

(1943) 09 MAD CK 0010
In the Madras High Court

K. Venkanna Chettiar and Sons by Managing Partner, K.V.
Muthukrishna Chettiar

APPELLANT

Vs

K.K. Shaik Muhammad Rowther and Another

RESPONDENT

Date of Decision : 17-09-1943

Acts Referred:

Citation : AIR 1944 Mad 105 : (1943) 56 LW 718 : (1943) 2 MLJ 504

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The only question raised in this second appeal relates to the respondent's claim to relief under the Usurious Loans Act,

1918, as amended by the Usurious Loans (Madras Amendment) Act, 1936.

2. The respondents who own extensive garden lands and coffee plantations in the District of Madura had dealings with the appellant, a money-

lender and commission agent at Dindigul, from 1927. There were settlements of account from time to time at varying intervals at which interest was

calculated at twelve per cent. per annum and added to the principal then due, the composite sum thereafter bearing interest at the same rate. At

one of such settlements which took place on 22nd February, 1933, the amount due to the appellant was fixed at Rs. 17,000 and a promissory

note for that sum was executed by the respondents. There were no further advances after that date but some repayments were made. On 30th

November 1935, the balance due was settled at Rs. 21,375 for which another promissory note was given in discharge of the earlier note. On 15th

March, 1937, the respondents sold certain immovable properties to the appellant for Rs. 20,000 out of which Rs. 19,500 was adjusted towards

She debt due under the promissory note. There was a final settlement on 11th July, 1937, at which the sum due to the appellant, after deducting the sale price adjusted as aforesaid and Rs. 2,500 remitted on the occasion, was fixed at Rs. 4,000, and it was further agreed that, if the respondents repaid on or before 30th March, 1940, this sum together with Rs. 20,000 the sale price and the rents if any due for the lands which were then leased to the respondents, the lands should be reconveyed to them by the appellant, but if they made default in such payment, the appellant should enjoy the lands absolutely and recover the balance of Rs. 4,000 with interest as provided in the promissory note of 1935 as well as the unpaid rents, if any, due under the lease. The respondents having made default, the appellant has brought the suit for recovery of Rs. 4,000 with interest from nth July, 1937.

3. The Courts below held that the respondents were agriculturists within the meaning of the Usurious Loans Act, 1918, as amended in Madras

(hereinafter referred to as the Act), the compound interest at twelve per cent. having been charged, the interest must be presumed to be excessive

and the transaction unfair, that no special circumstances were proved to rebut the presumption and that, therefore, the respondents were entitled to

relief under the Act. They accordingly reopened the accounts already settled between the parties and, allowing only simple interest at the agreed

rate of twelve per cent. throughout and reappropriating the payments on that basis, passed a decree for the amount found due to the appellant.

4. Before me, Mr. Rajah Ayyar for the appellant assailed every part of the finding of the lower Courts as erroneous and unsustainable, and

endeavoured to show that no case for relief under the Act was made out by the respondents. He contended, firstly, that the respondents were not

agriculturists and could not therefore invoke the rule of presumption regarding excessive interest, secondly, that this was not a case where

compound interest was charged and for that reason too such presumption could not be made, and lastly that, in any case, the circumstances in

which and the purposes for which the advances were made to the respondents were sufficient to rebut such presumption.

5. Before dealing with these contentions it will be convenient here to set out the material provisions of the Act.

Section 3(1). Notwithstanding anything in the Usury Laws Repeal Act, 1855 where in any suit to which this Act applies, whether heard ex parts or

otherwise the Court has reason to believe that the transaction was, as between the parties thereto, substantially unfair; the Court shall exercise one

or more of the following powers, namely--

* * * * *

(ii) notwithstanding any agreement purporting to close previous dealings, and to create a new obligation, re-open 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 in account in

respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

* * * * *

Explanation 1.--If the interest is excessive, the Court shall presume that the transaction was substantially unfair; but such presumption may be

rebutted by proof of special circumstances justifying the rate of interest.

* * * * *

2. (a) In this section ""excessive"" means in excess of that which the Court deems 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.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid whether in money

or in kind, for expense, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which

it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction:

Provided that in the case of loans to agriculturists, if compound interest is charged the Court shall presume that the interest is excessive.

* * * * *

The term ""agriculturist"" used in the newly inserted proviso to Clause (b) of subsection (2) is not denned in the Act, and it has been held that, in the

absence of any such definition, the term must be understood in its ordinary sense of a person who actually follows the calling of an agriculturist. See

Pothukuchi Venkata Ramanayya and Others Vs. Daggubati Mallikharjanudu, . It is

common ground that the respondents own extensive lands on which they grow plantains and coffee, and it has been found by the lower Courts that they were personally supervising the cultivation of their lands.

