

(1993) 03 AP CK 0038

In the Andhra Pradesh High Court

Case No : Second Appeals No's. 268 of 1985; 832 of 1987; 378 of 1986 and
A.S. No. 1778 of 1984

State Bank of Hyderabad and

APPELLANT

Vs

Advath Sakru and another

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

Banking Regulation Act, 1949 — Section 21(2), 21(3), 21A, 46(3)
Benami Transactions (Prohibition) Act, 1988 — Section 4
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 34
Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 11A
Usurious Loans Act, 1918 — Section 3(1), 3(2)

Citation : AIR 1994 AP 170 : (1993) 1 ALT 608 : (1994) 2 APLJ 1

Hon'ble Judges : P.L.N. Sharma, J;P. Venkatarama Reddi, J;Lakshmana Rao, J

Bench : Full Bench

Advocate : C. Poornaiah, V.L.N.G.K. Murthy, C. Trivikrama Rao, M.S.
Ramakrishna Rao, B.V. Subbaiah and P. Venkateswarlu, for the Appellant; T.
Ragunath Reddy, T. Anantha Babu B. Adinarayana Rao and T.S. Haranath, for the
Respondent

Judgement

1. Second Appeals Nos. 268 of 1985, 832 of 1987 and 378 of 1986 were heard by a Division Bench of this Court consisting of V. Sivaraman Nair and D. J. Jagannadha Raju, JJ. In these appeals, Banking Companies are the appellants, while in A.S. No. 1778 of 1984 Union Bank of India is the first, respondent.

2. The main point that was debated before the Division Bench was regarding applicability of Section 21-A of the Banking Regulation Act, 1949 to the transactions entered into between a Banking Company and its debtors.

3. On behalf of the Banking Companies, it was contended that after coming into force of Section 21-A of the Banking Regulation Act, 1949 (for short "Regulation Act, 1949", Courts are prohibited/debarred from reopening the transactions entered into between the Banking Company and its debtor invoking the

provisions of Usurious Loans Act, 1918 (for short "Act 10 of 1918") irrespective of the fact whether the transaction was entered into prior to the coming into force of Section 21-A of the Act. It is also contended that Section 21-A will be applicable to a suit filed prior to the coming into force" of the said provision and pending on the said date, as well as to a suit filed subsequent to the coming into force of Section 21-A of the Act. In other words, it was contended that irrespective of the fact that the transaction took place earlier to the coming into force of Section 21-A of the Act and whether the suit in respect of the said transaction is filed prior to the said date or not, the said provision will debar or prohibit the Court from reopening the transaction and scaling down the interest by applying the provisions of Act 10 of 1918.

4. On the other hand, it was contended by the counsel appearing for the debtors that Section 21-A is only prospective and not retrospective in the sense that it will not be applicable to the transactions entered into prior to the coming into force of the Act, irrespective of the fact whether the suit was filed prior to or after coming into force of Section 21-A of the Act. In any event, it is contended that Section 21-A has no application to the suits filed prior to the coming into force of the said provision irrespective of the fact that the suits are pending on that day. It is also contended that the moment the suit is filed the right to have the transactions, reopened under the provisions of Act 10 of 1918 accrued or acquired by the debtors and the said right is a vested right and the same cannot be defeated by Section 21-A of the Act.

5. Learned Judges of the Division Bench stated that there are at least three views expressed by co-ordinate Benches of this Court on the points debated before them and came to the conclusion that it is essential that the controversy which involved an important question of law of public importance should be set at rest by a decision of a Full Bench of this Court and accordingly, directed the cases to be placed before the Hon"ble Chief Justice to have them heard by a Full Bench for answering the questions raised by them. That is how these matters came up before us.

The questions referred to the Full Bench are:

1. Whether Section 21-A of the Banking Regulation Act, 1949 applies to transactions which were entered into prior to its commencement, even though suits were instituted subsequent thereto?
2. Whether it applies only to transactions entered into after the commencement of Central Act 1 of 1984?
3. Whether it applies only to suits which were pending on the date of commencement of Central Act 1 of 1984?
4. Whether it applies to suits instituted and in which decrees were passed before the commencement of the Act?
5. Whether it applies only to suits instituted after the commencement of the Act

irrespective of the date of the transaction?

