

(1973) 09 MAD CK 0004
In the Madras High Court

Navis Ammal Fernando and Another	Vs	APPELLANT
S. Subbiah Iyer		RESPONDENT

Date of Decision : 13-09-1973

Acts Referred:

Contract Act, 1872 — Section 16
Usurious Loans Act, 1918 — Section 3(1)

Citation : (1974) ILR (Mad) 237 : (1978) 87 LW 298 : (1974) 1 MLJ 334

Hon'ble Judges : Ismail, J

Bench : Division Bench

Judgement

Ismail, J.—The defendant in O.S. No. 76 of 1965 on the file of the Court of the Subordinate Judge of Tuticorin are the appellants herein.

The suit was instituted by the respondent for recovery of a sum of Rs. 31,861 due on a mortgage admittedly executed by the first defendant-first

appellant in favour of the respondent for R). 12,003. The mortgage deed is dated 1st August, 1953 and the same has been marked as Exhibit A-1

in these proceedings. The consideration recited in the document consists of three items, namely, (1) a sum of Rs. 8,600 paid by the respondent for

and on behalf of and at the request of the first appellant to the second appellant (second defendant) on 1st May, 1963 by cheque No. 148689 on

the Canara Bank issued in favour of the second appellant in discharge of the equitable mortgage in respect of the identical property created by the

first appellant in favour of the second appellant for Rs. 8,000; (2) a sum of Rs. 2,305-6-0 being the amount due to the respondent by the first

appellant in respect of the monthly auction chit conducted by the respondent and settled at that figure; and (3) a sum of Rs. 1,094.-10-0 received

as cash from the respondent. The rate of interest stipulated in the mortgage

deed was 12 per cent per annum, interest accruing for each month being payable on the 10th of every succeeding month, for which, receipt was to be obtained then and there. The principal amount was to be paid in three years' time, that is, on or before the 1st August, 1956 and the mortgage deed got back with the endorsement of discharge. The document further provided that if interest was not paid monthly, the amount of monthly interest due should be added to the principal amount and the whole amount should carry interest at the rate of 13 1/2 per cent per annum and the entire amount of principal and interest due as aforesaid was to be realised in a lump sum whenever the plaintiff wanted, by proceeding against the mortgaged property and also personally. Contending that the first appellant had not paid any amount till date of suit towards the principal and interest due on the mortgage, the respondent instituted the suit. He stated in the plaint that he was satisfied with interest at 12 per cent per annum on the principal sum of Rs. 12,000 from 1st August, 1953 the date of mortgage to 10th September, 1953, when the first month's interest became due and payable and was not paid and thereafter simple interest at 13 1/2 per cent per annum from 10th September, 1953 till date of suit and subsequent interest. The further case of the respondent was that on 27th October, 1965 the second appellant sent a registered letter to the respondent stating that he had purchased the mortgaged property on 22nd October, 1965 from the first appellant, that a sum of Rs. 5,622-50 was reserved in the document of sale for payment in full of the amount due on the suit mortgage, that he was willing to pay the same and that he was not liable for interest thereafter. The respondent contended that the said sale deed was taken by the second appellant in collusion with the first appellant and her husband with ulterior design; that it was not a genuine transaction; that the second appellant knew that the amount as claimed on the suit-mortgage was due; that he was getting a document with false recitals for a lower amount than was actually due; that that itself showed the mala fides of the second appellant and that the sale in his favour was not genuine. According to the respondent, the offer by the second appellant of the said amount in full discharge of the suit mortgage debt was mala fide and it was promptly rejected by the respondent, since nothing was paid either towards the principal or towards interest due to the respondent

under the mortgage deed, Exhibit A-1.

2. The suit was resisted by the appellants herein. The first appellant-first defendant denied that the mortgage was supported by consideration to the extent of Rs. 12,000. She admitted that the mortgage was supported by consideration to the extent of Rs. 8,600, the amount which was paid by the respondent to the second appellant towards discharge of the equitable mortgage admittedly created by the first appellant, in favour of the second appellant. In effect, the first appellant denied the other two items of consideration. The further case of the first appellant was that she had made payments to the respondent and that the amount due under the mortgage was only a sum of Rs. 5,622-50 which was reserved with the second appellant for payment to the respondent, when the property was sold by the first appellant in favour of the second appellant. The substance of the written statement of the second appellant was also the same. In addition to putting forward the above contentions, on merits, they further contended that the rate of interest provided for in the mortgage deed was penal and usurious and that the first appellant was entitled to claim the benefits of the Madras Agriculturists Relief Act (IV of 1938) and that the interest was liable to be scaled down under the provisions of the Usurious Loans Act (Central Act X of 1918) as well as the Madras Money-lenders Act, 1957.

3. On these pleadings of the parties, the trial Court settled the following issues for trial :

1. Whether the suit bond is supported by consideration to the extent of Rs. 8,600 only and the other items of consideration mentioned in the bond are not true ?

2. Whether the several payments alleged in discharge of suit bond are true ?

3. Whether the provision as to interest is either penal or usurious and not claimable under the Madras Money-lenders Act ?

4. Whether the first defendant is entitled to claim the benefits of the Madras Act IV of 1938 ?

5. Whether the first defendant is disentitled in any event to raise such a plea, as she has parted with all her interest in the property in favour of the

2nd defendant who is an Income Tax assessee ?

6. Whether the defendants are estopped from contending that the suit mortgage

bond is not fully supported by consideration ?

