
(1959) 05 PAT CK 0001
In the Patna High Court
Case No : A.F.A.D. No. 994 of 1956

Sk. Nawab and Others

APPELLANT

Vs

Bajnath Choudhury and Others

RESPONDENT

Date of Decision : 08-05-1959

Acts Referred:

Usurious Loans Act, 1918 — Section 3, 3(1)

Citation : AIR 1960 Patna 174

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : S. Sarwar Ali, for the Appellant; K.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

U.N. Sinha, J.—This is an appeal by the defendants. It arises out of a suit for redemption which has been decreed on certain terms. The defendants as well as the plaintiffs are aggrieved by the judgment and decree of the learned District Judge and the plaintiffs have filed a cross-objection.

2. The following facts will indicate the points that arise for determination in the appeal and the cross-objection. In December, 1925, three persons, namely Soney Lal Chaudhary, father of plaintiffs Nos. 1 and 2, Siaram Choudhary, father of plaintiffs Nos. 3 and 4, and one Rashbehari Choudhary had executed the bharna bond in question in favour of one Bhikhari, ancestor of the defendants.

The plaintiffs' case was that they approached the defendants asking them to accept the mortgage money and give up possession of the lands given in mortgage, but the defendants refused. Thereupon the plaintiffs deposited the money u/s 83 of the Transfer of Property Act. In spite of this deposit the defendants did not give up possession and hence the plaintiffs were compelled to institute this suit for redemption claiming mesne profits also.

3. The suit was really contested by defendants Nos. 1, 2 and 4 and two of the allegations of the defendants may be noted. The first allegation was that about a

year after the execution of the mortgage in question, the mortgagors had sold the mortgaged property to Bhikhari after taking Rs. 100/- as consideration in addition to the amount secured by the mortgage. The second allegation was that if the plaintiffs were held to be entitled to a decree for redemption they could not get possession unless they paid in addition to the mortgage money the amount of rent which had been paid by the mortgagees for the mortgaged property with compound interest at the rate of Re. 1/- per cent. per month. During the trial of the case the defendants gave up their contention about the purchase of the land set up by them, that is to say the suit proceeded on the basis that the mortgage was still subsisting.

4. The learned Munsif, who tried the suit, held that the defendants had paid rent for the mortgaged property and, therefore, they were entitled to get the money paid by them with compound interest at the rate of Re. 1/- per cent. per month. He also held that the plaintiffs were entitled to a set off of the price of the trees standing on the mortgaged property which trees had been appropriated by the defendants. He also held that the plaintiffs were not entitled to mesne profits as the deposit u/s 83 of the Transfer of Property Act was not sufficient. A decree was, therefore, passed for redemption with necessary directions.

5. The plaintiffs thereafter appealed to the court of appeal below and the defendants filed a cross-objection. The cross-objection related to that part of the decree by which the defendants were found liable for the price of the trees appropriated by them. In the court of appeal below however, the plaintiffs urged only one point, namely, that the defendants were not entitled to receive compound interest at the rate of Re. 1/- per cent. per month on the amount of rent paid by them for the mortgaged property.

The plaintiffs contended that the defendants could obtain only simple interest at the rate of 9 per cent. per annum. In support of the plaintiffs' contention it was argued in the court of appeal below that the rate of interest mentioned in the mortgage bond in question (Exhibit E) was excessive and unconscionable and, therefore, the court could reduce it to simple interest at the rate of 9 per cent. per annum. Reliance was placed upon Section 3 of the Usurious Loans Act (Act X of 1918) for this purpose.

In support of this contention reliance was placed on a decision of this court in *Balchand Mahto and Others Vs. Munshi Lal Raut and Others*, . The learned District Judge accepted the argument advanced on behalf of the plaintiffs and held that he was of the opinion that compound interest at one per cent. per month on the amount of rent paid by the mortgagees could not but be regarded as excessive. In this view of the matter the learned District Judge held that it was reasonable to reduce the rate of interest to nine per cent. simple interest per annum. Cross objection filed by the defendants was held to be without any merit and was dismissed.

6. Learned Counsel for the appellants in this court has submitted that upon the

facts found in this case Section 3 of the Usurious Loans Act, 1918, did not apply. It is urged that the learned District Judge has omitted to notice that before a transaction can be re-opened under the provisions of Section 3 of the Act, the court has to be satisfied about the two ingredients mentioned in that section. In substance, the argument of learned Counsel is that merely on the ground that the court holds the interest to be excessive, the transaction could not have been reopened and the rate of interest mentioned in the bond reduced. The relevant portion of Section 3 of the Usurious Loans Act runs thus :

"3. (1) 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

(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, --

(1) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest."

