
(1978) 07 AP CK 0020
In the Andhra Pradesh High Court
Case No : Appeal No. 175 of 1974

Kancherla Purshotham

APPELLANT

Vs

Kadimcherla Nageswara Rao and Others

RESPONDENT

Date of Decision : 21-07-1978

Acts Referred:

Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 12, 13, 7, 8, 9

Citation : AIR 1979 AP 48

Hon'ble Judges : A. Sambasiva Rao, C.J.; Madhusudan Rao, J.; Madhava Rao, J

Bench : Full Bench

Advocate : N. Bapi Raju and N.V. Suryanarayana Murthy, for the Appellant;
K.V. Ayyappa Sastry, for the Respondent

Judgement

Madhusudan Rao, J.—This Full Bench is constituted to resolve a conflict of views in regard to the mode of appropriation of open payments made by an agriculturist debtor towards a debt contracted after the commencement of the Madras Agriculturist's Relief Act, 1938 which was adapted in this State as the Andhra Pradesh (Andhra Area) Agriculturist Relief Act.

2. The appellant is the plaintiff. The contesting respondents 1 to 4 are the defendants 1 to 4 respectively. The second defendant is the undivided son of the first defendant. The defendants 1, 3, and 4 executed a mortgage deed in favour of late Kancherla Narasimham, the father of the plaintiff for Rs. 16,000 on 8-11-1951 agreeing to pay the amount in four equal yearly installments of Rs. 4,000 with interest at 10% p.a. and in default of payment of the instalments at 12% compound interest per annum. They made part-payments of Rs. 7,000 on 15-3-53, Rs. 800 on 17-2-55, Rs. 600 on 19-3-55, Rs. 1,400 on 12-6-56, Rs. 1,460 on 22-9-56, Rs. 100 on 12-3-57, Rs. 100 on 7-11-59 and Rs. 950 on 9-6-61. No payments were made subsequent to the payment on 9-6-61. During his lifetime Kancherla Narasimham executed a registered will bequeathing all his movable and immovable properties in favour of his son, the plaintiff. After the death of Narasimham the plaintiff instituted the suit against the suit four

defendants for recovering an amount of Rs. 13 ,826-23 ps. being the principal and interest due on the bond by the date of suit, He impleaded the Official Receiver, West Godavari the 5th respondent herein, as the 5th defendant Since the first defendant was adjudged insolvent in I.P. 11 of 64 on 26-7-65. The plaintiff sued for an amount of Rs 13,800 and odd only, as the defendants 1 to 4 are agriculturists entitled to the scaling down of the interest at 5 1/2 p.a, simple interest. Before the trial Court, the plaintiff died a memo stating that by correctly Calculations the amount due to him u/s 13 of the Act 5 1/2% p.a. simple interest, he would be entitled to only Rs. 11,910-78 Ps. and prayed that a decree may be passed for that amount. The defendants 1 to 4 contended that the suit mortgage bond was not fully supported by consideration, that the suit was barred by time and that at any rate, the open payments made by them were not properly appropriated by the plaintiff.

3 .The trial Court found that the suit mortgage band was supported by consideration only to extent of Rs, 15,525 that the suit is not barred by time and that as the part-payments made by the defendants were open, without any specification in regard to their appropriation towards interest or towards principal the plaintiff could not apply the payments towards the interest that accrued up to the dates of the payments and balance alone towards partial discharge the principal amount. It held that these open payments should be appropriated towards principal debt . Accordingly the trial Court passed a preliminary decree in plaintiffs favour for a sum of Rs. 8,226-85 ps, with proper costs together with interest at 5 1/2% p. a from the date of plaint till realisation. Granting three time for redemption the court the plaintiff to proceed against properties allotted to the share of the first defendant in the first instance to proceed against the share allot to the third defendant only in the event of the decree debt not being realised by the sale of the specified properties the first defendant. In passing a decree for Rs. 8,000 and odd, the learned Subordinate Judge relied an the decision in I. V. Subbaiah v. I. Venkatrayudu, (1973) 1 APLI 377 in which one of us held that under S.13 of the Andhra Pradesh (Andhra Area) Agriculturists" Relief Act, 1938 an open part-payment made by a debtor towards a debt incurred after the commencement of the Act cannot be appropriated by the creditor towards the interest and the balance alone towards partial discharge of the principal amount but that the part-payment should be appropriated towards principal, or counter interest may be calculated on the open part-payment so as to see that the interest obtained by the creditor does not exceed the rate fixed in S.13 of the Act. Aggrieved with the decision of the trail Court and claimants towards the interest in the first instance and thus being entitled to a sum of Rs.11,000 and odd even at the rate of interest prescribed under S.13 of the Act, the plaintiff [referred this appeal which in the usual course came up before a single Judge. When the appellant"s learned counsel submitted that the decision in I.V.Subbaiah v.I.Venkatrayudu runs counter to a binding Division of the Madras High Court in Thiruvengadatha Aiyangar Vs. Sannappan Servai, and that the decision therefore required reconsideration, the learned Judge A.V.Krishna Rao, K. referred the case

to a Division Bench. When the appeal came before a Division Bench consisting of Ramachandra Raju and Jeevan Reddi, JJ, the learned Judges noticed that the decision *I.V.Subbaiah v.I.Venkatrayudu* was confirmed in Letters patent Appeal No.131 of 1973 by a Division Bench of this Court consisting of Madhava Reddy, J. and Jayachandra Reddy, J. The learned Judges felt that there is conflict between the decisions of the Division Bench in L.P.A. No.131 of 1973 and the Division Bench in *Thiruvengadatha Aiyangar Vs. Sannappan Servai*, and therefore referred the appeal to a Full Bench.

4. It is not disputed that the interest on the suit debt has to be scaled down under S.13 of the Act IV of 1938. It is also not disputed that the State Government issued a notification dated 29th July, 1947 in the Official Gazette altering the rate of interest from 6 1/2% p.a. to the principal amount advanced to the defendant was Rs.15,525 and not Rupees 16,000. The various part-payments said to have been made on different dated are also not in dispute. The only point of difference between the plaintiff and the defendants is, according to the plaintiff, the creditor can appropriate each of the part-payments towards the interest due in the first instance by the date of the part-payment and then appropriate the balance, if any, towards the principal; while according to the defendants, the creditor should appropriate the open part-payments towards the principal only if the creditor did not so appropriate the open part-payments and institutes proceedings for recovering the debt, the court has to either direct appropriate the open part-payments towards the principal in the first instance or grant counter-interest on the open part-payments. The short question for decision in this appeal is what is the proper mode of appropriation of open part-payments when a creditor instituted a suit for recovering a debt contracted by an agriculturist?

5. Sec, 13 of the Act which governs the case reads as follows:

"13. Rate of interest payable by agriculturist on new loans:- In any proceeding for recovery of a debt, the court shall scale down all interest due on any debt, incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6 1/4 per cent per annum , simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

Provided that the State Government may, by notification in the official Gazette, alter and fix any other rate of interest from time to time.

Explanation:- xx xx xx"

Emphasising on the head-note to the section, Sri N.Bapiraju, the learned counsel for the appellant contends that S.13 provides only for scaling down the rate of interest payable by an agriculturist on loans contracted after the commencement of the Act and the provision does not in any way affect the right of the creditor under the ordinary law in regard to the appropriation of open part-payments. In support of this submission he relied on *Meghraj and Others Vs. Mst. Bayabai* and

Others, , Sheku Sahib Vs. Venkataramananayya, , Vinnakota Veeraju Vs. Kamarsu Balakoteswara Rao and Others, , Legiseti Srinivasulu Vs. Gondi Peda Kondappa, and P.Subbarama Chetty v.G.Aaaudishesan Sarma, (1970) 2 Andh WR 215.

6. In Venkatadri Appa Row's case AIR 1922 PC 233, the Judicial Committee of the Privy Council observed that "the ordinary rule with regard to payments by the debtor unappropriated either to principal or interest that they are first to be applied to the discharge of interest."