7. Whether the plaintiff is entitled to compensatory costs ?

8. Whether the tender pleaded by the 2nd defendant is true and valid ?

9. To what relief, the plaintiff is entitled ?

4. On an elaborate examination of the materials placed before the Court, the learned Principal Subordinate Judge of Tuticorin came to the

conclusion that Exhibit A-1 mortgage was fully supported by consideration to the entire extent of Rs. 12,000 and that the payments alleged to have

been made by the first defendant-first appellant had not been established. On this finding, he answered issue No. 1 in the affirmative and in favour

of the plaintiff-respondent and issue No. 6. in the negative, and against the appellants. He answered issue No. 2 also in the negative, and against

the appellants. On issues Nos. 4 and 5, he held against the appellants on his finding that the mortgaged property is situated within the limits of the

Tuticorin Municipality and that in any event the first appellant had sold the property to the second appellant, who is admittedly an Income Tax

assessee. On issue No. 3, he held that the mortgage debt in question and the rate of interest stipulated in the mortgage deed, Exhibit A-1, were not

liable to be reopened u/s 3(1) of the Usurious Loans Act (Central Act X of 1918), as amended by Madras Act VIII of 1937 and that the Madras

Moneylenders Act, 1957, not having retrospective effect, did not affect the rate of interest provided in Exhibit A-1, the mortgage-deed, which

admittedly came into existence prior to the coming into force of the said Act, and consequently he answered that issue against the appellants. On

issue No. 8, the conclusion of the learned Subordinate Judge was that, since he found under issue No. 2 that the several payments pleaded by the

first appellant were not true, the tender pleaded by the second appellant, although true, Was not valid in the sense that it was not purported to be in

full discharge of the liability under the suit mortgage. On issue No. 7, he held that the plaintiff was not entitled to compensatory costs. On these

findings, by his judgment and decree dated 24th October, 1966, the learned Principal Subordinate Judge decreed the suit as prayed for and

passed the necessary preliminary decree and granted three months" time to the appellants for payment.

5. It is against this decree and judgment that the present appeal has been

preferred by the defendant in the suit. Since the defendants contended that only a sum of Rs. 5,622-50 was due under the mortgage, admitting the liability for that amount and interest, they have filed this appeal for the balance of the amount decreed against them.

6. Mr. V. Ratnam, learned Counsel for the appellants, having regard to the voluminous evidence available in the case and having regard to the thoroughness with which all pieces of evidence have been considered and discussed by the trial Court, did not, in our opinion, very rightly canvass the correctness of the findings of the trial Court that Exhibit A-1 mortgage was supported by consideration to the entire extent of Rs. 12,000 and that the payments made by the first appellant were not true, with the result he concentrated his attack on the decree passed by the trial Court with reference to only two points considered and rejected by the trial Court, they being the reliance on the provisions of the Usurious Loans Act (Central Act X of 1918) as amended by the Usurious Loans (Madras Amendment) Act, 1936 (Madras Act VIII of 1937) and the Madras Money-lenders Act, 1957 and consequently we proceed to consider only those two points in this appeal.

7. As far as the first point regarding the Usurious Loans Act (Central Act X of 1918) is concerned, Section 3(1) of that Act provides that where in any suit to which that Act applied, the Court has reason to believe : (a) that the interest is excessive; and (b) that the transaction was, as between the parties thereto substantially unfair, the Court may exercise all or any of the following powers, namely : may (i) reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest; (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof; (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just. Clause (a) of Sub-section (2) of Section 3 states as to when

interest can be said to be excessive and Clause (b) of this subsection states, what should be taken into account by the Court in considering the question whether the interest is excessive or not. Clause (c) of this subsection further provides as to what the Court shall take into account in considering the question of risk and Clause (d) provides as to what the Court shall take into account in considering whether a transaction was substantially unfair or not. It will be seen that the conditions precedent for the exercise of the power by the Court pursuant to this section are that the Court must have reason to believe that the interest is excessive and that the transaction was, as between the parties thereto, substantially unfair. It is relevant to notice that these two conditions must be cumulatively satisfied.

8. A Bench of this Court had to consider the scope of the above provisions in *Nageswara Ayyar Vs. M.L.M. Ramanathan Chettiar and Another*, .

This Court pointed out that the Usurious Loans Act was introduced for the purpose of giving the Court larger powers than those given by Section

16, Contract Act, in dealing with matters relating to the rate of interest in cases of loans and that before a debtor can claim relief under the

Usurious Loans Act, the two conditions referred to above must be satisfied. The Bench held that the provisions of Sub-clause (a) of Clause (2) of

Section 3 of the Usurious Loans Act imposed upon the Court the duty of coming to a conclusion as to what would be a reasonable rate of interest,

having regard to the risk incurred, and that for a transaction to be regarded as unfair within the meaning of Clause (d) of Sub-section (2) of Section

3, it is not necessary that the Court should be able to ascribe some moral blameworthiness to the creditor in the sense that he had tricked the

debtor into entering into that bargain, though the terms of Clause (d) showed that taking undue advantage of the position of the debtor was one

category of cases falling under that clause. The Bench further held in that case that it was also open to the Court to come to the conclusion that the

transaction was substantially unfair by taking into account the circumstances materially affecting the parties at the time of the loan.

9. This Act has been amended, as far as the State of Tamil Nadu is concerned, by the Usurious Loans (Madras Amendment) Act, 1936 (Madras

Act VIII of 1937) and Section 3(1) and (2) of the Central Act of 1918 as

amended by the Madras Act VIII of 1937 reads as follows :

3(1) Notwithstanding anything in the Usury Laws Repeal Act, 1855 (XXVIII of 1855), where in any suit to which this Act applies, whether heard

ex parte 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 :

(i) reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, reopen any account already taken

between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in

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

(in) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan and if the creditor has parted

with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the Court shall not--

(i) reopen any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any

persons from whom they claim at a date more than twelve years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation I.--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.

Explanation 11.--In the case of a suit brought on a series of transactions the expression "the transaction" means, for the purposes of proviso (i), the

first of such transactions.

(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 expenses, 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 tourists, if compound interest is charged, the Court shall presume that the interest is excessive.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor".