It would seem to follow, therefore, that they were following the calling of an agriculturist. But Mr. Rajah Ayyar called attention to the evidence showing that the respondents were running two shops, one at Madras and the other at Trichinopoly, where they were selling plantains and he urged that, even assuming that they were selling the produce grown on their own lands as found by the lower Court, the commercial scale on which they carried on their operations of cultivation and sale indicated that they were merchants and salesmen and not agriculturists. There can be little doubt that the respondents were growing produce on their extensive lands for the purpose of sale in their shops and that, in doing so, they were carrying on a business. But can it be said that they ceased, on that account, to be agriculturists? Most land owners grow produce on their lands with a view to its sale either on the farm Or in the local market and, as it seems to me, the extent of their agricultural and marketing operations cannot enter into the determination of the question as to whether they were agriculturists or not. It may be that the framers of the proviso had in view small land owners occupied in cultivating their lands and not persons engaged in growing and selling agricultural produce on a commercial scale. But the language used is general and covers all agriculturists big or small. I am therefore of opinion that the respondents are agriculturists within the meaning of the Act.

6. The question next arises whether compound interest has been charged in this case. It is true, as pointed out by Mr. Rajah Ayyar, that there was no stipulation in advance at any time to pay compound interest with specified rests, but, as already stated, accrued interest was capitalised and added to the principal at each settlement of account between the parties, and it was agreed that the composite sum should bear interest at the same rate of twelve per cent. Mr. Rajah Ayyar, however, contended that this did not amount to charging "" compound interest "" but was only payment of interest on interest, and he referred to Muthu Chettiar v. Meenakshisundaram Ayyar (1927) 54 M.L.J. 82 in support of that view. In that case, the mortgage bond contained a stipulation to "" pay interest on interest at one per

cent. "" if the mortgagor failed to pay interest before the 10th of every month. The principal sum carried interest at half per cent. and was payable in three years from the date of the mortgage. Default having been made in the payment of interest, the mortgagee claimed compound interest at one per cent, per mensem with monthly rests on the entire balance of the debt due at the date of default, while the mortgagor contended that the principal sum bore interest at only half per cent. throughout, and that overdue interest alone carried interest at one per cent, but without further rests. Their Lordships accepted this contention, observing that the expression "" interest on interest"." was an ambiguous phrase and that, on the true construction of the instrument as a whole, it did not mean compound interest. They pointed out that in compound interest the interest in arrear sinks into the principal and the composite sum carries interest at the stipulated rate, the debtor losing all right to have the unpaid interest separated from the principal debt and dealt with Independently; whereas a stipulation ""to pay interest on interest"" might well refer, and in the instrument before them did refer, to interest to be borne by a sum in arrear if that sum was payable as interest. The distinction assumed all the more importance in that case as the rate of interest on the original debt and the rate payable on unpaid interest were different. In the present case, although there was no stipulation in advance to pay compound interest with periodical rests, by subsequent agreement between the parties at each settlement of account there was a sinking of the interest in arrear into the principal debt and the composite sum carried interest till the next settlement. It may also be said here that, after each settlement, the debtors lost their right to have the unpaid interest separated from the principal and dealt with independently. It seems to me therefore that the essential features of compound interest are here present, and no covenant to pay such interest is necessary to bring the proviso into play as it applies to all cases of loans to agriculturists where compound interest is charged.

7. Reference may be made in this connection to *Hiralal Sahu v. Lakshmi Prasad Narainsingh* (1929) 57 M.L.J. 319 where interest charged more

or less in the same way as in the present case was regarded by the Privy Council as "" compound interest.

8. Mr. Rajah Ayyar next urged that, even if it could be said that compound

interest has been charged in respect of the dealings as a whole, the promissory note Ex.: A for the enforcement of which the suit was brought, provided for payment of simple interest only at twelve per cent. per annum. on the amount found due on its date, and that therefore this "transaction" could not be said to be substantially unfair as no compound interest was charged in respect of it. In other words, the argument was that the word "transaction" in section 3 must be taken to refer only to the transaction on which the suit was based, and not to the earlier dealings or settlements of account which led up to such transaction. I am unable to accede to this contention. Without attempting a precise definition of the scope of the term "transaction," I think it will be sufficient for the purposes of this case to say that in the context of Section 3 it is wide enough to include a course of dealings by way of advances and repayments such as we have here, although promissory notes have been taken as collateral securities on settlements of account from time to time. The narrow interpretation suggested for the appellant would deprive the provision of much of its usefulness.

9. Lastly, reference was made to several cases where this Court allowed compound interest at twelve per cent. and more with yearly or shorter rests in exercising its powers under the Act, for example, A.S. No. 390 of 1939 and A.S. No. 21 of 1940 which also arose from the same place (Dindigul) where the dealings here in question were carried on, and it was submitted that no interference was called for in this case as no more than twelve per cent. has been charged at any time in the course of the dealings. The cases referred to, however, did not concern agriculturist debtors and there was no question of applying the statutory presumption. But where, as here, the Court has to presume that any compound interest is excessive" and that, in consequence, a transaction charging such interest is substantially unfair and the presumption has not been rebutted, it is difficult to see how the Court can, in relieving the debtor of liability in respect of the excessive interest, allow the interest already charged to stand as fair and reasonable or, indeed, award any compound interest, however reasonable it may seem; for, ex hypothesi all compound interest is excessive. It seems to me, that the newly inserted proviso where it applies, precludes the Court from allowing any compound interest to the

creditor. The Courts below have allowed twelve per. cent simple interest throughout as the proper rate in the circumstances of the case, and I see no reason to interfere with their decision on the point.

10. The appeal fails and is dismissed with costs. Leave refused.