7. In Meghraj and Others Vs. Mst. Bayabai and Others, the Supreme Court held that "the normal rule is that in the case of a debt due with interest any payment made by the debtor is in the first instance to be applied towards satisfaction at interest and thereafter to the principal. "There can be no exception to this rule which is incorporated in S. 60 of the Indian Contract Act. The question however, is whether by permitting the creditor of an agriculturist-debtor to avail of rule, it would be possible to give effect to Section 13 of the Act? What is provided in S. 13 of the Act is that in any proceeding for recovery of any debt, the court shall scale down all interest due on the debt so as to see that the creditor does not get any amount more than 6 1/4% p a simple interest on the debt interest on the debt . "All interest due" on the debt is not synonymous with "all interest outstanding" on the debt. In Nainamul v. Subbarao, (1957) 2 A WR 53: (AIR 1957 A p 546) (FB) delivering the opinion of the Full Bench, Subba Rao (C. J. as he then was) pointed out that the word "due" in S. 13 is deliberately used by the Legislature to convey a different sense from the word "outstanding". He observed (at p. 551 of AIR):

"it may therefore be accepted that the Legislature gives two definite connotations to the word "outstanding" and the word "due", one indicating actual arrears of rent and the other that which is payable under the contract. With the knowledge of the distinction between these two words the Legislature uses the word "outstanding" in S. 8 (1) and the word "due" in S. 13 in the context of the scaling down of interest. It is, therefore, not legitimate to presume that the Legislature used the words "due" and "outstanding" in the same sense in which those words are used in S. 8. Further, the word "outstanding" is more appropriate to convey the idea of the interest remaining to be paid than the word "due. When the Legislature ignoring the appropriate word introduced the "due" which conveys the intention clearly, it is reasonable to assume that it does not intend to convey the same meaning but a different one from what the word "outstanding" conveys, Sec.13 does not give any indication that the Legislature by using the word "due" instead of the word "outstanding" intended to convey the same meaning. In the circumstances, applying the aforesaid rules of construction I hold that the word "due" means only the interest payable on the debt."

Though the head-note to the section mentions the rate of interest payable by an agriculturist, the mandatory words in the section call upon the court to scale

down the interest due on any debt so as not to exceed a sum calculated at 6 1/4% p. a. simple interest. In the process of scaling down of interest due on a debt in a proceeding for its recovery, the Court has to necessarily reopen all part-payments made prior to the institution of the proceeding and ultimately see that the agriculturist-debtor is not required to pay his creditor anything more than the principal amount and simple interest at 6 1/4% p. a.

8. In *Thiruvengadatha Aiyangar's* case (AIR 1911 Mad 199) the Bench categorised the debts of agriculturists into three kinds: (1) those incurred before 1st Oct. 1932; (2) those incurred from 1st Oct. 1932 to 22nd March, 1938 and (3) those incurred after 22nd March, 1938 i.e., after the commencement of the Act. So dividing the debts, the Bench observed that the first category falls under S. 8, the second category under S. 9, and the third category under S. 13 of the Act and held that all debts incurred after the commencement of the Act, whether they be in discharge of prior debts or not, would fall only under S. 13 and that S. 9 could not be applied to such debts. This authority held the field until it was dissented from by a Full Bench of this Court in *Chebrolu Nagabhushanam and Another Vs. Rachapudi Seetharamiah*, . Laying stress on the word "incurred" contained in Ss. 9 and 13 of the Act, the Full Bench held that a debt incurred prior to the commencement of the Act and governed by S. 9 of the Act cannot be construed as a debt incurred after the commencement of the Act merely because it was renewed subsequent to the commencement of the Act. In another Full Bench case, *P. Sriramulu v. Nagaiah* (1962) 1 A WR 378: (AIR 1962 A. P 431) (FB), it was again held that if the promissory note was executed prior to the commencement of the Act and was renewed after the commencement of the Act, it cannot be said that the debt was incurred after the commencement of the Act but that the debt was incurred prior to the commencement of the Act. Speaking for the Full Bench Chief Justice Chandra Reddy, observed (at p.433 of AIR)

"The circumstances that Section 13 does not in express terms provide for tracing back a debt to its origin does not in any way indicate that the relief should be confined to the interest earned on the suit promissory note. Since the language of Section 13 itself has that effect, a specific provision in that behalf was unnecessary. A debt can be incurred only once and the renewal of a debt does not result in the incurring of the debt over again. The words of S.13 are of such wide amplitude as to take in the original loan."

Further, *Sheku Sahib Vs. Venkataramananayya*, was expressly overruled by the Supreme Court in *Gamini Krishnappa and Others Vs. Curza Seshachalam and Others*, . Their Lordships of the Supreme Court have pointed out in this case that under the Act, debts have been broadly divided into two categories—one category of debts incurred prior to 1st Oct., 1932 and the other category of debts contracted subsequent to 1st Oct., 1932. It was pointed out that there is nothing in S.13 which would preclude the application of S.9 to any case whatsoever of a debt incurred after the commencement of the Act. The Supreme Court clearly held that if an agriculturist executed a promissory note after the coming into

force of the Act in renewal of a debt incurred after 1st Oct., 1932, the debt covered by such a promissory note is to be scaled down under S.9 of the Act and not under S.13 of the Act as held in Sheku Sahib Vs. Venkatararamanayya,

9. No doubt as contended by Sri Bapiraju the appellant's learned counsel, the mode of calculation of interest under S.13 of the Act as adopted in Sheku Sahib Vs. Venkatararamanayya, was not overruled by any of the two Full Benches referred to supra or the Supreme Court. But, that cannot be a ground to hold that the mode adopted by the Division Bench is an authoritative pronouncement on the mode of appropriation of open payment. What all was effectively considered in that case is whether a debt incurred prior to the commencement of the Act but renewed subsequent to the commencement of the Act should be scaled down under S.9 or under S.13. Holding that the debt should be scaled down under S. 13 of the Act, the Division Bench granted "a decree for the principal amount of the suit promissory note with interest at 6 1/4 per cent less the amount of the three payments which will be credited in the first instance to the interest at 6 1/4 per cent as on the dates on which they were made", In granting the decree, the Division Bench took the mode of appropriation for granted in several subsequent cases also the same mode of appropriation was adopted by the courts and it may be unnecessary to mention in detail all those cases. It is not clear from the facts reported in Thiruvengadatha Aiyangar Vs. Sannappan Servai, : Sheku Sahib Vs. Venkatararamanayya, whether the three part-payments made by the debtor in Thiruvengadatha Aiyangar's case were specified by the debtor to be towards interest. In some of the subsequent cases it is clear from the facts reported that the debtors made part-payments specifying them towards interest. It would appear that in all the cases which followed the mode of appropriation adopted in Thiruvengadatha Aiyangar's case the debtors either made the part-payments specifically towards interest or when they made an open payment, the creditor immediately appropriated the payment towards interest and soon thereafter intimated the fact to the debtor without leaving the payment open until the institution of the proceeding in the court. Suffice it to say, that in none of the cases was the question in regard to the appropriation of an open part-payment by an agriculturist-debtor specifically raised nor expressly decided.

10. In Vinnakota Veeraju Vs. Kamarsu Balakoteswara Rao and Others, the Full Bench decided that a creditor is not entitled to retain payments made after 1st October 1937 towards interest in excess of the interest payable under the provisions of the Act without adjusting them towards the principal and that in regard to this matter, there is no distinction in principle between a debt to which the provisions of S. 8 apply and that governed by the provisions of S. 9 of the Act. That arises did not deal with S. 13 of the Act at all, On the other hand, when the debtor himself made a part-payment towards interest which was in excess of the interest payable under the provisions of the Act and the creditor retained the excess amount in exercise of his right under the ordinary law. the Full Bench directed the application of the excess towards the principal though S. 9 of the

Act in terms does not state that any amount paid in excess of the interest could be appropriated towards the principal

11. In *Legisetti Srinivasulu Vs. Gondi Peda Kondappa, Ranganadham Chetty J.*, however directly dealt with the question. He held that in so far as there is no provision similar to Explanation (1) to S. 8 of the Act in S.13, the creditor's right under S. 60 of the Contract Act to appropriate an open payment as he chooses is not curtailed. The same view was expressed by Parthasarathi J., in *P. Subbarama Chetty v. G. Audiseshan Sarma* (1970 2 A WR 215) for the same reason of the absence of any provision similar to Explanation (I) to Section 8 in S. 13. Both the learned Judges considered S. 13 of the Act in its isolation from the other provisions of the Act and did not, in my opinion give the effect which the Legislature intended.