6. Whether it makes any difference if the loan was an agricultural and not a commercial loan?

6. Before taking up the questions referred to us, it is necessary to refer to certain events and decisions which culminated in the reference to the Full Bench to have a better appreciation of the points involved.

7. A Division Bench of this Court consisting of P.A. Choudary and P. Kodandaramayya JJ. in *Indian Bank, Alamuru v. M. Krishnamurthy*, AIR 1983 Ap 347, held that the provisions of Madras Agriculturists Debt Relief Act (Act IV of 1938) are applicable to the transactions entered into between a Banking Company and its agriculturists-debtors and the debtors are entitled to have the transactions reopened by the Court and the interest scaled down as per the provisions of the said Act. Learned Judges held that Banking Companies will not come within the exemption enumerated in Section 4(e) of Act IV of 1938 as they are not Corporations formed pursuant to Act of Parliament of the United Kingdom or any special Indian Law. Subsequently, Section 21-A of the Act was amended by Amending Act 1 of 1984 and it came into force with effect from 15-2-1984.

8. While so, in another case *Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru*, question arose regarding the applicability of provisions of Act IV of 1938 to similar transactions. In the said case, on behalf of the banking company, which was the respondent therein, it was contended that Section 21-A of the Regulation Act, 1949 overrides any other law relating to indebtedness in force in the State and also overrides the provisions of Usurious Loans Act, 1918 as well. Having regard to the judgment of the Division Bench in *Krishnamurthy's* case (AIR 1983 AP 347) (referred to supra), the learned Judge came to the conclusion that Section 21-A of the Regulation Act, 1949 and Act IV of 1938 operate in different fields and the debt is liable to be scaled down under the provisions of Act IV of 1938. In the meanwhile, in another case, *In the Matter of: State Bank of India, Eluru*, P. A. Choudary, J. struck down Section 21-A of the Regulation Act, 1949 as unconstitutional. Subsequently, *Venkateswarlu's* case (supra) was considered and overruled by a Division Bench of this Court consisting of P. Rama Rao and P. Kodandaramayya, JJ. in *Andhra Bank Ltd. v. B. Narasamma*, (1986) 2 APLJ (HC) 165. The learned Judges held that Section 21-A of the Regulation Act, 1949 is constitutionally valid. However, the learned Judges reiterated the view expressed by P. Kodandaramayya, J in *Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru*, .

9. While so, the judgment of the Division Bench of this Court in *Krishnamurthy's* case (AIR 1983 AP 347) (supra) was overruled by the Supreme Court in its Judgment in *Bank of India Vs. Vijay Transport and Others*, learned Judges of the Supreme Court held that the Banking Companies Act is a special Indian law and the provisions of Section 4(c) of Act IV of 1938 are applicable to banks which are nationalised under the Banking Companies Act. Consequently, in view of Section

4(e) of Act IV of 1938, question of scaling down the debts due to the Banks which are nationalised under the Banking Companies Act does not arise. Therefore, it is authoritatively ruled by the Supreme Court in the above decision that the debts due to the banks which are nationalised under the provisions of Banking Companies Act cannot be scaled down invoking the provisions of Act IV of 1938. Therefore, the judgments of P. Kondandaramayya J. in Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru, as well as Andh Bank case (1986 (2) APLJ (HC) 165) (supra) to the extent they stated that the debts due to the Banks are liable to be scaled down under the provisions of Act IV of 1938 are no longer good law.