The effect of the amendment made by the Madras Act is as follows :

(1) Instead of two conditions precedent cumulatively being satisfied, the only condition that has to be satisfied to enable a Court to exercise power

u/s 3 is that the Court must have reasons to believe that the transaction as between the parties thereto was substantially unfair.

(2) In relation to the exercise of the power by a Court, instead of the word, "may", the word, "shall" has been substituted.

(3) A new Explanation as Explanation I extracted above has been introduced. The effect of this amendment is that if a Court considers the interest

as excessive, it must presume that the transaction was substantially unfair, though the said presumption is rebuttable.

(4) In the case of loans to agriculturists, if compound interest is charged, the Court is bound to presume that the interest is excessive.

(5) Explanation to Clause (d) of Sub-section (2) of Section 3 is omitted. The Explanation, as it stood, was :

Interest may of itself be sufficient evidence that the transaction was substantially unfair.

10. As far as the present case is concerned, we have already referred to the finding of the trial Court that the mortgaged property is a house situate within the limits of the Tuticorin Municipality and that the second appellant is an Income Tax assessee. Therefore, the provisions of Madras Act IV of 1938 are not applicable to the appellants herein. Independent of the provisions of Madras Act IV of 1938, no other claim was put forward that the appellants were agriculturists so as to attract the applicability of the proviso to Section 2(b) of the Central Act X of 1918 as amended by the Madras Act VIII of 1937. Consequently, we are left only with the main part of Section 3(1) of the Central Act X of 1918 as amended by the Madras Act VIII of 1937 on which alone reliance appears to have been placed before the trial Court. For the purpose of attracting that statutory provision, the condition precedent is that the Court must have reason to believe that the transaction was, as between the parties thereto, substantially unfair. In this case, there is absolutely nothing to show that as between the parties thereto, Exhibit A-1 mortgage was unfair, much less substantially unfair. Before the trial Court, reliance had been placed on a decision of this Court in Buragada Venkatarao and Another Vs. Godavarti Venkatratnam and Others, . That decision considered the effect of the amendment made to the Central Act X of 1918 by the Madras Act VIII of 1937 and pointed out that the same was to make it obligatory on the Court to find out whether there was excessive interest and when once that was done, to presume that the transaction was unfair. That decision, in our opinion, does not lay down any general principle which is capable of helping the contention of the appellants in this particular case. In that case a question arose whether the rate of Rs. 1-0-6 per month, compound interest, with annual rests was excessive in the circumstances of the case. It was observed that in a case where a mortgagor gives ample security for the loan and there were no encumbrances or other claimants to the mortgaged property, prima facie and in the absence of special circumstances to the contrary, the rate of 12 percent, per annum, simple interest, might be taken as a fair and proper rate and Rs. 1-0-6 per cent, per mensem, compound interest with annual rests was excessive, within the meaning of the Explanation inserted by the Madras Act VIII of 1937 and that therefore the transaction between the parties thereto was unfair and that the debtors in that case were entitled to the benefit of the

Usurious Loans Act, as amended by the Madras Act VIII of 1937, and that 12 per cent, simple interest was fair, reasonable and just. In this

particular case, as we have pointed out already, originally the rate of interest was only 12 per cent, per annum and only if default was committed in

the payment of monthly interest, that interest was to be added to the principal and interest at 131/2 percent, per annum was to be charged. We do

not consider that this interest is excessive, with reference to the Explanation inserted by the Madras Act VIII of 1937 so as to give rise to the

presumption of the transaction being substantially unfair as between the parties. Therefore, the said decision, in our opinion, is not of any assistance

to the case of the appellants herein with reference to the provisions of the Central Act X of 1918 as amended by the Madras Act VIII of 1937.

11. We may also point out that in that decision, the Bench has observed :

We are also of opinion that in the Madras State it has been long understood that 12 per cent, simple interest is a fair, proper and reasonable

rate...We have already expressed the opinion that anything above 12 per cent, per annum simple interest is excessive, considering the nature of

transactions in this State.

This observation of the Bench came up for consideration before another Bench of this Court in Sri Balasaraswathi Ltd., Tirunelveli Vs. A.

Parameswara Aiyar and Another, . After referring to the various earlier decisions including the decision of the Bench of this Court referred to

already, the Bench held :

No absolute maximum rate of interest, beyond which it will automatically become usurious or unconscionable, can be laid down, even after the

coming into operation of the Constitution of India. Courts will have to see the circumstances of each case, and judge whether the rates in those

circumstances will be penal, usurious and unconscionable.

Of course, there may be some cases where the rate is so excessive that there may be a conclusive presumption that it is penal, usurious or

unconscionable, as where the rate is 100 per cent, per annum, or it is compound interest at even 10 per cent, per annum with daily rests....

It cannot be said that compound interest, without more, by itself will be presumed to be penal, usurious and. unconscionable, either regarding

secured or unsecured debts, even after the coming into operation of the

Constitution of India. It is obvious that three per cent, compound interest, with yearly rests for a loan enuring for three or four years, will be more advantageous to the borrower than 12 per cent, simple interest.

...

Where there is no security, and the principal and interest are in danger, and the borrower cannot get in the money market any loan even at 12 per

cent, simple interest, a Court can allow something more than 12 per cent, simple interest per annum...Even in the borrower's interest, a slightly

higher rate than 12 per cent, per annum should be allowed by Courts in such cases, as otherwise the borrowers may get no loan whatever from

anyone and may not be able to start any trade or business and eke out their living.

It is often the case that a man with no resources has yet the ability to buy goods in the market and sell them within a few days at 20 to 25 per cent,

profit which he cannot make unless he gets a loan and nobody will give him a loan even at 12 per cent, simple interest. In such a case it will be

profitable for him to pay a little more interest, say even upto 18 3/4 per cent, per annum.