12. As can be seen from the preamble, the Act was passed to provide for relief of indebted agriculturists in the State in regard to the debts contracted by them. The material provisions are contained in Ss. 1, 8, 9, 12 and 13 of the Act and they are as follows :

7. Debts payable by agriculturists to be scaled down:-- Notwithstanding any law, custom contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this Chapter.

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him, nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down on under this Chapter.

8. Provision for debts incurred before 1st Oct., 1932:- Debts incurred before 1st Oct. 1932 shall be scaled down in the manner mentioned hereunder,namely :-

(1) All interest outstanding on the 1st Oct., 1937 in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of Court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date.

(2) Where an agriculturist has paid to any creditor twice the amount of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3)Where the sums repaid by way of principal or interest or both fell short of twice the amount of the principal, such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding whichever is smaller, shall be repayable.

(4) Subject to the provisions of Ss. 22 to 25 nothing contained in sub-secs. (1), (2) and (3) shall be deemed to require any creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Explanation I:- In determining the amount repayable by debtor under this section every payment made by him shall be credited towards the principal, unless he has expressly stated in writing that such payment shall be in reduction of interest.

Explanation II:- Where the principal was borrowed in cash with an agreement to repay it in kind, the debtor shall, notwithstanding such agreement, be entitled to repay the debt in cash after deducting the value of all payments made by him in kind at the rate, if any, stipulated in such agreement, or if there is no such stipulation at the market rate prevailing at the time of each payment.

Explanation III:- Where a debt has been renewed or included in fresh document executed before or after the commencement of this Act, (whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest and whether in favour of the same creditor or of any other person acting on his behalf or in his interest), the principal originally advanced together with such sums, if any as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this Section.

Explanation IV:- Where a debt has been split up whether before or after the commencement of this Act, among the heirs, legal representatives or assigns of a debtor or a creditor and fresh documents have been executed in respect of the different portions of such debt the provisions of this Section shall continue to apply in respect of each of the different portions.

9. Provision for the debts incurred on or after 1st Oct., 1932 shall be scaled down in the manner mentioned here under, namely :-

(1) Interest shall be calculated up to the commencement of this Act, at the rate applicable to the debt under the law, custom, contract or decree of court under which it arises or at five per cent per annum simple interest whichever is less and credit shall be given for all sums paid towards interest and only such amount as is found outstanding in any for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due:

Provided that any part of the debt which is found to be a renewal of prior debt whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest and whether in favour of the same creditor or of any other person acting on his behalf or in his interest shall be deemed to be a debt contracted on the date on which such prior debt was incurred and if such debt had been contracted prior to 1st Oct., 1932 shall

be dealt with under the provisions of S. 8:

Provided further that where debt has been split up whether before or after the commencement of this Act among the heirs, legal representatives or assigns of a debtor or of a creditor and fresh documents have been executed in respect of the different portions of such debt, the provisions of this Section shall continue to apply in respect of each of the different portions.

(2) Subject to the provisions of Sections 22 to 25, nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor or to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

9-A. Special Provision in respect of usufructuary mortgages:--

12. Rate of interest payable by agriculturist on old loans:- All debt, which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract, or otherwise: Provided that it shall not in any case exceed $6\frac{1}{4}$ per cent per annum simple interest that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

13. Rate of interest payable by agriculturist on new loans: In any proceeding for recovery of a debt, the court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at $6\frac{1}{4}$ per cent per annum, simple interest. that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest:

Provided that the State Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

Explanation:-- For the purpose of this Section, the definition of an agriculturist" in S, 3 (ii) shall be read as if-

(i) in proviso (A) to that Section, for the expression "the financial years ending 31st March 1938" the expression " the financial years ending on the 31st March immediately preceding the date on which the debt is incurred" were substituted; and

(ii) in proviso (B) and (C) to that section, for the expression "the four half years immediately preceding the 1st Oct 1931", the expression four half-years ending on the 31st March or the 30th September (whichever is later) immediately preceding the date on which the debt is incurred" were substituted.

13-A, Rate of interest payable by certain persons on debts :-"

Under the proviso to S.13, a notification was issued by the Government in July,

1947 altering the rate of 6 1/4 per cent per annum simple interest specified in the Section to 5 1/2 per cent per annum simple interest.

13. It is abundantly clear from the. above extracted provisions that the general purpose and policy of the statute is give relief to agriculturist-debtors and the Legislature varied the ordinary or common law rules governing the rights liabilities of the creditors and debtors. The scheme and object of the Act to see that the creditors of agriculturist-debtors do not avail of the normal law governing debts. In Gamini Krishnayya and Others Vs. Curza Seshachalam and Others, the Supreme Court observed as follows at p. 89 (of Andh WR) : (at p. 642 of AIR):

"Chapter II of the Act deals with "scaling down of debts and future rate of interest." Section 7 appears to be the most important provision therein because it is here that the Legislature has given a mandate that every debt payable by an agriculturist at the commencement of the Act shall be scaled down and that nothing in excess of the amount a" scaled will be recoverable from such debtor. That Section runs as follows:

"XX XX XX XX"

(After extracting the Section, their Lordships proceeded to observe):

"We will have to bear in mind the provisions of this Section while construing the other provisions in Chap. II including those of Ss. 8. 9 and 13."

The impression that the provision "notwithstanding any law, custom, contract or decree of Court to the contrary" applies only to debts payable by an agriculturist at the commencement of the Act, cannot any longer be considered to be correct in the light of the clear observation of the Supreme Court that S. 7 has to be borne in mind while construing the other provisions in the Act regarding the scaling down of debts and rate of interest. In Maxwell's Interpretation of Statutes, 10 th Edition at page 68, it was pointed out that even in the terms of a Section fall short of the objective of the Legislature. it is permissible to ascribe an extended meaning to them, provided, the words are fairly susceptible of that meaning. The Act is special legislation intended to agriculturist-debtors. When its object is demonstrated in some provisions by specifically indicating the nature of the benefit intended, it would not be reasonable for the courts to in, the other provisions of the enactment without reference to the provisions in which the intention of the Legislature is expressed in clear terms construing beneficial legislation it is the duty of the court to make such construction as to suppress the mischief and advance the remedy. In Barlow v. Ross, (1890) 24 QBD 381 Lord Esher M R, observed at p. 389 as follows :

"Even where the usual meaning of the Languages falls short of the whole object of the Legislature more extended meaning may be attributed to the words if fairly susceptible of it, If there are circumstances in the Act showing that the phraseology is used in its large sense than its ordinary meaning that sense may

be given to it"

A comprehensive conspectus of the shows that the field of operation of Section 60 of the Indian Contract Act negated by the Act in negated by the area covered by Agriculturists' debts, In *Muthiah Thevar v. Lakshmanan Pandithar*, (1948) 2 Mad LJ 500: (AIR 1944 Mad 497): Govindarajachari, J. observed at p.503 (of Mad LJ): (at p. 499 of AIR) as follows :-

"It is true that Ss. 7, 8 and 9 of the Act deal with one subject, namely, debts incurred by agriculturist before 22nd March 1938, on which date the Act came into operation, while S. 13 statedly deals with debts incurred by an agriculturist after the commencement of the Act. It cannot, however, be forgotten that all the provisions were meant for the relief of agriculturists and that the Legislature was in giving relief to agriculturists overriding several provisions of the general law..... While a departure from the law of the country is not to be easily inferred it is, in my opinion, sufficiently clear from the wording as well as the object of Section 19 that the Legislature clearly intended to protect an agriculturist notwithstanding his own contract, and that it could not have intended to make his right to the benefit contemplated by the Act liable either to be defeated or materially curtailed by an act of the creditor to which the debtor is no consenting party."

The above view of the Learned Judge was quoted with approval by the Full Bench in *Nainamul v. Subba Rao* (AIR 1959 A P 548), While approving the view of Govindarajachari, J., and speaking for the Full Bench, Chief Justice Subba Rao observed:

"In my view, the principle enunciated by the learned Judge would apply only to unilateral appropriations by a creditor but also to payments made by a debtor under a mistake."

In *P. Sriramulu v. Nagiah*, (AIR 1962 A P 431) again the Full Bench approved the view of Govindarajachari, J., Speaking for the Full Bench, Chief Justice Chandra Reddy Observed (at p. 434):

"As pointed out by Govindarajachari J, in *Muthiah Thevar v. Lakshmanan Pandithar*, (AIR 1949 Mad 497) the wording and the object of S. 13 clearly indicate that the legislature wanted to protect an agriculturist notwithstanding his own contract and that it could not have intended to make his right to the benefit contemplated by the Act liable either to be defeated or materially curtailed by an act of the creditor to which the debtor is no consenting party. In our opinion, the position would be the same even if the debtor is a consenting party."

