(1957) 07 AP CK 0005

In the Andhra Pradesh High Court

Case No : Appeal No. 387 of 1952 and C.M.P. No. 3958 of 1957

Raja Vellanki Lakshmi Narasayamma Rao APPELLANT

Vs

Vejju Achayya RESPONDENT

Date of Decision : 10-07-1957

Acts Referred:
Usurious Loans Act, 1918 — Section 3, 3(1)

Citation : AIR 1958 AP 207

Hon'ble Judges : Srinivasachari, J;Manohar Pershad, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao, for the Appellant; K.B. Krishna Murthy, for the Respondent

Judgement

Srinivasachari, J.—This is an appeal directed against the judgment of the Subordinate Judge, Vijay Wada, decreeing the plaintiff''s suit. The plaintiff-respondent filed a suit on the basis of a promote executed by the defendant on 12-9-1949 which in turn was one in renewal of an earlier promissory note for Rs. 4,000/- executed on 25-9-1946. The plaintiff claimed Rs. 6,113-8-9 as being the amount of principal due on the promote and claimed by way of interest a sum of Rs. 1461-0-6, calculated at Re. 1-4-6 per cent, per month with yearly rests.

The defendant admitting the "execution of the suit promote only disputed the claim as regards interest contesting that the rate of interest was excessive and the whole transaction was substantially unfair. She stated that interest at 9 per cent, per annum simple was the most reasonable rate of interest to which the plaintiff was entitled. The only issue in the case therefore was as to whether the plaintiff was entitled to the interest claimed by him. The learned Subordinate Judge was of the opinion that the defendant was not entitled to the relief claimed by her and decreed the suit awarding interest at the contract rate, and allowing future interest at 6 per cent, per annum on the principal amount from the date of the suit. Hence this appeal.

2. The only point for determination therefore is whether the interest charged is

excessive. Relief on the ground of interest being excessive could be granted to a debtor under the Usurious Loans Act, Act 10 of 1918. Section 3, sub-s. (1) of the Central Act has been amended by Madras Act, Act 8 of 1937 and an explanation has been introduced and the section as amended reads under:

Notwithstanding anything in the Usury Laws Repeal Act 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

The explanation introduced by the Madras amendment is to the following effect:

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.

The effect of the introduction of this explanation is that once the Court comes to the conclusion that the interest is excessive, a presumption would be drawn that, the transaction is unfair and it would be for the creditor to reb(sic) such presumption by showing that in the pec(sic) liar and special circumstances of the case, the interest was but fair and reasonable. When the transaction is found to be unfair the Court is empowered to grant relief to the debt under S. 3 (1) of the Usurious Loans Act.

The sole point to be determined therefore is as to whether the interest in this case court be regarded as being excessive. There can no general rule with regard to the rate of in (sic)rest to be charged. It will depend upon the nature of the particular transaction and other circumstance? appurtenant to such transaction.

Learned counsel for the appellant argument that under no circumstances could a rate Re. 1-4-6 compound be regarded as being a for rate of interest, and in support of his contention relied upon a decision of the Madras High Court in Buragada Venkatarao and Another Vs. Godavarti Venkatratnam and Others, (sic) learned Judge after reviewing the decisions the Privy Council and the Allahabad High Court came to the conclusion that in Madras it has long been understood that 12 per cent simple interest was a fair, proper and reasonable rate.

3. Learned counsel for the appellant was have us hold that any interest above 12 per cent, simple must be regarded as excessive view of the decision above referred to the case that the learned Judges were dealing (sic) was a case of a loan advanced on the mortgage of immoveable property and in the partied circumstances of the case where the crec(sic) had sufficient security for the amount advised and he was not undergoing any risk, thought that 12 per cent, simple would (sic) fair and proper and reasonable rate of inte(sic).

The learned Judges Govinda Menon Ramaswami Gounder, JJ. referred to a (sic) sion of the Privy Council in Ram Bhujha Prasad Singh v. Nathuram, 50 Ind App 14: 1923 PC 37) (B). In that case the loan(sic) borrowed by the Kartha of a Hindu family at 36 per cent, per annum with quai(sic) rests by hypothecating certain immoveable(sic) perties of the joint family. The question raised as to whether it was within the(sic) of the authority, of the Kartha to borrow rate of interest in excess of the order commercial terms. It was found that it not been proved that it was within the sec(sic) his authority.

