

(1977) 12 MAD CK 0005
In the Madras High Court

S. Jabaperumal		APPELLANT
	Vs	
Central Bank of India and Others		RESPONDENT

Date of Decision : 13-12-1977

Acts Referred:

Citation : (1978) 91 LW 178 : (1978) 1 MLJ 312

Hon'ble Judges : V. Sethuraman, J

Bench : Single Bench

Judgement

V. Sethuraman, J.—The first defendant in O.S. No. 83 of 1972 in the Court of the Subordinate Judge of Tuticorin is the appellant. The

plaintiff is the Central Bank of India and it filed a suit against the defendants for recovery of a sum of (Rs. 10,937.31 with further interest and costs.

The first defendant had executed a promissory note for Rs. 20,000 in favour of the Bank undertaking to repay the loan with interest at 4 per cent

per annum over the Reserve Bank rate with a minimum of 9 per cent per annum with half-yearly rests. By way of an equitable mortgage, the first

defendant deposited his title deeds and he executed also a hypothecation bond covering his banana crops on the land. Defendants 2 and 3 are the

guarantors. The first defendant had paid various amounts and the sum claimed in the suit is the balance after giving credit for the amounts paid by

the first defendant. In his written statement, the first defendant contended, inter alia, that he was an agriculturist and that the plaintiff was not entitled

to recover interest at more than 6 1/4 per cent per annum according to the provisions of Tamil Nadu Act IV of 1938. The learned Subordinate

Judge went into the question whether the 1st defendant was an agriculturist entitled to the benefits of Act IV of 1938 and came to the conclusion

that, though he was an agriculturist, he was not entitled to the benefits of Act IV of 1938. It is this conclusion of the learned Subordinate Judge

which is now challenged before me.

2. The only point that arises is whether the first defendant is entitled to the benefits of Tamil Nadu Act IV of 1938. Section 4 of the Act as it was in

force prior to the amendment in 1973, to the extent necessary, ran as follows:

Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:

any liability in respect of any sum due to any co-operative society, including a Land Mortgage Bank, registered or deemed to be registered under

the Madras Co-operative Societies Act, 1932, or any debt due to any corporation formed in pursuance of an Act of Parliament (of the United

Kingdom) or of any special Indian Law or Royal charter or Letters Patent.

The point to be examined is whether the Central Bank is a Bank formed in pursuance of any special Indian law. The Banking Companies

(Acquisition and Transfer of Undertakings) Act (V of 1970), was published on 1st March, 1970. It repealed the Banking Companies (Acquisition

and Transfer of Undertakings) Ordinance, 1970. Section 3 of the said Act provided that:

3. (1) On the commencement of this Act, there shall be constituted such corresponding new banks as are specified in the first Schedule.

The Central Bank of India is the first of the entries in the First Schedule. The learned Counsel for the appellant contended that, even though the

Central Bank of India might have come into existence under the Central Act V of 1970, still, it cannot be said to be a bank formed in pursuance of

any special law. I am unable to accept this submission. It may be remembered that, at the time when the Central Act V of 1970 was passed, 14

new undertakings or banks came into existence and they took over the assets and liabilities of banks carrying a similar name earlier. Instead of

enacting 14 separate statutes for the purpose of bringing into existence the respective banks, the Parliament passed a single enactment and created

14 banks under that enactment. These banks, whose names are set out in the First Schedule, were all banks which came into existence as a result

of a special enactment, viz., the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. They did not come into existence, and

were not incorporated, under any other law. Therefore, even under the provision as it was prior to the amendment in 1973, Tamil Nadu Act IV of

1938 did not apply to the loans advanced by a bank like this. The Court below, therefore, was right in its conclusion that, though the first

defendant was an agriculturist, he could not get the benefits of Tamil Nadu Act IV of 1938 because of a special provision of exemption u/s 4(3)

covering loan in favour of a bank like this. In this view, it is unnecessary to go into the question whether the amendment to Tamil Nadu Act IV of

1938 was retrospective in character. The appeal is accordingly dismissed with no order as to costs.