Section 13 of the Act shall have to be interpreted not merely by reference to words contained in the Section but also by reference to the manifest object of the Legislature as envisaged in Sections 7,8 and 9. If S. 13 has to be interpreted as a provision only in regard to the rate of interest payable by a debtor without in any way affecting the legal right of a creditor to appropriate an unspecified part-

payment, the effect would not be in accordance with the intention of the Act and the mandate contained in the Section itself. Suppose A advanced Rs. 10,000 to B at 10% p.a. simple interest, He advanced a similar sum at 10% p.a. simple interest to C also. B pays Rs. 500/- at the end of every year for nine years. C does not pay any amount but acknowledges his liability before the end of every three years. A files a suit against B. He files another suit against C also if the relief to be given to both B and C is only in regard to the rate of interest by way of reducing interest from 10% to 5 1/2, the total sums payable by both would be the same and in the various amounts paid by B are to be appropriated only towards the interest, B stands in no better footing than C even though he was diligent in making part-payments while C did not make any payment whatever. It is not certainly the intention of the Legislature to treat a good debtor and a bad debtor alike. If B is to stand in the same position as C, he could have as well deposited the open payments in bank and derived interest therefrom. When A received the part-payments every year it shall have to be presumed that he was utilizing the amounts for his advantage and derived interest at least at the minimum rate of 5 1/2 p.a. In I.V. Subbaiah's case (1973) 1 APLJ 377 Sambasiva Rao J. (as he then was) has given another illustration of the anomalous result if Section 13 has to be interpreted in the manner done by Rangannadham Chetty J. and Parthasarathi, J. While affirming the decision in I. V. Subbaiah's case, the Division Bench gave yet another illustration of the anomalous result and it may be unnecessary to reiterate those illustrations on, again. As pointed out by Subba Rao (Chief Justice as he then was) in Nainamul v, Subba Rao, (AIR 1957 A P 546) (FB) "the object of a. 13 is to give relief to agriculturists in the matter of interest in respect of a debt incurred after the Act, If such debt is sought to be enforced it is caught in the net of the Scaling down process, At that stage all the interest due on debt is reduced to the statutory level or, to put it differently, whatever may the contract rate of interest it is replaced by the statutory rate If the appropriations made earlier are not responded the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage. Doubtless the Courts are concerned with "the expressed intention of the Legislature." In P. Sriramulu's case the Bench clearly held that "the Full Bench in Nainamul v Subba Rao has firmly established the proposition that under S.13, the scaling down operation should be with reference to the first advance and that even appropriations of payments made towards interest could be reopened and adjustments made towards the amount determined by calculating interest on the original principal at the statutory rate."

14. The anomalous result can be obviated and full effect can be given to S. 13 of the Act with reference to the object of the Legislature only by applying the open part-payments towards principal. Otherwise the specific mandate of S. 13 that all interest due shall not exceed a sum calculated at 5 1/2% per annum simple interest cannot be complied with, The mere absence of a provision similar to Explanation (1) to Section 8 in S. 13 does not in any way enable the creditor to

defeat the object S. 13. S. 8 deals with debts incurred prior to the Act while S. 13 prescribes the process of scaling down the interest due on a debt contracted subsequent to the commencement of the Act if a proceeding is instituted in the court for the recovery of the debt Speaking for the Bench in the Letters patent Appeal No. 131 of 1913, Madhava Reddy. J observed ;

"The addition of any Explanation similar to the one contained in Sec. 8 (1) would be superfluous. That Explanation was necessary in 5. 8 because the Legislature did not stipulate that even debts incurred prior to 1st Oct, 1932 should necessarily carry 549C per annum simple interest, nor was there any provision to scale down all interest formed to be in excess of 51% per annum simple interest. The purpose of Expln. I to S. 8 is amply served by making a provision in S. 13 to scale down all interest exceeding a sum calculated at 5 1/2% per annum simple interest. To our mind, the absence of such an Explanation does not entitle the creditor to debit the amounts repaid by the debtor wholly towards interest due up to that date and debit only the balance, if any, towards principal."

The mode of appropriation of an open -payment made by an agriculturist-debtor as indicated in Sheku Sahib Vs. Venkataramananayya, therefore, incorrect. The decision of Division Bench in Letters Patent No. 131 of 1873, affirming I. V. Subbaiah v, I. Venkatrayudu, (1973) 1

APLJ 377 lays down the correct law. The decisions in Legiseti Srinivasulu Vs. Gondi Peda Kondappa, and P.Subbarama Chetty v, G. Audiseshan Sarma (1970-2 Andh WR 215) are not good law and are, therefore liable to be overruled.

15. In the result, the appeal has to be dismissed, but under the circumstances, without costs.

Madhava Rao, J.

16. This is an appeal preferred by the plaintiff against the judgment and decree dated 3-9-1973 of the Sub ordinate Judge's Court, Narasapur, to the extent aggrieved.

17. The appellant filed the suit originally for recovery of Rs. 13,826-23 P. on the basis of registered mortgage deed In the valuation para of the plaint he gave the various particulars showing the principal mortgage amount the various open payments made by the defendants from time to time. In arriving at the suit amount the plaintiff calculated interest only at 5 1/2% (five and-half per cent) per annum as per the statutory rate mentioned in S. 13 of the Madras Agriculturists Relief Act, IV of 1938 (hereinafter referred to as "the Act") and after adding the interest so calculated to the principal amount deducted the open payment made and ham that the plaintiff calculated interest at the same rate an the balance amount till the date of the next open payment and so on But when the open payments made represent amounts less than the interest accrued and due by that date, the balance of interest was added to the principal and again interest was calculated on the aggregate amount till the date of next open

payment and thus calculated interest on interest Pending the suit when the plaintiff found that the method and manner of calculation was contrary to the provisions at S. 13 of the Act, filled a fresh calculation memo avoiding calculation of interest an interest, From out of the open payment made by the debtor, appropriation was made towards the interest due and the balance, in any, towards the discharge of part of the principal. By adopting this revised calculation, the plaintiff arrived at Rupees 11,910-78 paise as representing the amount due under the mortgage deed and accordingly he prayed from a decree for that amount.

18. The defendants disputed the method and manner of appropriation of the open payments. According to the defendants, as per the provisions of Section 13 of the Act, simple interest has to be calculated on the principal amount from the date of debt till the date of filing of the suit or till the date of final payment wiping out the debt, and from the total amount so arrived at credit should be given to the open payments made by calculating counter interest on such amounts paid from the respective dates of payments. If this method is adopted the balance debt due according to the defendants would come to Rupees 8,226-85 paise, Reliance for such a calculation was placed on Venkata Subbaiah v, I Veenkatrayudu, (1973) 1 APLJ 377, It is not in dispute that the debtor-defendants are agriculturists entitled to the benefits of the Act and that at the relevant time the statutory rate of interest is 5 1/2% per annum simple,

19. The learned Subordinate Judge agreed with the contention of the defendants with regard to the appropriation of the open payments made and decreed the suit only for Rs. 8,286-83 paise

