

(1945) 11 MAD CK 0027
In the Madras High Court

Kallakuri Venkateswarlu and Others

APPELLANT

Vs

Kalidindi Narayanaraju and Others

RESPONDENT

Date of Decision : 22-11-1945

Acts Referred:

Citation : AIR 1946 Mad 380 : (1946) 59 LW 203 : (1946) 1 MLJ 272

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The short point raised in this appeal which has been brought by some of the defendants related to the mode of appropriating three of the payments made in scaling down the suit mortgage debt. These payments are as follows : Rs. 2,200 paid on 6th November, 1925 " towards the debt due under this mortgage deed "; Rs. 1,000 paid on 15th March, 1927, ". towards the principal and interest due on the debt " and stated to have been " credited towards this deed "; Rs. 1,500 paid on 15th February, 1930, in two parts, namely, Rs. 684-7-9 out of which Rs. 420 was to be credited to the principal and Rs. 264-7-9 towards the interest due on the bond and Rs. 815-8-3 paid " towards the deed." In scaling down the debt the Court below after discussing the decisions of this Court relating to the manner in which open payments have to be dealt with for the purposes of the Act IV of 1938 expressed the opinion that a payment made towards principal and interest of a debt could not be regarded as an open payment. It proceeded, however, to award relief to the debtors u/s 8(2) under which no question of appropriation of payments can arise at all. Mr. Govindarajachari for the appellants complains that as his clients sought relief u/s 8(1) and not u/s 8(2) of the Act, the learned Judge should not have proceeded to scale down the debt u/s 8(2) and he further complains that the learned Judge was wrong in treating the payment of Rs. 1,000 made towards principal and interest of the bond as not being an open payment. We are of opinion that these contentions are correct and must be accepted. The learned Judge gives no reason why when the debtors claimed relief u/s 8(1) of the Act he scaled down the debt u/s 8(2). The provisions of Section 8 clearly give the debtor the option

to claim relief either under the one or the other of the two provisions referred to. The Court below was therefore not justified in proceeding u/s 8(2) in the circumstances of the case.

2. Proceeding, then, u/s 8(1) the question of appropriation of payments made prior to 1st October, 1937, has to be considered. Reference was made by the learned Judge himself to the decision of this Court in Chittapragada Veerraju and Another Vs. Muppala Rayanim Dora Garu and Others, , where the following observations occur:

On 4th October, 1934, a payment of Rs. 3,367 was made and the endorsement is that it was made towards principal and interest of the debt; that is to say, there was apparently no specific appropriation towards either principal or interest.... The payment made on 4th October, 1924, which has not been specifically appropriated will be disregarded in calculating the amount of interest outstanding on 1st October, 1937, unless it can be established that there has been a specific appropriation before 1st October, 1937.

In holding that the payment of Rs. 1,000 was not an open payment the learned judge distinguished the above decision on the ground that this Court did not use the expression " open payment " in its judgment, but the observations quite clearly imply that the payment made " towards principal and interest of the debt in that case was to be treated as a payment not specifically appropriated towards either principal or interest, which means the same thing as an open payment. The decision is itself an authority for the proposition that a payment " towards principal and interest" of a debt is to be treated as open payment for purpose of scaling down the debt under the Act.

3. Mr. Satyanarayana Rao for the respondents attempted to show on the strength of a recent decision of their Lordships in AIR 1945 170 (Privy Council) that the series of decisions of this Court which have laid down that payments not specifically allocated to principal or interest before 1st October, 1937, should be treated as open payments in applying the process of scaling down debts under Madras Act IV of 1938 were all wrongly decided. The case before their Lordships was one where certain payments made by the debtors had to be adjusted by ascertaining what part of the debt still carried interest after such adjustment and the Court applied the usual rule that a payment should first go in reduction of the interest due on the debt and the balance alone should be applied in reduction of the principal. The same principle was laid down by their Lordships in Venkatadri Apparao v. Parthasarathi Appa Rao (1921) 40 M.L.J. 549 : L.R. 48 IndAp 150 ILR 44 Mad. 570 , which indeed was referred to and followed by the Judicial Commissioner, North-Western Frontier Province in his judgment which was approved by their Lordships. The line of cases was considered by their Lordships of the Privy Council in Rama Shah v. Lal Chand (1940) 1 M.L.J. 895 : L.R. 67 IndAp 160 : ILR (1940) Lah. 470 , where they held that for the purposes of Section 20 of the Limitation Act, however, an open payment cannot be turned into a part payment of principal by applying the rule that a payment should first

be applied in reduction of the interest due, but that there should be an actual appropriation of such payment to principal to satisfy the requirements of the section. this Court followed that ruling and applied the same principle to the Madras Agriculturists' Relief Act which enacts that all interest outstanding on 1st October, 1937, in respect of certain classes of debts due by agriculturists should be deemed to be discharged. We do not therefore think that the recent decision of their Lordships relied on by Mr. Satyanarayana Rao affects the position any more than decisions like Venkatadri Apparao v. Parthasarathi Appa Rao (1921) 40 M.L.J. 549 : L.R. 48 IndAp 150 ILR 44 Mad. 570 . It is not disputed that if the first two payments and the second of the payments made on 15th February, 1930, are treated as open payments the amount properly payable to the plaintiffs will be Rs. 1,564-7-9 as on 1st October, 1937. This sum will carry interest at 6 percent per annum from that date till date of decree with further interest on the aggregate amount at the same rate till date of payment. The appeal is allowed and the decree of the Court below will be modified accordingly. The appellants will have proportionate costs in this Court. In the Court below the parties will pay and receive proportionate costs.