It might be observed that in the above their Lordships were disposed to reduced rate of interest because there was ample(sic) rity for the loan. The other case referred by the learned Judges is Ziaul Rahman (sic) Ganga Dei, 1939 All LJ 40 : (AIR 1939 A (C). That was also a case of loan sup(sic) by a hypothecation bond. A subsequent soon of the Madras High Court of the Justice and Venkatrama Iyer J. in Paramasiva Mudaliar of unsound mind by guardians, Dhanakoti Ammal and Another Vs. D. Rangachariar,), may be re(sic) to.

Here also the case was of a loan on a mortgage. The learned Judges held that in view if me special circumstances of the case interest of 10 per cent, compound was not unreasonable. They adverted to the circumstances of the case, such as the difficulty of collecting (sic)ents from the ryots, a plea having been raised (sic) regards the extent of the liability of the (sic)hortgagor.

4. We have an unreported judgment of the Madras High Court, a decision of Vishwanatha Sastry, J. who, in K.V. Narasinga Rao Srimathi Pyda Venkata Subbamma, Appeal No. 502 of 1947, D/- 7-12-1950 (Mad) (E), after considering the earlier cases of the Madras High Court opined that what amounts to ex(sic)essive interest would have to be determined a each case according to the circumstances of each case.

5. We desire to make it clear that no (sic)ard and fast rule could be made nor could it (sic)e laid down as a broad proposition of law, "as (sic) what would be the reasonable rate of interest and what would be excessive. Various circumstances have to be kept in view when (sic)eciding this matter such as (a) the facility or the creditor in realizing the debt (b) the (sic)alvency of the debtor and other circumstances.

Above all distinction has always to be drawn between a transaction where the creditor has security for his loan, and a transaction there is no security. This principle that the particular circumstances of the case alone would govern the determination of the fair rate of interest in a particular case has been well established long ago. We might refer to the case of Samuel v. Newbold, (1906) AC 461 (F), herein Lord James said :

What amounts to excessive interest is to be determined by the Tribunal in each case, (sic)e question of risk being a material matter for consideration.

Therefore having regard to the particular circumstances of this case we do not think we (sic)in justifiably say that the interest that has been charged is excessive.

6. The next argument that was advanced on behalf of the appellant was that the estate of the judgment-debtor was notified to be taken (sic)er by the

Government on 7-9-1950 and that (sic)der the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, no creditor would be entitled to claim forest at a rate more than 6 per cent, per (sic)mum. On the strength of this legislation it argued that in any event the decree-holder as not entitled to any interest in excess of 6 per cent, from the date of notifying to the date of deposit.

In this connection the learned counsel for the appellant drew our attention to a petition dated 17-6-1957 filed for amendment of the written statement and prayed that he be permitted to amend the written statement by adding para 7. With regard to the amendment it as contended that the amendment could not (sic) permitted because it would mean that that (sic)ovision was already there. We did not think that an amendment of the written statement could be allowed.

We, therefore, disallowed it. The point raised was one of law and we permitted the learned counsel to raise and argue the point here. It was contended on behalf of the creditor that the right to claim interest at the contract rate had accrued to the creditor long before the Act came into force and this right was a vested right in so far as the creditor was concerned and no subsequent legislation could impair or affect a vested right by retrospective effect.

Authorities were cited to elucidate the well-known principle that no legislation could have a retrospective effect unless the Legislature intends to give the enactment a retrospective effect. There can be no quarrel about this principle. An enactment would be held to have retrospective effect where it could be gathered from the enactment that by express intendment or by implication the enactment was to have retrospective effect. Section 59 (3) of the Act is clear.

The words of the section would indicate that no liability shall be enforced after the coming into force of this Act and, therefore, this being a decrial liability it would not be open to the creditor to enforce the liability except as provided under S. 59 (3) of the Act. We are, therefore, of the opinion that the contention of the appellant in this regard must prevail.

The result of this will be that the decree-holder would be entitled to interest at Rs. 1-4-6 per cent, compound up to 7-9-1950 and at the rate of 6 per cent simple from 7-9-1950. The appeal is partly allowed and the decree of the lower Court is modified as detailed above. Each party will bear his own costs of this appeal in the circumstances of the case.