20. In this appeal the plaintiff challenged this method and manner of appropriation adopted by the lower Court When the appeal was pasted before a Division Bench consisting of Ramachandra Raju and Jeevan Reddy, JJ. they heard the appeal. Ramachandra Raju, J. speaking for the Bench took the view that, what all S. 13 of the Act says is that in a proceedings before the Court for recovery of a debt incurred by an agriculturist, the Court shall not allow interest over and above the statutory rate of interest mentioned in the said section (6 1/4 % was subsequently reduced to 5 1/2% by a notification issued by the State Government and published in the Official Gazette), The protection given to the agriculturist-debtor under the provisions of the Act is that if interest was paid at the contracted rate, which is in excess of the statutory rate. the debts will be reopened and the payments made in excess of the statutory rate would be adjusted at the statutory rate. The learned Judge further observed that there is nothing in S. 13 of the Act from which it could be said that even if the payments are made towards the simple interest at the statutory rate due on the date of such payment, still they could be reopened and counter interest given to the debtor on the amounts paid by him, It was further observed that there is nothing in S. 13 either to think that the normal of appropriation of open payments is deviated or that a different rule of appropriation is provided except that the

interest should be scaled down to the level of statutory rate ii the contracted interest is in excess of that, In other words, even if the debtor has paid the contracted rate of interest which is in excess of the statutory rate but the creditor has appropriated it calculating interest only at the statutory rate and the balance of payment, if any, towards the principal then also the question of re-opening the debt or scaling down the interest does not arise. If there are any open payments they would first go in the first instance towards interest due and the excess if any towards discharge of part of the principal, learned Judge in support of this view relied upon the decisions in *Thiruvengadatha Ayyangar v, Sannappan Servai*, 1941-2 Mad LJ 307: (AIR 1941 Mad 799 (2)); *Muthiah Thevar v. Lakshmanan Pandithar*, 1948-2 Mad LJ 500: (AIR 1949 Mad 497) and *Legisetti Srinivasulu Vs. Gondi Peda Kondappa*, . The learned Judge next referred to the decision in *I. V. Subbaiah v.I, Venkatarayudu* (1973)1 APLJ 377 (supra) in which *Sambasiva Rao.J.* (as he then was) expressed a contrary view to that in *Srinivasulu v. Kondappa* (AIR 1460 A P 174), but did not think it necessary to refer to a Division Bench as the Full Bench decisions set at naught the opinion expressed by *Ranganatha Chetty J* in *Srinivasulu v. Kondappa*, *Ramachandra Raju, J.,* was of the view that it was not stated in any of the two Full Bench decisions that after opening the appropriations the payments should be credited towards the principal and not towards the interest at the statutory rate accrued as on the date. of payments. According to *Ramachandra Raju, J.,*

"*Sambasiva Rao*, Justice, felt that the expressed intention of the legislature being only to permit Simple interest, the claim of the plaintiff to appropriate part of the open payment towards interest accrued until the date of payment is unauthorised by S. 13. Against this judgment of his Lordship there was an appeal in L. P A. No. 131 of 1973 which was disposed of by a Bench consisting of our learned brothers *Madhava Reddy* and *Jayachandra Reddy*, Justices. The Bench approved of the view taken by Justice *Sambasiva Rao*. The Bench observed thus: ""When once it is accepted that the creditor's right of appropriation Of payment is modified by the provisions of the Madras Act, IV of 1938, then the conclusion is inescapable that in whatever manner he may appropriate he cannot recover more than 5 1/2% simple interest. The only method of preventing him from recovering anything more than that, is to appropriate the payments made by the debtor towards reduction of the principal."

Even the Bench consisting of *Madhava Reddy* and *Jayachandra Reddy, JJ.* relied on the two Full Bench decisions the extracts of which were quoted in the judgment. Referring to the Full Bench decisions extracted the Learned Judge *Ramachandra Raju*, observed thus:

"There the Full Benches were concerned with cases of renewal of a debt where in the renewed debt is also included the interest accrued till the date of the renewal on the debt originally incurred or where there were earlier payments or appropriations credited towards interest at the contract rate in excess of the statutory rate. In one case it interest is calculated on the aggregate amount for

which the renewal was made it would be calculating interest on interest which is prohibited by S. 13, If, in the other case, the payment or appropriations were made towards the contract rate in excess of the statutory rate of interest, that would be allowing the excess rate up to a point which is prohibited by S. 13. That is why their Lordships of the Full Bench case said that the intention of the Legislature is not to apply the statutory rate to the outstanding interest only but to all interest due under the debt. That does not mean that the payments cannot go in the first instance in reduction of interest due at the statutory rate as on the dates they were made. The only prohibition is that the payments on the dates they were made cannot go in the reduction of any interest in excess of the statutory rate of interest at 5 1/2% simple."

In the end the Bench was of the view that S. 13 does not in any way alter the normal rule that in case of debt due with interest and payment received without a definite appropriation on the one side or the other, in the first instance, it has to be applied towards satisfaction of interest then outstanding provided it is not over and above the statutory rate of 5 1/2% per annum and it does not include interest on interest, and thereafter to the principal. Thus, in the present case the Division Bench agreed with the revised calculation filed by the plaintiff. But as the learned Judges took a view contrary to the one in L.P.A. No. 131 of 1973, they thought it desirable to refer the case for the decision of a Full Bench. Thus, the matter came up before this Full Bench.

21. The only point that arises for consideration before this Full Bench is, in view of the provisions of S. 13 of the Act when there are open payments made by the debtor, whether the payments so made should be first appropriated towards interest and the balance, if any, towards the principal or such payments must first be appropriated towards the principal alone.

22. The learned counsel for the appellant, Sri Bapiraju, contended that S. 13 of the Act speaks of only scaling down of interest when it is over and above the Statutory rate. Whatever the interest the debt may earn, it should not exceed the total interest calculated at the statutory rate of 5 1/2% per annum on the principal. That apart, S. 13 in no way takes away the application of general principles of appropriation as contemplated by S. 60 of the Contract Act when there are open payments by the debtor. But the trial Court on the basis that all the payments made by the debtor should be appropriated towards the principal first and not towards the interest due on those debts arrived at a figure less than the amount claimed by the plaintiff as per his revised calculation and decreed the suit of that amount. He also contended that if open payments made by the debtor are to be appropriated first towards the principal and not towards the interest the Legislature would have added to S. 13 an Explanation similar to that of Explanation I to S. 8 of the Act. The learned counsel for the respondent on the other hand contended that the lower Court in its judgment dated 3-9-1973 followed a decision of this Court in *I. V. Subbaiah Y.T Venkatrayudu*. (1) 1 APLJ 371 (supra) wherein it was laid down that open payments are to be credited

towards the principal first and not towards the interest and therefore correctly arrived at the balance amount due and accordingly decreed the suit. The decision in Venkata Subbaiah v.I. Venkatrayudu (supra) was also later on confirmed in L.P.A. 131 of 1973, D/- 6-8-1975. The learned counsel for the respondent pointed out that even in the L.P.A. the learned Judges were of the view that the addition of any Explanation similar to the one in S. 8 of the Act would be superfluous. Even the scheme of the Act is for the benefit of the debtors and therefore the provisions of the Act are to be construed in such a manner as to give maximum relief to the debtor.

23. To appreciate the above arguments, it is necessary to note a few sections which deal with the scaling down of the debts and interest. The relevant portions of the concerned Ss. 7, 8, 9, 12 and 13 of the Act are as under : (After stating the text of these sections as given in para 23 his Lordship proceeded:)

Section 1 lays down that irrespective of any law, custom, contract or a decree of my Court to the contrary, all debt payable by an agriculturist at the commencement of the Act shall be scaled down in accordance with the provisions of Chap.II. It also provides that after coming into force of the Act any debt due by an agriculturist irrespective of the contract shall be scaled down and the debtor is not liable to pay any sum in excess of it. Sec. 8 relates to debts incurred before 1-10-1932. S.8 (1) provides for discharge of all interest outstanding on 1-10-1937 and payable by an agriculturist whether under a contract, custom or" law, etc,, and that only the principal or such portion thereof as may be outstanding alone is repayable sec. 8 (2) Is meant for another situation, It provides that any debt as against which the debtor agriculturist paid twice the amount of Principal either by way of principal or interest shall be deemed to have been wholly discharged In other words, in cases where the creditor has received double the amount of Principal lent the entire debt stands completely discharged S. 8 (3) lays down that the smaller among the principal amount or such portion of the principal amount as is outstanding, and the amount of shortage arrived at by deducting the repayments made either by way of principal or interest or both from twice the amount of the principal alone Shall be repayable. Sub-sec. (4) of Section 8 makes it clear that if for any reason the amounts paid by the debtor are more than the amount repayable under Sub-secs. (1), (2) and (3) the excess shall not be required to be refunded by the creditor Explanation 1 is added to Section 8 laying down the mode of appropriation of Open payments. It states that each and every open payment made by the debtor should be appropriated towards the satisfaction of the principal amount. This Explanation has created kind of appropriation favorable to the debtor as all Open payments made by him should go towards the satisfaction Of the principal This appropriation provided by this Explanation is a deviation from the general principles laid down by S. 60 of the Contract Act with which I would deal a little later.

