
(1941) 10 MAD CK 0011
In the Madras High Court

Panuganti Seshayya and Others

APPELLANT

Vs

Lankireddi Swamireddi (died) and Others

RESPONDENT

Date of Decision : 03-10-1941

Acts Referred:

Citation : AIR 1942 Mad 204 : (1941) 54 LW 551 : (1941) 2 MLJ 795

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This Civil Revision Petition raises the question of the interpretation of Section 9(1) of Act IV of 1938. The suit was brought

on a promissory note dated 22nd September, 1937, executed for the balance due on a mortgage bond in favour of the same creditor executed on

19th December, 1932, by the present defendants and some others. There had been considerable payments made under the mortgage bond.

2. The contention of the defendants-petitioners here is that u/s 9, they are entitled to have the debt scaled down on the basis of the original

mortgage advance of 1932, payments thereunder made towards interest being adjusted to interest on the original principal at five per cent. The

contention is based on the language of the proviso to Section 9(1) which states:

Provided that any part of the debt which is found to be a renewal of a prior debt 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 the 1st October, 1932, shall be dealt with under the provisions of

Section 8.

3. Now, in the present case the prior debt was not contracted before 1st October, 1932, so that the last part of the proviso has no application. It

is difficult to see how the debt can be scaled down on the basis of the mortgage advance, unless one can import into the first part of the proviso the explanation to S. 8 which treats the original principal as the principal for the purposes of Section 8. It has no doubt been held that when under the latter part of the proviso to Section 9 the debt is deemed to be a debt incurred before 1st October, 1932, then the debt is to be scaled down in accordance with the provisions of Section 8 including the explanation thereto and the principal sum payable will be the principal sum originally advanced with any further sums advanced as principal. But Section 9 contains no machinery for scaling down debts originating after the 1st of October, 1932, except on the basis of the actual contract sued on with such re-appropriation of payments towards interest as are expressly prescribed. The section does not seem to contemplate any going back to any earlier debt except for the single purpose of ascertaining what is the theoretical date of the debt in order to find out whether it has to be scaled down u/s 8 or not. The proviso certainly allows the Court to treat as the date of the debt, the date of the original advance; but it is still dealing with the debt that is sued on and it is that debt which under the first clause is to be scaled down by the process of re-calculating interest at five per cent, and adjusting to the interest so calculated the amount paid towards interest of that debt. In my opinion, the section does not contemplate the re-calculation of interest on the antecedent debt and the re-appropriation of payments towards interest made under that antecedent debt. The process of going back to the earlier debt is a peculiar feature of Section 8 applicable only to debts which originated before the 1st of October, 1932. Evidently the Legislature had in mind the date on which there was an economic upheaval which made it impossible for many agriculturists to pay their debts without some very drastic relief. Such debts, whether they subsist under the original document or under renewals, are dealt with u/s 8 on the basis of the original sum advanced. Debts originally incurred after this economic upheaval do not require such drastic treatment and for such debts the Legislature has provided only a moderate scaling down of interest by the process set forth in Section 9. There is nothing in Section 9 which, in my opinion, justifies the treatment of the principal of the debts as anything different from the principal of the contract actually sued on or as warranting a procedure analogous to that of Section 8 which Section 9

does not seem to contemplate except for the specific purpose of reducing debts which originated before 1st October, 1932.

4. In this view, I dismiss the Civil Revision Petition with costs.