Many a man buys vegetables in the shandis with money borrowed at 18 3/4 per cent, per annum and sells them within 24 to 48 hours at a profit of

20 to 25 per cent. It cannot be said that in such cases interest of even 18 3/4 per cent, per annum (charged in the country parts even today on

loans to impecunious creditors (sic) will be penal and usurious or unconscionable, as he gets a good balance as profit for himself after paying such

interest.

While we cannot, therefore, agree with Mr. Venkatasubramania Aiyar that simply because the borrower gets high profits by investing the loan in

business he can be made to pay 15 or 18 per cent compound interest, much less 50 to 75 per cent, simple interest, as held in the old cases, we are

of opinion that 12 1/2 per cent, to 18 3/4 per cent, simple interest or 2 or 3 pies per rupee per month, may be quite reasonable in such cases.

Thus, the Bench in that case did not construe the decision of this Court in Buragada Venkatarao and Another Vs. Godavarti Venkatratnam and

Others, as holding that 12 per cent, simple interest was the only reasonable rate of interest in the State.

12. The same view was taken by another Bench of this Court in *Gopala Menon and Another Vs. Srinivasa Varadachariar and Others*, . After

referring to the decision in *Buragada Venkatarao and Another Vs. Godavarti Venkatratnam and Others*, . the Bench pointed out :

We do not, however, understand the effect of this decision to be to lay down an inflexible rule that anything above 12 per cent, per annum simple

interest is excessive, whatever be the particular circumstances relating to a particular transaction of loan...We are clearly of opinion that to lay

down an absolute maximum rate of interest beyond which interest would be excessive within the meaning of the Usurious Loans Act would be in

direct contravention of what is laid down in the Act itself.

Section 3(2)(a), (b) and (c) of the Usurious Loans Act which continues to be applicable notwithstanding the Madras Amendment makes it

abundantly clear that in deciding whether the interest charged is excessive several factors have to be taken into consideration.

One important fact will be the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan. In

considering the question of risk Section 3(2)(c) enacts that it will be material to take into account the presence or absence of security and the value

thereof, and the financial condition of the debtor and the result of any previous loan transactions known to the creditor. If compound interest is

charged, the periods at which it is calculated and the total advantage which may be reasonably expected to have accrued from the transaction are

important factors.

13. Thus, in our opinion, no hard and fast rule can be laid down either with reference to the percentage of interest or with reference to the nature of

interest, whether simple or compound, for the purpose of coming to the conclusion whether the rate of interest charged in a particular case is

excessive or not. As far as the present case is concerned, we have already pointed out that the rate of interest originally stipulated was only 12 per

cent, simple interest per annum and only if default was committed with regard to the payment of interest every month, the document provided that it

must be added to the principal and the interest thereafter would be at 13 1/2 per cent, per annum. Consequently, the above rate of interest per se

cannot be said to be excessive. Further, no particular circumstance was brought

to our notice to compel us to hold that either the rate of interest so provided was excessive having regard to the facts of the case or that the transaction was substantially unfair as between the parties thereto, in view of any particular facts. Hence, agreeing with the trial Court, we hold that the appellants have not made out any case for the Court exercising its powers u/s 3(1) of the Usurious Loans Act, as amended by Madras Act VIII of 1937.

14. The next point for consideration is, whether the appellants are entitled to any relief under the provisions of the Tamil Nadu Money Lenders

Act, 1957, hereinafter referred to as the Tamil Nadu Act. As the preamble itself states, the Act was enacted to regulate and control the business of

money-lenders in the State of Tamil Nadu. Sub-section (3) of Section 1, provides that the Act shall come into force in any area on such date as the

Government may by notification specify and the Act was brought into force on 16th October, 1959. Section 2 of the Act defines the various terms

used in the Act including the term, "loan". That expression excludes among others from the scope of the Act the following, namely : (1) a deposit of

money or other property in a Government Post Office Savings Bank or in a Bank, in a company as defined in the Companies Act, 1956 or with a

co-operative society; (2) an advance made by a Bank or a co-operative society or an advance made from a provident fund to which the Provident

Funds Act, 1925 applies; (3) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881,

exceeding Rs. 3,000. The expression, "money-lender" is defined as a person whose main or subsidiary occupation is the business of advancing and

realizing loans, but it excludes a Bank or a co-operative society.

15. Section 3(1) of the Act provides that no person shall, on and after the date on which the provision of this Act are brought into force in any

area, carry on, or continue to carry on business as a money-lender at any place in such area, except under and in accordance with the terms of a

licence. Section 4 deals with the grounds on which and the circumstances under which licences so applied for shall be granted or refused and the

period of validity of licence. It also deals with appeals against orders refusing to grant licence. Section 5 imposes an obligation on a money-lender

not to change his place of business without previous notice to the licensing

authority and without having the address of the new place of business

duly endorsed on the licence. Section 6 requires that every moneylender shall always keep exhibited over his shop or place of business his name

with the word, ""money-lender"" and its equivalent in the regional language.

16. Section 7, which has three subsections, is as follows : --

7 (1) No money-lender shall charge interest on any loan, at a rate exceeding nine per cent, per annum, simple interest, where the loan is a secured

loan, or at a rate exceeding twelve per cent. per annum, simple interest, where the loan is not a secured loan.

(2) A money-lender may demand and take from the debtor such charges and in such cases, as may be prescribed.

(3) A money-lender shall not demand or take from the debtor any interest, profit or other sum whatsoever in excess of that payable under Sub-

section (1).

Section 8(1) provides that where a moneylender refuses to accept the whole or any portion of the money or other property due in respect of his

loan, the debtor may deposit the said money or property into the Court having jurisdiction to entertain a suit for recovery of such loan and apply to

the Court to record full or part-satisfaction of the loan, as the case may be and Sub-section (2) of Section 8 provides that where any such

application is made, the Court shall, after due inquiry, pass orders recording full or part-satisfaction of the loan, as the case may be.