24. Section g deals with debts incurred between 1-10-1932 and 22-3-1938 S. 9

(1) provides that the rate of interest for such debts shall be as per law, Custom, contract, under the decree of Court or at 5 per cent per annum simple, whichever is less and credit shall be given for all sums paid towards the interest and only such amount as is found outstanding if any for interest thus calculated shall be payable together with the principal amount or such portion of it as is due. Here emphasis is laid on the fact that if the rate of interest is less than 5 per cent per annum simple then the contract rate alone is payable but not at 5% per annum. At this juncture it can be noted that Sections 8 and 9 deal with scaling down of the debts incurred prior to the commencement of the Act while Sec. 13 deals with Scaling down of interest for the debts incurred after the commencement of the Act. S. 12 provides the rate of interest Payable by agriculturists on old loan.

25. S. 13 Specifically speaks of scaling down of all interest due on any debt incurred by an agriculturist after the commencement of the Act so as not to exceed a sum calculated at 6 1/4 (now 5 1/2% Simple interest. A plain reading of this Section leaves no doubt that all interest due on any debt has to be scaled down to the level of the Statutory rate. Now the controversy is while applying this benefit conferred by S. 13 whether the open payments made by the debtor have to be credited first towards the interest or the principal. Section 13, in my opinion, does not give any clue to resolve this controversy. In the absence of any guidelines given by this section the only appropriate course is to follow the general principles in this behalf. Whenever there is an open payment it is not disputed, that it is the option of the creditor to appropriate it either towards the Principal or towards the interest. S. 60 of the Contract Act which has a bearing on this aspect. reads as under:

"60 Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

This Principle is extended even to the appropriation of open Payments made by the debtor first towards interest and thereafter to the principal. This principle was laid down in *M.V. Appa Rao v. R. P. Appa Rao*, AIR 1922 PC 233 which is again accepted by the Supreme Court in *Meghraj and Others Vs. Mst. Bayabai and Others*, . The Supreme Court expressed this in the following terms:

"The normal rule in the case of a debt due with interest is that any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal.

26. In L.P.A. No. 131 of 1973 D/-6-8-1975 dealing with S. 13 of the Act, a Bench of this Court took the view that, keeping the Special provisions of the Act in view and to give benefit to the agriculturist debtor Open payments made by the debtor are to be first appropriated towards the principal and not towards

interest, The Bench felt that if the open Payments made by the debtor are not appropriated towards the principal first, but appropriated towards the interest and the balance if any towards discharge of a part of the principal then there is likelihood of the creditor receiving more interest than what is warranted by Section 13 of the Act In this behalf the Bench gave an illustration which is extracted in full below as it has a direct bearing on this point:

"For example, if a sum of Rs. 2,000 is advanced on 1st of Jan 1970, the maximum amount that a creditor may at the end of the first year, recover from an agriculturist-debtor governed by the provisions of the Act would be Rs. 2,110 and at the end of the two years would be Re, 2,220, If at the end of the first year, the debtor were to pay a sum of Rs. 1,000, the amount due to the creditor, at the commencement of the second year, would be Rs. 1,110 out of which Rs 110 represents the interest earned by the Principal sum of Rs. 2,000 advanced by the creditor. At the entire principal amount of Rs. 2,000 has already earned interest at 5 1/2 % per annum for the first year, when the debtor has paid Rs. 1,000 no further interest can be allowed on Rs. 110 which represents the interest earned by Rs. 2,000 and not the principal. Interest could be allowed only on the principal amount due. After excluding this amount of Rs. 110, which constitutes interest on Rs 2,000 and after deducting Rs. 1,000 repaid by the debtor at the end of the first year the balance of the principal amount due would be Rs. 1,000 on which sum alone interest at 5 1/2% per annum simple interest may be allowed for the Second year. In other words the amount paid by the debtor should go towards the reduction of the principal, and the interest must be calculated on the balance of Rs. 1,000 principal for the next one year. So calculated on this Rs, 1.000 at 5 1/2% per annum, the creditor would earn another Rs.110. Thus, the total sum recoverable by the creditor at the end of two years, calculating interest at 5 1/2% per annum simple interest would be Rs. 2,000 principal and Rs. 220 by way of interest, This would be in accord with Sec. 13 of the Act. If the contention of the learned counsel for the appellant, Mr Y. G. Krishna Murthy, is accepted and the creditor given the absolute discretion to appropriate the amount of its. 1,000 paid by the debtor at the end of one year either towards principal or towards interest, and the creditor chooses to appropriate the said amount towards the interest due as on that date and appropriates only the balance left towards principal, the result in the example given above would be, that out of Rupees 1,000 paid at the end of one year Rs 110 would first go towards interest and thus only Rs, 890 would be left to go towards the reduction of the principal, and the principal amount due at the end of one year from the debtor would be RE. 1,110. In other words, for the second year, the creditor would be claiming interest at 51% per annum on Rupees 1,110 and would be earning an interest of Rs. 122-10 Ps. Thus the total sum of interest at the rate of 5 1/2% per annum earned on the principal amount of Its 2,000 advanced by him would be Rs. 232 10 Ps. This would result in the creditor recovering Rs. 12-10 Ps. in excess of what he would have recovered. if the debtor had not paid Rs. 1,000 at the end of the first year. That certainly could

not be the intention of the legislature.

That would result in the creditor recovering interest in excess of 5 1/2 % per annum simple interest by Rs. 12-10 Ps at the end of two years. That would be contrary to the express terms of S. 13 of the Act. Inasmuch as by such appropriation as is contended for by Mr., Y. G. Krishna Murthy appearing for the creditor-appellant, though 5 1/2% is calculated, that creditor would be recovering interest in excess of 5 1/2% per annum. Such appropriation cannot be permitted by the Court. The Court in allowing such appropriation and calculation of interest in that manner would be failing to scaling down all interest which is in excess of 5 1/2 % per annum simple interest."

Taking that view the Bench proceeded to observe that even the learned single Judge in Venkata Subbaiah v. Venkatrayudu (1973)1 APLJ 377 (Supra) expressed the same opinion which is noted down by the Bench as under:

"As observed by our learned brother, Sambasiva Rao, J., (as he then was), if the amount paid by the debtor is not deducted towards principal, on the date he pays it, and is deducted from out of the total amount of principal and interest, then, the debtor would be paying interest in excess of what would be due on the principal amount."

The principle which is adopted by the Bench is that under no circumstances the creditor is entitled to recover interest on the debt at more than 5 1/2% per annum simple. This proposition cannot be disputed. The Bench in its illustration took Rs. 2,000 as the money advanced towards the loan. It rightly calculated interest at 5 1/2% per annum simple for the first year as Rs. 122-10 Ps. Therefore, at the end of the first year the debt comes to Rs. 2,110. If Rs. 1,000 is paid by the debtor as an open payment and out of that Rs. 110 is appropriated towards the interest due for that first year the balance of open payment left would be Rs. 890, if this Rs 890 is appropriated towards the principal the balance of the debt comes to Rs. 1,110. At this stage, in my view, inadvertently some mistake seems to have crept into the calculation. It is found in the illustration, on this balance Principal of Rs 1,110 simple interest for one year at 5 1/2% per annum would come to Rs. 61-05. A correct calculation of simple interest at 5 1/2% per annum on Rs. 1,110 for one year comes to only Rs. 61-05 and not Rs. 122-10 Ps. The Bench under the wrong calculation found that the total interest payable by the debtor at the end of two years would be Rs. 232-10 Ps, On a principal of Rupees 2,000 simple interest at 5 1/2% per annum for two years comes to Rs. 220 alone and thus, according to the Bench the debtor had to pay in the given case Rs 12-10 Ps. Over and above the interest that would be due and payable by him under S. 13 of the Act, As pointed out above simple interest at 5 1/2% per annum on Rs. 1,110 for one year would be Rupees 61-05 and not Rs, 122-10 Ps Therefore, the total interest by the end of two years would be Rs. 171-05 (Rs. 110+ Rs 61-05) and not Rs. 232-10 Ps. Hence it cannot be said that if the open payment of Rs, 2,000 made at the end of the year is first appropriated towards the interest due by that date and the balance towards the discharge of the

principal the debtor is paying more than the interest due and payable u/s 13 of the Act, Had that mistake, due to inadvertence not crept into the calculation, my view, the Bench would not have held that the open payments should be appropriated towards the satisfaction of the Principal alone. It cannot be doubted that if out of the payment, appropriation is made first towards interest and the balance toward. the principal, the principal goes on decreasing. Eventually the interest payable becomes lesser and lesser. Therefore, under no circumstances the entire interest payable by this method of appropriation exceeds the total interest payable by the debtor on the original debt from the date of debt to the date of filing of the suit, That apart, the Bench even wanted to draw support for this proposition from a Full Bench lodgment of this Court in *Nainamul v. Bala Hadra Subba Rao*, AIR 1957 AP 546: (1957) 2 A WR 52 In my view, the Full Bench nowhere laid down the principle that the open payments made by the debtor should be first appropriated towards the Principal alone, The question before the Full Bench was, whether in the case of a debt incurred after the Act came into force a payment made expressly towards interest at the contract rate can be "opened and reappropriated towards interest payable under the provisions of a 13 of the Act. The Full Bench took the view that it was open for the Court to "open the account and "appropriate the open payments towards the interest due on the dates of payments at the statutory rate. While construing the objection of S. 13 Of the Act the Full Bench observed as under:

"The object of S. 13 is to give relief to agriculturists is the matter of interest in respect of debt incurred after the Act. If such a debt is sought to be enforced it is caught in the net of the letting down process. At that stags all the interest due on the debt is reduced to the statutory level, or to put it differently whatever may be the contract rate of interest it is replaced by the statutory rate, If the appropriations made earlier are not reopened the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage. Doubtless the Courts are concerned with the expressed intention of the Legislature, The crucial words in Section 13 are "all interest due on my debt". The word "interest" is quali- fied by two words "all" and "due". If interest outstanding alone is scaled down, the emphatic word "all " becomes otiose, If that was the intention the words "interest outstanding would serve the purpose as well The word "all" therefore cannot be ignored and must be given a meaning it indicates that the entire interest which a debt earned is scaled down" (emphasis is mine).

Adverting to the next crucial word "due" the Bench referred to various dictionary meanings and reading them in the context of the several provisions of the Act, the word "due" is ultimately given the meaning "only the interest payable on the debt", The Full Bench also distinguished the words outstanding interest" from "all interest due" Ultimately the Full Bench held that whatever the interest earned by the debt it should not exceed the statutory rate of interest But there is no suggestion, express or implied that the open payments should be appropriated towards the principal.

27. At this stage it is necessary to point out that the Division Bench in L.P.A. No. 131 of 1973 proceeded on the principle that the overall interest should not exceed the statutory rate of interest. If the open payments are not appropriated towards the principal alone, but appropriated first towards the interest and the balance if any towards the principal then the interest payable would be more than what would be due as per S. 13 of the Act. This assumption is due to the wrong calculation of interest in the illustration as pointed out earlier.

28. The learned single Judge in Venkata Subbaiah v. I. Venkatrayudu, (1973) 1 APLJ 377 (supra) proceeded on a different basis which was not adapted by the Division Bench in the L.P.A. The learned single Judge observed thus:

"If, however, whenever a payment is made without appropriating it specifically either towards interest or principal and if the option is given to the creditor to first appropriate the amount to interest due up to the date of payment and to credit the remaining balance only to the principal, it necessarily results in the increase in the amount of interest that is ultimately payable by the debtor. I will try to demonstrate this by giving a simple illustration. Suppose an amount of Rs. 1,000 is advanced and the debtor makes an open payment of Rs. 100 on the expiry of one year from the date of incurring of the debt. If the interest is reckoned simply from the date of incurring of the debt for three years, which is the period of limitation, at 5 1/2% per annum it comes to Rs. 165. Thus the total of principal and interest that is due on the expiry of three years from the date of incurring of the debt, reckoning on the basis of simple interest at 5 1/2% per annum is Rs. 1165. But the debtor has paid Rs. 100 as an open payment. If that is also allowed straight and simple interest at the same rate from the date of payment for two years it gathers an interest of Rs. 11? The total of Rs. 100 plus interest for two years is Rs. 111. If this payment which comes to Rs. 111 at the permissible rate of interest is deducted from the total principal and interest that accrued by the end of the term of three years viz.. Rs. 1,165 the balance that is found due and payable by the debtor is Rs 1,054. If, on the other hand, when the payment of Rupees 100 is made on the expiry of one year, whatever interest that accrued on Rs. 1,000 up to that date is deducted from the payment, what remains out of the payment of Rs. 100 is only Rs. 45, for an interest of Rs. 55 accrues on the Principal amount of Rs. 1,000 for one year. Therefore only the balance of Rs. 45 goes towards the principal. So on the expiry of one year, the principal amount that remains is Rs. 955. If interest is calculated on that amount at 5 1/2% for the balance of two years. it comes to Rs 105-05. Thus the balance that is found due and payable by the debtor is Rs 1060-05 That means the debtor, according to this latter method of appropriation of the payment and calculating the interest, is obliged to Rs 6-05 more, This certainly results in paying more than simple interest that is provided under S. 13 of the Act, This is indeed claimed by the plaintiff in the present case. By appropriating parts of payments towards the interest that fell due by the dates of payment a further amount of slightly over Rs. 200 is claimed from the debtor. Thus it results in claiming more than 5 1/2% simple interest".

In that illustration an amount of Rs. 6-05 is arrived at as having been more than what is permissible by S. 13 of the Act. Now, I will examine whether the calculation in the illustration is in conformity with the provisions of S. 13 of the Act, If Rs 1,000 is advanced the interest for three years calculated at 5 1/2% per annum simple would be Rs 165. Therefore the total amount of principal and interest after three years would come to Rs 1165 as per the Provisions of S. 13 of the Act. The provision lays down that under no circumstances in this given illustration the creditor is entitled to claim more than its. 165 towards interest If an open payment of Rs, 100 is made at the end of the first year and if out of this Rs. 55 is appropriated towards the interest secured for the first year and the balance of Rs. 45 towards the principal the balance of principal outstanding would be Rs. 955. If for two years no payment is made the interest that accrues on Rs. 955 at 5 1/2% per annum Simple would be Rs 105-05 i.e., the total interest that would be payable by the end of three years would be Rs. 160-05. This is certainly less than Rs. 165 permissible u/s 13 of the Act. What is stated in the illustration is that if the open payment of Rs 100 made is allowed straight and simple interest it fetches Rs 11 for two years at 5 1/2% per annum . The total amount comes to Rs. 111 viz., rest accrued thereon. Thus, for the money paid by the debtor to the creditor counter interest is calculated. This in my view is not warranted by the provisions of Section 13 of the Act. The question here is scaling down of interest to the level of statutory rate, but not grant of counter interest. Granting of counter interest practically amounts to deducting the open payments made by the debtor towards the principal alone. But this is neither contemplated nor envisaged by S. 13 of the Act. If that method is adopted we have to treat the open payment as if it is an investment fetching return. If the debtor, who is an agriculturist wants to invest money for getting return it need not necessarily be with the creditor alone and that too for an interest at the Statutory rate of 5 1/2% per annum, which rate of concession is given only to an agriculturist debtor under the Act. The debtor may make an investment of the Same for a higher return in some other manner. From any point of view grant of counter interest is not envisaged by S. 13 of the Act. At this stage it can also be noted that this method of calculation adopted by the learned single Judge is not followed by the Division Bench in the L.P.A., probably because grant of counter interest is not contemplated by S. 13 of the Act.