7. Learned counsel for the appellants has submitted that Clauses (a) and (b) of Section 3 of the Act are conjunctive and a Court must be satisfied that the interest is excessive and also that the transaction was as between the parties substantially un- fair. It is urged that not only the Court of appeal below has not held that the transaction in this case was substantially unfair, but that the Court of appeal below has in fact, held that the transaction was not an unfair one. I will quote here paragraph 19 of the judgment of the learned District Judge which runs thus :

"The question, therefore, is whether the rate of interest on the amount of rent is excessive so that a reduction in it is called for. It will be seen that the stipulated rate of interest is compound interest at the rate of 1 per cent. per mensem. There is no evidence, worth the name, showing that any undue influence was exercised by the mortgagee on the mortgagors in entering into the contract about, the rate of interest on the amount of rent. This fact, however, does not, in my opinion affect the matter because what has to be seen is whether the rate of interest is really excessive".

Learned counsel has thereafter submitted that after what the learned District Judge has stated in paragraph 19 of his judgment, a mere finding that the rate of interest mentioned in the bond was really excessive is not sufficient to attract the provisions of Section 3 of the Usurious Loans Act.

8. In view of the words "worth the name" mentioned in paragraph 19 of the judgment of the learned District Judge, learned counsel for the plaintiff-respondents has submitted that if a finding is necessary upon Clause (b) of Section 3 of the Usurious Loans Act, the appeal may be remanded for fresh-determination. In the light of that argument my attention has been drawn to

paragraph 10 of the judgment of the learned Munsif in this case. The relevant portion of paragraph 10 runs thus :

"Section 3 of the Usurious Loans Act was also cited in support of the contention of the learned lawyer representing the plaintiffs and it was argued that at least, I should hold that the contract was arrived at under undue influence. The plaintiffs' learned lawyer submitted that the poor debtor in general is in a weak position and because of his pressing necessities the creditor always dominates and takes unfair advantage of the weakness of the debtors. The debtor has not other alternative but to say "Yes" to all the conditions put forward by the creditor. It is difficult to agree with the plaintiffs' lawyer in the absence of any material before me that the contract was actually arrived at under some undue influence. The Courts in my opinion are not very much concerned with what is the general practice with regard to money lending transaction. In fact, they are concerned more with facts which actually happened with respect to a particular fact alleged before the Court or with fact, which under the circumstances alleged, can be legitimately inferred to have occurred at a particular point of time. Viewed with this aspect, there is absolutely no material before me from which I can safely infer undue influence at the time of the contract."

As a matter of fact, I have gone through the entire oral evidence of the plaintiffs' witnesses in this case and there is no evidence at all, as the learned Munsif stated, to draw any inference by which Clause (b) of Section 8 of the Usurious Loans Act can be attracted.

9. Learned counsel for the appellants has relied upon the case AIR 1949 57 (Federal Court) , and in my opinion, that decision is to the point. It was held in AIR 1949 57 (Federal Court) that in order to be entitled to the benefit of the Usurious Loans Act a person must establish (i) that the interest payable on the loan is excessive, and. (ii) that the transaction was, as between the parties thereto, substantially unfair. In that case the trial Judge had found upon the evidence that the transaction was substantially unfair. The High Court held that the circumstances relied upon by the trial Judge afforded no ground for holding that the transaction, as a whole, was substantially unfair as between the parties. The Federal Court concurred in this view of the High Court, and, therefore the appeal to the Federal Court failed. In my opinion. AIR 1949 57 (Federal Court) supports the contention of the learned counsel that Clauses (a) and (b) of Section 3 of the Usurious Loans Act are conjunctive and both the conditions must be fulfilled before a Court re-opens a transaction and gives relief to the debtor in respect of any excessive interest.

10. The learned District Judge in the instant case has held that the Court has jurisdiction to reduce the rate of interest provided it can come to the conclusion that it is excessive. In my opinion, the learned Judge has erred in law in interpreting Section 3 of the Usurious Loans Act. At more than one place the learned Judge has mentioned that the only matter for investigation for giving relief to the debtor was whether the rate of interest was excessive or not. It is

clear that the learned District Judge has fallen into an error. The decree of the learned District Judge reducing the rate of interest from compound interest at 1 per cent per mensem to simple interest at the rate of 9 per cent per annum must, therefore, be set aside. The decree of the learned Munsif in this respect is restored. The appeal is, therefore, allowed only to this extent.

11. Learned counsel for the appellants has also urged that the price of the trees said to have been appropriated by the defendants should not have been allowed to be deducted from the amount payable by the plaintiffs. I am of the view that this point is without substance and must be rejected. So far as the costs of this appeal are concerned the parties will bear their own costs.

12. The cross-objection filed by the plaintiffs is without any merit whatsoever. In the Court of appeal below the only point that they had urged was about the rate of interest. As a matter of fact, the learned District Judge has mentioned that the plaintiffs had not challenged the correctness of the finding to the effect that the rent for the bharna land had been paid by the defendants. Under the circumstances, the cross-objection is dismissed, but without costs.