17. Section 9 requires that every moneylender shall regularly record and maintain or cause to be recorded and maintained, an account showing for

each debtor separately : (1) the date of the loan, the amount of the principal the loan, the rate of interest charged on the loan, and the nature of

security taken, if any; and (2) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment. The

same section imposes an obligation on every money-lender to give to the debtor or his agent, a receipt for every amount paid by him, duly signed

and, if necessary, stamped at the time of such payment; and on requisition in writing made by the debtor to furnish to him, or if he so requires, to

any person mentioned by him in that behalf, a statement of account signed by himself or his agent, showing the particulars referred to already and

also the amount which remains outstanding on account of the principal and of

interest and change such fix; therefore as the Government may prescribe. The same section further imposes an obligation on every moneylender to submit such returns relating to the loans advanced by him to the Inspector concerned, in such form and at such times as may be prescribed. Sub-section (2) of this section requires that all records or entries made in the books, accounts and documents referred to in Sub-section (1) shall be in such language as may be prescribed in respect of any area. Sub-section (6) of this section states that if any money-lender fails to give a receipt as required by Clause (b) of Sub-section (1) or to furnish on a requisition, a statement of account as required by the said subsection within one month after such requisition has been made, he shall not be entitled to any interest for the period of his default.

18. Section 10 enables the Government or any authority or officer empowered by them, to appoint one or more persons to be Inspectors for the purposes of this Act and deals with the powers of the Inspectors.

19. Section 11(1) states :

Any money-lender whether licensed or not

(a) who actually advances an amount less than the amount shown in his accounts or registers or other document relating to the loan; or

(b) who takes or receives interest or any other charge at a rate higher than the rate shown in the accounts, registers or document aforesaid or

allowed under this Act shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees

or with both.

20. Section 12 deals with cognizance of offences under the Act and Section 13 provides for penalty for molestation of a debtor.

21. Section 14 enables the licensing authority to cancel a licence already granted under the circumstances mentioned therein. Section 15 provides

for publication of the order of cancellation and Section 16 provides that no compensation will be payable in respect of cancellation of licence.

22. Section 17 states that whoever carries on the business of money-lending without a licence or otherwise than in conformity with the terms and

conditions of a licence shall be punished with fine which may extend to Rs. 1,000, provided that a person shall not be deemed to carry on the

business of money-lending without a licence, if he had ceased to carry on the business of money-lending but was taking steps to recover any loan advanced by him.

23. Section 18 provides for penalties to be imposed for contravention of any of the provisions of the Act or any rule made thereunder or of any terms or conditions of a licence granted or deemed to be granted thereunder and it also states that whoever makes a claim or a statement which is false or which he does not believe it to be true shall also be liable to the penalty.

24. Section 19 deals with transfer of licence in the event of the death of the licensee. Section 20 is concerned with the jurisdiction of the Courts to try offences under this Act and Section 21 provides that where a money-lender is guilty of an offence punishable under this Act any contract made by him in relation to his business of money-lending shall not be void by reason only of that offence, nor shall he, by reason only of that offence lose his right to the loan and the interest and other charges, if any, payable in respect thereof.

25. Section 22 is the rule-making section

26. The constitutional validity of this Act came to be considered by a Bench of this Court in J.D. Nichani and Another Vs. State of Madras, . In that judgment, this Court has elaborately referred to the circumstances under which the Tamil Nadu Act came to be passed.

27. As far as the present case is concerned the question for consideration is, whether the appellants herein are entitled to the benefit of the provisions of the Tamil Nadu Act. Reliance has been placed on the provisions of this Act only because the respondent during the course of his evidence has admitted that he is a professional money-lender. In view of this statement of the respondent, the case of the appellants is that once the respondent has admitted that he is a professional money-lender, he is a money-lender as defined in the Tamil Nadu Act and consequently the restriction regarding the rate of interest is applicable to the suit transaction. It must be noticed that the mortgage in this case was executed on 1st August, 1953, that is, prior to the coming into force of this Act. Therefore, the question for consideration is, whether the provisions of Section 7 of this Act, on which alone reliance has been placed, applies to the suit transaction. The trial Court has held that there is nothing in the language of the

Tamil Nadu Act to make the Act retrospective in operation and consequently, the provisions of this Act do not apply to the suit transaction which

was entered into prior to its coming into force. Mr. V. Ratnam, learned Counsel for the appellants, contended that the trial Court erred in this

conclusion of its and even if Sub-section (i) of Section 7 of the Tamil Nadu Act does not apply, Sub-section (3) of Section 7 will apply to this

case. We have extracted Section 7 in full already. Sub-section (1) of Section 7 prohibits a money-lender from charging interest on any loan at a

rate exceeding 9 per cent, per annum, simple interest, where the loan is a secured one or at a rate exceeding 12 per cent, per annum, simple

interest, where the loan is not a secured one. Mr. V. Ratnam concedes that the expression, ""charge interest"" will refer to the stage of stipulating

interest, that is, in the present case, at the time when the suit mortgage was executed on 1st August, 1953 and therefore Sub-section (1) will not

apply to the present case, but contends that the language of Sub-section (3) is more general and deals with the stage of even demanding or taking

and consequently after the coming into force of the Tamil Nadu Act, the respondent herein can neither demand nor take interest at a rate in excess

of 9 per cent, as provided for in Sub-section (1), since the loan in question is a secured loan. We have given careful consideration to this argument

of the learned Counsel for the appellants. But we are not able to accept the same. It is true that it may not be correct to say that to accept the

argument of the learned Counsel for the appellants is to give retrospective effect to the provisions of the Tamil Nadu Act. It is one thing to say that

a particular statute is retrospective. It is another thing to say that a particular statute, though prospective in operation, relates to acts or events

which are of the past. As pointed out by Craies on Statute Law, Seventh Edition, page 387.

