that in a case where such presumption or raised with reference to agriculturists, no

where such a presumption is raised with reference to agriculturists, no special circumstances justifying the rate of interest charged existed. In this

case, it is not disputed that the petitioner is a nationalised bank functioning under the provisions of the Banking Regulation Act. It may be that the

object of the Usurious Loans Act is to relieve agricultural indebtedness and to achieve that object certain benefits by way of reduction of interest

have also been conferred upon them, but even while doing so, the provisions of the Act have taken care to exclude debts from the operations of

the Act. namely, debts where in spite of the interests being excessive, it would into be an "unfair transaction" because of the special circumstances

justifying the rate of interest actually charged. In the present case, the relevant circulars which have been issued by the RBI have been produced by

the petitioner and the they are marked as exhibits A-17 and A-18. These circulars do contain instruction issued by the RBI with reference to the

charging of a particular rate of interest. This would be a special circumstances justifying the nationalised bank in charging the rate of interest it did,

as otherwise, the petitioner-bank would have violated s. 21(e) read with s. 2(3) and the penalties provided for violation thereof under s. 46(4) of

the Banking Regulation Act would stand attracted. In addition, it must be remembered that the provisions of the Usurious Loans Act were enacted

at a time when ordinary money-lenders exploited the needy agriculturists and imposed upon them onerous terms by way of compound interest

while making available loans to them. But such a charge cannot be leveled against the nationalised banking institutions which are really in the nature of representative institutions governed by rules and regulations which do not change from debtor to debtor and which, if anything, are intended, only to benefit the weaker sections of the society. It is perhaps for this reasons that even in other legislations giving relief to indebted agriculturists, debts in favour on nationalised banks have been totally exempted, as for instance s. 4(h)(b) of the Tamil Nadu Act IV of 1938, s. 3(h)(B) of the Tamil Nadu Act XXXVIII of 1972, s. 13(g)(i)(A) of the Tamil Nadu Act XXXI of 1976 and s. 12(h)(i)(A) of the Tamil Nadu Act XIII of 1980.

Indeed, s. 34 of the CPC enables a nationalised bank to recover a higher rate of interest in respect of commercial transactions. Having regard to these considerations, in our view, when a nationalised bank controlled by the provisions of the Banking Regulation Act, 1949, lends money to a debtor charging interest at the rates prescribed by the RBI from time to time, it cannot be said that the charging of such rates by such banks is per se excessive as to render such transactions "substantially unfair" so that the transaction can be ripped open by applying the provisions of the Usurious Loans Act and the rate of interest cut down accordingly.

18. During the course of arguments, reference was made to a number of decisions relating to the general interpretation of the provisions of the Usurious Loans Act as well as other related enactments. In our view, it is not necessary to refer to all of them excepting the following which have a direct bearing on the question. In *Special Deputy Collector, Land Acquisition, Defence Equipment Factory Vs. Karuppayee Ammal and Others*, , a Division Bench had occasion to consider whether the interest stipulated at the rate of 11 per cent. per annum with quarterly rests was usurious. In that case also the money had been lent by a banking institution, though the borrower was not an agriculturists debtor, yet a firm of partner carrying on business. In considering the question whether the rate of interest is usurious, excessive or unreasonable, the Division Bench held that there should be evidence before the court to prima facie establish that the rate of interest is exorbitant or excessive and that no hard and fast rule can be laid down merely on the mathematics of the rate per cent. to hold that the rate of interest was excessive. In this case, as already pointed out, the

circulars issued by the RBI to the effect that banking institutions like the petitioner-nationalised bank should charge a particular rate of interest would be a special circumstances which obliges the petitioner to charge a rate of interest as it did on pain of the imposition of a penalty for the violation thereof. IT is also necessary in this connection to notice that in the decision referred to above, it had been pointed out that the parties were informed of the increase in the rate of interest not because the bank wanted to make an unreasonable gain out of the transaction and make the debtors suffer loss, but the increase was attributed to an increase in the rate of interest by the RBI and that was a circumstances which was of universal application in the sense that it applied to all banks and borrowers in similar circumstances. This decision, in our view, would point out that it is not as if that a nationalised bank is a free agent in the sense that it can stipulate for any particular rate of interest because of the directives or circulars issued periodically from the RBI, which is the controlling bank with reference to the nationalised banking institutions functioning under the Banking Regulations Act, 1949. This, in our opinion, would be a special circumstances, which would justify the charging of the rate of interest, as has been done.

19. In *L. Mahadeviah and Sons v. State Bank of Mysore* [1976] II MLJ 125, this court had to consider the question whether the rate of interest at 11 per cent. per annum with half-yearly rests was usurious. In that case also, the institution which had lent the money was the State Bank of Mysore, though the borrower was not an agriculturist. It was held that the provisions of the Usurious Loans Act provided that, under certain circumstance and upon certain factors to be taken into account it would be open to the court to come to the conclusion whether the rate of interest in a particular case is excessive or not, but each case would depend upon the facts of that case. The function of a court under the provisions of the Usurious Loans Act, as laid down earlier, was also referred to and it was pointed out that the court has only a limited power of considering whether the interest contracted for between the parties, is in the circumstances of a particular case, usurious or unconscionable or excessive or liable to be reduced. Applying this test in that case and taking into account the further circumstances that the respondent therein was a bank subject