29. If the legislature really intended the open payments made must be appropriated towards the discharge of principal alone, it would have certainly added an Explanation similar to Explanation-1 to S. 8 of the Act to S.13 also. Explanation 1 to S. 8 of the Act was added by Act XXIII of 1948 with a special purpose. S. 8 specifically provided that the sums paid by way of principal or interest should not exceed to the principal amount and in some cases it also provided that the interest outstanding on 1-10-1937 shall stand discharged. The legislature is deemed to be accredited with the knowledge of prevailing practice that in the absence of Explanation-1 the creditor is to appropriate the open payments towards interest and the balance, if any, towards the principal. To

avoid this kind of appropriation in respect of the debts governed by Section 8, Explanation-1 is inserted by way of amendment. This Explanation also became necessary in view of the earlier judgments of the Madras High Court holding that the recognised and acknowledged principle regarding the utilisation of payment which is made in respect of principal and interest is that the payment would be appropriated by the creditor towards the interest and thereafter the balance, if any, towards the principal. In *A.S. Duraiswamy Mudaliar and Others Vs. Muhammad Amiruddin and Others*, Gentle C. J., and Bell J., were deciding a case arising under Sec 8 (1) of the Act. The question there was, with regard to the appropriation of the amount paid by the debtor under a money decree obtained on 10-4-1931 i.e. prior to 1-10-1932. Their Lordships held that when a payment is made in respect of principal and interest there is an inference that the payment is ordinarily allocated towards the interest and thereafter any balance in respect of the principal. Hence when a money decree is passed and payment is made by a debtor without saying about the appropriation, the inference is that the creditor had appropriated the payment primarily towards the interest. The payment cannot be credited towards the principal. In this behalf, the Bench relied on *V. Sreenivasachariar Vs. Bysani Krishnayya Chetti transferee decree-holder, insolvent, represented by the Official Assignee of Madras, : S. Venkiteswara Aiyer Vs. T.N. Ramasami Aiyar and Others*, . Dealing with the scope and object of Explanation-I to S. 8 the learned author Sri P, Ramanatha Iyer of the *Madras Agriculturists' Relief Act*, 3rd Edition at page 84 commented as under:

"Scope and Object of:-- The object of Explanation I is to take away the right of the creditor to appropriate payments towards interest unilaterally, as he would be entitled to under S. 60 of the Contract Act and to nullify the effect of the decision in *A.S. Duraiswamy Mudaliar and Others Vs. Muhammad Amiruddin and Others*, ."

Thus, it is evident that Explanation-1 to S. 8 was specifically added to take away the option of the creditor to appropriate the open payments made by the debtor towards the interest first and the balance, If any, towards discharge of part of the principal. When such is the special purpose behind adding the Explanation-1 S.8, it cannot be presumed that in absence of any such Explanation added to S. 13 this method of appropriate could be read into S. 13 also.

30. The Supreme Court in *K. Hutchi Gowder Vs. Richobdas Fathaimull and Company*, discussed the scope of Ss. 7, 8, 9 and 13 of the Act. There the point was, whether a decree obtained in a suit to set aside a debt incurred after the Act came into force could be amended either under S. 19 or S. 13 of the Act by scaling down the interest. Subba Rao, J, (as he then was) speaking for the Bench observed thus (at p. 518):--

"The general scheme of the Parent act gathered there from may be briefly stated thus, The main object of the Parent Act was to give relief to agriculturists. "Debt" has been defined in S. 3 (iii) of the Parent Act as any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable

under a decree or order of a civil or revenue court or otherwise This definition is rather comprehensive: It takes in secured, unsecured and decree debts due from an agriculturist. S.7 of the Parent Act declares that debt so defined has to be scaled down in the manner prescribed by the said Act Section 8 provides the mode of scaling down debts incurred before 1932 and S. 9 the debts incurred after 1932 but before March 22, 1938 and S. 13 deals with the scaling down of debts incurred after the commencement of the Parent Act, The relief granted under the said Act varies with the date of the debt depending upon whether it falls under one or other of the said three periods. While Ss. 7,8,9 and 13 give the principles for scaling down a debt, S. 19 provides the machinery for scaling down..... The position, therefore, is that in the case of debts other than decree debts, the settling down process will have to be resorted to in the appropriate proceeding taken in respect of the debt and in the case of decree in respect of debts incurred before the Parent Act whether made before or after the said Act, by filing an application u/s 19 (1) or (2) of the Parent Act, as the case may be, But S. 19 on its express terms does not permit the filing at an application for amending a decree by scaling down a debt incurred after the Parent Act came into force. Doubtless as Mr. Viswanatha Sastry contends, the Parent Act, to some extent, undermines the sanctity of decrees, but that is to implement the policy of the Legislature to give relief to agriculturists overburdened with debts. But a court particularly in the case of an expropriatory measure like the Act , cannot rely upon the supposed policy of the legislature and extend the scope of the relief given to agriculturists by analogy. The scope of the relief shall necessarily be confined to that given by the Act expressly or by necessary implication. A fair reading of sub-sees, (1) and (2) of S, 19 of the Parent Act discloses beyond any reasonable doubt that the Legislature does not provide thereunder any machinery for reopening a decree made in respect of a debt incurred after the Act came into force:"" (emphasis is mine).

The Supreme Court held that by analogy. particularly in the case of an expropriatory measure like the Act, one cannot rely upon the supposed policy of the Legislature and extend the scope of the relief beyond what is provided in the section, Even if it is a beneficial legislation for the agriculturists, the benefit must be confined to the extent the section provides and one cannot travel beyond that. Further an argument was addressed before the Supreme Court that the debt in S. 13 of the Act includes a decree debt and therefore the scaling down of that decree debt could also fall under S, 19 of the Act, Dealing with this aspect the Supreme Court held thus (at P. 579):--

"The argument, if accepted, disturbs the entire scheme of the Parent Act. Section 13 is one of the group of sections, viz. Ss. 8, 9 and 13, dealing with the principles or scaling down in a proceeding for the recovery of a debt, But where a decree is to be amended, the Act has taken care to provide expressly of the amendment of the decree. If the Legislature intended to provide for the amendment of decrees even in cases falling under S. 13 it would have added another appropriate clause in S. 19. The absence of any such clause indicates an

intention that in cases of debts comprehended by S. 13 the Legislature gives only a limited relief expressly provided thereunder, It is said, so far as the reopening of decrees after the Parent Act came into force is; concerned, whether in respect of debts incurred before or after the said Act, there cannot possibly be a justification for a difference in the manner of their treatment. A plausible reason can be discerned for this legislative distinction between debts incurred before the Act and those incurred after the Act, for in the former when the debts were incurred the Act was not in existence and, as the debtors could not have anticipated the provisions of the Act, they were given the summary remedy, hut the agriculturists who incurred debts after the Parent Act with open eyes were denied the same; While in the former , they were allowed to a open decrees made in respect of the said debts before or after the Act, in the latter that could claim relief only in an appropriate proceeding before the decree was made and that too was confined to the limited relief in regard to the rate of interest provided thereunder. The difference in the treatment of the two categories of decrees was brought about by sub-sec. (2) of S. 19 added by a later amendment. Whatever may be the reason for the difference. We cannot extent the scope of S.13 by analogy or by stretching the meaning of the words "proceeding" and "recovery".

(emphasis is mine).

This reasoning given by the Supreme Court equally applies to the present case while construing Explanation-1 to 8 and S. 13 of the Act. If the Legislature wanted that the open payments made towards the debt incurred subsequent to the commencement of the Act were to be appropriated towards the principal alone, it could have definitely added an Explanation-1 to S, 13 similar Explanation-1 to S. 8. Therefore, looking the matter from any angle it cannot be paid that the open payments by the debtor have to be appropriated towards the principal alone under S. 13 of the Act.

31. In Rex Vs. Jaggopal Prasad and Others, a Bench of the Madras High Court held that open payment should be credited in the first instance towards the interest as on the dates on which they were made. This was followed in R. Muthiah Thevar Vs. P. Lakshmanan Pandithar, by Govindarajachari, Justice. There are other authorities of this High Court in which this method of appropriation is followed, namely, in Legisetti Srinivasulu Vs. Gondi Peda Kondappa, wherein Ranganadham Chetty. J, observed that under S. 60 of the Contract Act the creditor has got a right to appropriate the amount towards interest if he chooses and that right subsists even to the stage of trial of the suit. Explanation-I to S. 8 relates to the debts incurred on or before 1-10 1932 and where the debt was of 15-6- 1953 the provision which has direct application is 8, 13 of the Ad and to that section there is no Explanation similar to S. 8 curtailing the creditor's right under S. 60 of the Contract Act. Parthasarathi, J., also took the same view in P. Subrama Chetty Audiseshan Sarma, (1970) 2 Andh WR 215. The learned Judges referring the present matter to the Full Bench also expressed the same

view that S. 13 does not in any way alter the normal rule that in the case of a debt due with interest any payment received without any definite appropriation on the one side or the other, in the first instance, it has to applied towards satisfaction of interest then outstanding, provided it is not over and above the Statutory rate of 5 1/2% per annum, and it does not include interest on interest and thereafter, to the principal. For the reasons given above, I am in entire agreement with the view taken by the Division Bench referring the matter to this Full Bench.

32. In the result, the appeal is allowed and preliminary decree is passed as per the revised valuation. The judgment and decree of the Lower Court is accordingly modified. There will be no order as to costs.

BY THE COURT

By virtue of the majority judgment. the appeal is dismissed, There will be no order as to costs.

33. Appeal dismissed