A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new

obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute "is not

properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing".

It is a settled and fundamental rule that no statute should be construed so as to have retrospective operation unless its language is such as plainly to

require such a construction. At the same time, it should not be forgotten that the rule against retrospective effect of a statute is not a rigid or

inflexible rule, but is one! to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing.

28. As pointed out by Maxwell on the Interpretation of Statutes, Twelfth Edition page 218 :

The rule discussion (relating to retrospective operation) has been applied chiefly in cases in which the statute in question, if it operated

retrospectively, would prejudicially affect vested rights or the legality of past transactions, or would impair contracts, or would impose new duties

or attach new disabilities in respect of past transactions.

Yet another rule of construction in this behalf is :

If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." (Craies on

Statute Law-Seventh Edition, page 390).

29. It is against the background of these general principles, we have to consider the question whether Sub-section (3) of Section 7 of the Tamil

Nadu Act applies to the present case so as to compel us to hold that even though at the time when Exhibit A-1 mortgage came into existence,

there was no law prohibiting the stipulation of interest at 12 per cent, per annum or 13 1/2 per cent, per annum and consequently the respondent

was entitled to claim the rate of interest as agreed to between the parties, still after the coming into force of the Tamil Nadu Act, the respondent

can demand and take only 9 per cent, per annum simple interest as provided for in Sub-section (1) of Section 7, as the loan in the present case is a

secured loan. If Sub-section (3) is merely consequential upon Sub-section (1), there no dispute that Sub-section (3), has no application to the

present case, because Sub-section (1) deals only with transactions entered into after the coming into force of the Tamil Nadu Act and therefore

Sub-section (3) also will apply only to such transactions. The argument of the learned Counsel for the appellants will prevail only if we hold that

Sub-section (3) is independent of Sub-section (1) and that while Sub-section (1), deals with loans advanced subsequent to the coming into force

of the Act, Sub-section (3) covers loans advanced even prior to the coming into force of the Act. For more reasons than one, we are unable to

hold that Sub-section (3) of Section 7 is an independent provision and consequently it applies to all loans irrespective of whether the loan was advanced prior to the coming into force of the Act or subsequent to the Act, because of the wide language ""demand or* take"" used in the said subsection. In the first place, we have already referred to the provisions of the Tamil Nadu Act and there is absolutely nothing in the language of the provisions of the Act to indicate that any of the provisions of the Act is intended to apply to loans advanced prior to the coming into force of the Act.

30. In this context, it may be useful to refer to the enactments of a similar nature passed by the various State Legislatures in this country.

31. The Assam Money-lenders Act, 1934 as amended by Act VI of 1943, in section 4 thereof provides that any contract made before or after the commencement of that Act for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract.

Section 7(1) of that Act states that in respect of every contract for the repayment of a loan made by a money-lender, whether made before or after

the commencement of that Act, the money-lender shall, on demand in writing being made by the borrower at the time of executing the contract or

at any time during the continuance of the contract, supply to the 44

borrower, or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent

showing the particulars mentioned in that Section Similarly Section 9 of that Act provides that no money-lender shall, in respect of any loan made

before or after the commencement, of that Act, recover, on account of interest and principal, whether through Court or otherwise or by way of

usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan.

32. The Bihar Legislature passed the Bihar Money-lenders Act, 1938. Section 7 of that Act dealing with the duties of registered money-lenders to

maintain accounts and to give receipts, expressly provides that every registered moneylender shall, in respect of every loan advanced by him after

the commencement of that Act and every transaction made by him after the

commencement of that Act relating to any loan advanced by him before the commencement of that Act, regularly record and maintain an accounts.

33. Section 5 of the Bihar Money-lender, (Regulation of Transactions) Act, 1939 fixes the maximum rate of interest at 9 per cent, per annum in the case of secured loans and at 12 per cent, per annum in the case of unsecured loans and expressly states that notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced after the commencement of the Act, pass a decree for interest at rates exceeding the rates mentioned above. Section 6 of that Act similarly provides that notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, an agreement entered into by a debtor for the payment of compound interest on loans advanced after the commencement of the Act shall be void. Section 7 of that Act provides that notwithstanding anything to the contrary contained in any other law or in any thing having the force of law or in any agreement no Court shall, in any suit brought by a money-lender before or after the commencement of the Act in respect of a loan advanced before or after the commencement of the Act or in any appeal or proceedings in revision arising out of such suit, pass a decree for an amount of interest for the period preceding the institution of the suit, which, together with any amount already realised as interest through the Court or otherwise, is greater than the amount of loan advanced or, if the loan is based on a document, the amount of loan mentioned in, or evidenced by such a document. Section 8 of that Act expressly provides for the reopening of the past transactions and clearly refers to the loans advanced before the commencement of that Act. Similarly Section 10 deals with suits instituted before or after the commencement of the Act.

34. Section 23 of the Bombay Moneylenders Act, 1946, provides that notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which the Act came into force, decree, on account of interest a sum greater than the principal of the loan due on the date of the decree.

35. Section 9 of the Central Provinces and Berar Money-lenders Act, 1934,

provides that notwithstanding anything contained in any other enactment for the time being in force, no Court, original or appellate, shall decree, in respect of any loan made after the Act came into force, decree, on account of arrears of interest a sum greater than, the principal of the loan,

36. Section 9 of the Orissa Moneylenders Act, 1939, provides that notwithstanding anything to the contrary contained in any other law or in

anything having the force of law or in any contract, no Court shall, in respect of a loan advanced after the commencement of the Act, pass a decree

for interest at rates exceeding 9 per centum simple per annum in the case of a secured loan and 12 per centum simple per annum in the case of an

unsecured loan. Section 10 of that Act provides that notwithstanding anything to the contrary contained in any other law or in anything having the

force of law or in any contract, no Court shall, in any suit whether brought by a moneylender or by any other person in respect of a loan advanced

before or after the commencement of the Act, pass a decree for an amount of interest for the period preceding the institution of the suit which,

together with any amount already realised as interest through Court or otherwise is greater than the amount of the loan originally advanced.

