(1944) 08 MAD CK 0009

In the Madras High Court

Patnala Ramalakshmi and Others APPELLANT

Vs

Dowlatabad Gopalakrishnarao RESPONDENT

Date of Decision : 29-08-1944

Acts Referred:

Citation : AIR 1945 Mad 12 : (1944) 57 LW 550

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The plaintiff filed a small cause suit on a promissory note dated 11th April 1938, for a sum of Rs. 300 carrying interest at

12 per cent. There was a series of payments of interest expressly appropriated by endorsements. The result was that all the interest was paid at the

contract rate up to 11th. August 1941. The plaintiff sued for the principal amount of the note together with interest at the contract rate from 10th

August 1941. The lower Court has held that the debtor is entitled to relief u/s 13 of the Madras Act 4 of 1935 and has scaled down the debt by

the process of calculating the total amount of principal and interest at the statutory rate and deducting therefrom the payments made, ignoring the

fact that these payments have been actually appropriated as they were made towards interest at the contract rate. We do not consider that the

procedure of the learned Subordinate Judge is justifiable. u/s 13 it is provided that:

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 centï¿½.

2. There is no provision for the scaling down of interest already paid. We had to deal with a similar question in an unreported case, A.A.O. No.

387 of 1942. There, the debt was a mortgage of 1st June 1932, towards which a payment of Rs. 6000 was made on 11th August 1940, towards

interest which had then accrued at the contract rate, without taking into consideration the reduction of that interest which might have been claimed

under Act 4 of 1938. We observed that the payment towards the accrued interest must be deemed to be an overpayment made owing to a

mistake of law. We go on to say:

It is well established that a payment made lender a mistake of law cannot ordinarily be recovered through the Courts. Had there been in the

present case no principal outstanding after the date on which this payment was made, the excess payment towards interest could not have been

recovered. It seems to us to follow that the excess payment towards interest cannot be taken back by the debtors and re-paid towards the

principal. To allow the debtors to make such a re-appropriation to the detriment of the creditor, would in fact be to recognise their right 4o get the

excess amount back at their disposal so that they can re-allot it to a different fund. The principle enunciated above is well established, and a case

coming very near to the facts of the present case is the case in Sharp Brothers and Knight v. Chant (1917) 1 K.B. 771.

3. The same principle applies in the present case. These payments having been made and appropriated to interest at the contract rate under a

mistake of law cannot be got back and re-appropriated towards the principal, so as to make the whole of the accrued interest amenable to the

process contemplated u/s 13. The civil revision petition is allowed and the plaintiff will have a decree for Rs. 300 with interest at 6 1/4 per cent,

from 11th August 1941, till to-day; proportionate costs in the lower Court, full costs in this Court and subsequent interest at 6 per cent.