to certain regulations and control by the RBI and the charging of interest was in accordance with the directive of the RBI, it was held that the rate of 11 per cent. per annum with half-yearly rests cannot be said to be prima facie excessive. This case also, no doubt, related to the case of a borrowing by a non-agriculturists debtor. But this would apply even to a case where the debtor is an agriculturist debtor since, at best, the charging of compound interest in relation to a lending to such a debtor would give rise to a presumption that the rate of interest is excessive, but that, as noticed earlier, is a rebuttable presumption upon proof of special circumstances. It has also been pointed out that the regulation of rate of interest on advance to be made available by banking institutions functioning under the control of the RBI in accordance with the provisions of the Banking Regulation Act, would be a special circumstances justifying the charging of a rate of interest in accordance with the directives and circulars periodically issued, as the nationalised banks have no freedom of sharing their own rate of interest in respect of advance made by them.

20. In *State Bank of Travancore Vs. C.T. George and Another*, , a question arose whether a stipulation by an agriculturist debtor agreeing to pay compound interest could be presumed to be a substantially unfair transaction. In holding that it would be so in the absence of circumstances made out to rebut the presumption, the award of simple interest at 9 per cent. per annum up to a particular date and at 12 per cent. per annum thereafter as fixed by the courts below, was upheld. This decision would also establish that merely because the borrower happens to be an agriculturists debtor who had agreed to pay compound interest on the advance made to him, the transaction does not ipso facto become unfair if there are special circumstances warranting the charging of a higher rate of interest. Again, in *Union Bank of India v. Dhanekula Koteswara Rao* [1979] II AWR 165 (AP), the question that arose, was whether the benefits of the Usurious Loans Act could be availed of by an agriculturist debtor. In dealing with this question, it was held that though the court shall presume that the interest is excessive, if compound interest is charged on loans given to agriculturists, yet, in that case, there was no proof of any special circumstances justifying the rate of interest and, therefore, the compound interest charged at the rate of 11 1/2 per cent. per annum was held to be excessive. This decision would also emphasize that the presumption with

reference to the excessive nature of interest from the circumstances of the charging of compound interest in respect of a loan to an agriculturist

debtor is not an absolute one as contended for by the learned counsel for the respondents, but is a rebuttable one on proof of special

circumstances justifying the charging of interest at a particular rate in a given case.

21. In *Canara Bank, Palani v. Palaniswami Gounder* (S.A.No. 235 of 1978, dated March 16, 1981,) this court had to consider the question

whether compound interest payable by an agriculturist debtor at 3 1/2 per cent. per annum and 4 per cent. per annum above the rate of interest

fixed by the RBI, subject to a minimum of 8 1/2 per cent. per annum and 9 per cent. per annum, respectively would be usurious or not. Before the

learned judge, the question of the presumption in favour of agriculturists in respect of whose transaction compound interest is charged being

rebutted by the presence of special circumstances justifying the same, was not raised nor was considered. Indeed, on a consideration of the memo

of calculation filed in that case was usurious. No doubt, it has also been stated by the learned judge that the fact that interest has been charged at

the the direction of the RBI will not enable the bank to contend that the compound interest is not unreasonable. From a perusal of the judgment, it

does not appear that any circular from the RBI directing the lending of amounts at particular rates of interest was produced or relied upon as proof

of special circumstances justifying the charging of higher rate of interest, as in the special circumstances justifying the charging of higher rate of

interest, as in the present case. But if that decision intended to lay down that even if such circulars had been produced they would not constitute

special circumstances within the meaning of Explanation I to s. 3(i) of the Usurious Loans Act referred to earlier, we have no hesitation in

disagreeing with that view. As pointed out earlier, the whole object of the Usurious Loans Act was only to save agriculturist debtors from the

oppression of private money lenders and nationalised banking institutions, as we have today, charging rates of interest in accordance with the

circulars issued by the RBI from time to time, was farthest from the contemplation of the makers of the Usurious Loans Act.

22. A faint argument was raised by the learned counsel for the respondents that this would result in a certain category of debts being taken out of

the operations of the provisions of the Usurious Loans Act and this may result in the infraction of the guarantee of equality. Debts incurred from nationalised banks and other banking institutions, subject to the control of the RBI, would fall into a separate and distinct class, the classification bearing a nexus with the object of the Act. Under those circumstances, we are of the view that a nationalised bank or a banking institution functioning under the provisions of the Banking Regulation Act and subject to the control of the RBI as the apex bank, has no free hand in relation to the stipulation of interest on advances made by it to debtors and is bound by the periodical circulars issued by the RBI regulating the rate of interest on lending and this could constitute a special circumstances within the meaning of Explanation 1 to 3(1) of the Usurious Loans Act. In this case, as seen earlier the petitioner and produced Exs. A-17 and A-18 and have not been in any manner disputed by the respondents and the circumstances that the petitioner is obliged to charges rates of interest in accordance with those circulars, would justify the recovery of the amounts as claimed by the petitioner from the respondents without the application of the provisions of the Usurious Loans Act to the transaction in question.

23. The result is, in modification of the decree of the courts below, there will be a decree prayed for. The civil revision petition is, therefore allowed with costs.