37. Section 30 of the Bengal Moneylenders Act, 1940, is as follows :

30. Notwithstanding anything contained in any law for the time being in force, or in any agreement--

(1) no borrower shall be; liable to pay after the commencement of this Act-

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds

twice the principal of the original loan;

(b) on account of interest outstanding on the date upto which such liability, is computed, a sum greater than the principal outstanding on such date;

(c) interest at a rate per annum. exceeding in the case of--

(1) unsecured loans, ten per centum simple;

(ii) secured loans, eight : per centum simple;

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement

or this Act;

(2) no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect

of interest paid before such date or included in a decree passed before such date, interest at rates per annum exceeding those specified in Sub-

clause (c) of Clause (1);

(3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

Section 38 of that Act enables a borrower to make an application at any time to a Court which would have jurisdiction to entertain a suit by the

lender for the recovery of the principal and interest of a loan made before or after the commencement of the Act for taking accounts and for

declaring the amount due to the lender.

38. u/s 9 of the Mysore Money-lender Act, 1939, every moneylender shall in respect of every loan advanced by him after the commencement of

the Act and every transaction made by him after the commencement of the Act relating to any loan advanced by him before the commencement of

the Act, regularly record and maintain or cause to be recorded and maintained, an account; in such form, language, script and numerals as the

Government may prescribe. Section 14 of that Act provides that notwithstanding anything contained in any law for the time being in force, no

Court shall in any suit brought in respect of a loan advanced after the commencement of the Act, pass a decree for interest at rates exceeding 9 per

centum per annum in the case of a secured loan and 12 per centum per annum in the case of an unsecured loan. According to Section 15 of that

Act, no money-lender shall recover by suit interest of any kind at a rate exceeding 6 per centum per annum with yearly interest, (sic.) in respect of

any loan made after the commencement of the Act under a contract which provides for the payment of compound interest. Section 17 of that Act

provides that no Court shall, in respect of a loan advanced before or after the commencement of the Act, decree on account of arrears of interest, a

sum greater than the principal of the original loan.

39. Without attempting to be exhaustive we have referred to certain enactments of the State Legislatures that were in force in the different States of

the country at the time when the Tamil Nadu Act was passed. The provisions of

the said Acts referred to already clearly show that those Acts, whenever they intended to deal with a loan advanced before the commencement of the said Acts, had expressly mentioned the same. There are certain provisions like application of the principle of damdupst which are made applicable to all loans, whether advanced before or after the commencement of the Act. They also make provisions for the reopening of the past transactions and for the Court giving directions for payment of the amount in instalments with regard to decrees already passed. However, in the entirety of the Tamil Nadu Act, there is not a single expression showing that the intention of the said Act was to apply any particular provision to any loan advanced prior to the commencement of the Act; One of the formula generally adopted by Legislatures to make the provisions of an Act to override the contract between the parties is, to expressly say so, and this is what Craies on Statute Law, 7th Edn. at page 256 points out : -

It is not uncommon now-a-days for statutes to make their provisions applicable notwithstanding any agreement to the contrary, or to forbid contracting out except under conditions prescribed in the statute.

As far as the Tamil Nadu Act under consideration is concerned, in addition to there being no words indicating an intention on the part of the Legislature that any of the provisions of the Act was to apply to a loan advanced before the commencement of the Act, even such a formula is absent. We have referred to the provisions contained in some of the enactments of the State Legislatures on the same subject, not for deriving any assistance for construing the Tamil Nadu Act in question, but merely for the purpose of showing that at the time when the Tamil Nadu Act was passed, those Acts were on the statute book and they had used a different language whenever they intended to deal with a loan advanced prior to the commencement of the Act. Consequently, even a comparison of the language of the Tamil Nadu Act with the language of the provisions contained in those Acts will clearly show that the provisions of the Tamil Nadu Act and in particular Section 7(3) were not intended to apply and do not apply to loans advanced prior to the commencement of the said Act.

40. We shall refer to some of the practical considerations also which will lead to the same conclusion. As we have pointed out already, the Tamil

Nadu Act has no application to advances made on the basis of negotiable

instruments, as defined in the Negotiable Instruments Act, 1881, exceeding Rs. 3,000. With reference to this provision, a Bench of this Court in J.D. Nichani and Another Vs. State of Madras, . referred to already, stated that the underlying idea was that persons who borrow such large amounts of Rs. 3,000 and above on executing negotiable instruments can well take care of themselves and that the protection afforded by the Act would not be necessary as it is essentially one for the protection of the impecunious and helpless borrowers. The Bench further observed :

The materials now available show that the evil of the money-lenders' exploitation was with reference to lower middle class people, particularly, the salaried servants and wage-earners.

The Act also does not cover an advance made by a bank or a co-operative society, as such bank or co-operative society does not come within the definition of the term, ""money-lender"". A money-lender might have borrowed money either on the basis of a negotiable instrument exceeding Rs. 3,000 or from a Bank or co-operative society, agreeing to pay a particular rate of interest and then in his turn might have advanced the amount by way of loan in the course of his occupation, stipulating a particular rate of interest which would leave him a decent margin of profit. If we hold that Section 7(3) of the Tamil Nadu applies to loans advanced by such a money-lender and consequently he could receive interest only at the rate prescribed by the statute, that might seriously affect his occupation itself, since his borrowing itself is left unaffected and the rate of interest which he has to pay to his lender remains the same, as agreed upon. Such a consequence would not have been, intended by the Legislature. Therefore without there being definite words to that effect, we cannot hold that the sub-section in question was intended to apply to loans advanced prior to the commencement of the Act.

41. Yet another consideration may also be borne in mind in this connection. Section 7(3) prohibits demanding or taking from a debtor interest in excess of that payable under Sub-section (1). Under Clause (b) of Section 11(1), a person who takes or receives interest at a rate higher than the rate allowed under the Act shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand

rupees or with both. The point to be noticed is that even a demand or taking interest in excess of the rate prescribed by Sub-section (1) of Section

7 is made applicable. Suppose in a particular case, a trader had borrowed money from a money-lender for the purpose of utilising the same in his

trade and he had agreed to pay a particular rate of interest, say, for instance, 15 per cent, per annum, in the hope and belief that he would be

making a profit of 30 per cent in his trade and consequently as a result of his making the expected profit, he promptly and voluntarily pays the

agreed interest to the money-lender in question. If the contention of the learned Counsel for the appellants is accepted, the consequence is, the

prohibition provided for in Sub-section (3) of Section 7 will be immediately attracted and the money-lender will be liable to be punished u/s 11(1)

(b) of the Tamil Nadu Act. In our opinion, that could not have been the intention of the Legislature.

42. We may also refer to yet another consideration. If Sub-section (3) of Section 7 is said to apply to loans advanced even prior to the

commencement of the Tamil Nadu Act, a question will arise, whether it covers the interest that accrued subsequent to the commencement of the

Act or it covers also the interest that accrued prior to the commencement of the Act, but remaining unpaid on the commencement of the Act. The

expression, "demand or take" is so wide as to be capable of being applied to both. There is absolutely nothing in that sub-section to limit the

applicability of this expression only to interest accruing after the commencement of the Act. Therefore, if the generality or the apparent width of the

expression employed in the subsection is to be given effect to, the provision will apply to both the cases. It may happen that in a particular case,

with reference to the past interest, a debtor had been regular and prompt in paying and whatever interest had accrued prior to the commencement

of the Act was actually paid by him. In such a situation, to apply Sub-section (3) to the interest accrued prior to the commencement of the Act and

outstanding on the date of the commencement of the Act, is to confer a benefit on a debtor who had been in default in the payment of interest in

preference to one who had been regular and prompt in the payment of interest. Such a consequence should not ordinarily be presumed or intended

to be produced, unless the statute itself contains clear provisions to bring about such result or consequence.

43. In our opinion, Sub-section (3) of Section 7 has to be read with Sub-section (1) of that section and it covers the same transactions. As we have pointed out already Sub-section (1) prohibits charging of interest in excess of the rate referred to therein, while Sub-section (3) prohibits the demanding or taking of interest, whether by way of interest, profit or other sum, in excess of that payable under Sub-section (1). One of the unscrupulous practices prevalent among the professional moneylenders was to charge a high rate of interest on loans advanced by them and obtain from the borrowers, documents for amounts much larger than what were actually lent and not to keep proper accounts. It may happen that a moneylender, in order to keep himself within the four corners of the law, may charge the rate of interest prescribed by Sub-section (1) and mention the same in the document evidencing the loan. However, he may actually demand or take from the debtor interest at a rate higher than the rate stipulated in the document itself. Such a practice is not unknown among the pawn-brokers or money-lenders. It is only to prevent such circumvention and to make the provisions for the stipulation of the rate of interest not exceeding the maximum prescribed by the statute effective, Sub-section (3) has been enacted. That is, the maximum rate of interest prescribed by the statute has to be observed at every stage, namely, at the stage of charging, demanding or taking. If Sub-section (3) has not been there in the statute book, a contention may be (sic) forward that what Sub-section (1) prohibits is only the charging of interest above the prescribed rate, but there is nothing in the Act preventing a money-lender from taking from the debtor interest in excess of that charged or prescribed by the statute. In order not to give scope for such a contention only, Sub-section (3) has been enacted, with the result that a money-lender has to charge, demand and take interest only in accordance with the rate prescribed in the statute. As a matter of fact, Section 7 of the Tamil Nadu Act in question is a reproduction of Section 6 of the Tamil Nadu Pawn-brokers Act, 1943, except for the difference necessitated by the very fact of the 1943 Act being applicable to pawn-brokers and the Tamil Nadu Act of 1957 being applicable to money-lenders and for small verbal change in Sub-section (3).

44. The Counsel for both sides were not able to draw our attention to any direct decision bearing on the question for consideration before us.

However, Mr. Ratnam, learned Counsel for the appellant drew our attention to two decisions of the Bombay High Court, namely, *Sajanlal*

Jhaverilal and Co. Vs. Gulabchand Keshrichand and Others, . and *Bansilal Ramgopal Bhattad Vs. Harischandra Tatya Bhambhure*, . The decision

in the former case primarily turned on the expression, ""suit to which this Act applies"" as contained in Section 2, Clause 17 of the Bombay Money-

lenders Act, 1947. Therefore, it is not of any assistance even though the judgment contains the general principle of interpretation, namely,

Normally all legislation is prospective and an intention to divest the citizens of vested rights will not be imputed to the Legislature, unless it is

expressed or by clear intendment implied. Where the Legislature intended to deprive parties governed by the Act of their rights, express provision

was made by the Legislature, see Sections 23, 24 and 28"". The latter decision was concerned with Section 23 of the Bombay Moneylenders Act,

1946 to which we have already referred and which in express terms is retrospective. Consequently, neither of the decisions of the Bombay High

Court helps us to interpret the particular provisions in the Tamil Nadu Act which we have considered.

45. Having regard to the considerations mentioned above, we are clearly of the opinion that Section 7(3) of the Tamil Nadu Act, 1957, has no

application to advances made prior to the commencement of that Act and the interest payable in respect thereof.

46. Under these circumstances, the appeal fails and the same is dismissed. There will be no order as to costs.