10. Constitutional validity of Sec. 21-A of the Regulation Act, 1949 as inserted by Amending Act 1 of 1984 was already upheld by a Division Bench of this Court in Andhra Bank's case (1986 (2) APLJ (HC) 165) (supra). The said question was also referred to by another Division Bench of this Court consisting of B. P. Jeevan Reddy and K. Amareswari, JJ. in Yogendranath Raj v. State Bank, of India, (1987) 1 ALT 316. The learned Judges after referring to the Judgment of the Division Bench of this Court referred to supra (1986 (2) APLJ (HC) 165) observed as follows in para 17:--

"Constitutional validity of Section 21-A is, therefore, not in issue before us. Indeed, in our opinion, the competency of the Parliament to enact the said provision could never have been in doubt."

11. No arguments are advanced before us also with regard to the constitutional validity of Section 21-A of the Banking Regulation Act, 1949.

12. Now we proceed to deal with the points referred to us.

13. Sri V.L.N.G.K. Murthy, learned counsel appearing for the appellant in S.A. No. 268 of 1985 led the arguments on behalf of the nationalised banks which were adopted and supplemented by the other learned counsel appearing for the appellants, viz., Sri C. Trivikramara, Sri M. S. Ramarishn Rao and Sri T. S. Harnath. Sri B. Adinarayana Rao, and Sri E. Rajarao, learned counsel addressed the main arguments on behalf of the debtors which were adopted by the other counsel.

14. The contention of Mr. Murthy, learned counsel is that Section 21-A of the Regulation Act, 1949 mandates that Courts cannot reopen a transaction between a banking company and its debtor on the ground that the rate of interest charged is excessive or unreasonable notwithstanding the provisions of Usurious Loans Act, 1918 (Act 10 of 1918). According to the learned counsel, the language of the said provision makes it clear that the exercise of the jurisdiction by the Courts under the provisions of Usurious Loans Act or any other law relating to indebtedness for the purpose of giving relief to any party is ousted. Therefore, whenever the Court is called upon to exercise jurisdiction under the provisions of Usurious Loans Act or any other law relating to indebtedness so as to give relief to the debtor, the court will be precluded to do so by virtue of the

mandatory terms incorporated in Section 21-A of the Regulation Act, 1949, irrespective of the fact whether the transaction sought to be reopened took place anterior to the invoking the jurisdiction of the Court. This applies equally to a suit filed prior to the coming into force of the said provision (15-2-1984) and pending as on that date. Prohibition also embraces cases where the suit was filed and decreed before 15-2-1984 and an appeal is pending as on the said date before the appellate or second appellate Authority, as the case may be. It is also contended that the question whether Section 21-A is prospective or retrospective does not arise and as and when the Court is called upon to exercise the jurisdiction under the provisions of Usurious Loans Act or any other law relating to indebtedness in the States, the jurisdiction of the Court is ousted by Section 21-A of the Regulation Act, 1949.

15. It is also contended that no right, muchless a vested right, accrued or acquired by the debtors either on the date of the transaction or on the date of filing of the suit by virtue of the provisions of Act 10 of 1918.

16. On the other hand, Sri B. Adinarayana Rao, and Sri E. Rajarao, learned counsel appearing for the debtors contended that statutes are prospective and not retrospective unless retrospectivity is given to the provisions expressly or by necessary intendment. There is neither express provision giving retrospectivity to Section 21-A of the Act nor there is anything to necessarily imply retrospectivity. They contended that a vested right accrued or acquired by the debtors to claim the relief under the provisions of Usurious Loans Act, 1918 on the date of the transaction or at any rate on the date of filing of the suit, which are anterior to coming into force of the said provision i.e., 15-2-1984 and the same cannot be defeated by Section 21-A which came into force during the pendency of the suit or in some cases after the disposal of the suit. The contention is that Act 10 of 1918 not only gives power to the Court to re-open a transaction, but also creates corresponding rights and obligations on the parties and therefore, a decree passed in the suit prior to the enactment of Section 21-A will not be affected notwithstanding the pendency of an appeal against the said decree.

17. To appreciate the rival contentions, it is necessary to refer to the well settled principles of construction of statutes. Parliament as well as State Legislatures have plenary power to legislate within the legislation committed to them. They can do so prospectively as well as retrospectively. However, every statute is prima facie, prospective unless it is expressly or by necessary implication made retrospective. But the rule in general is applicable only where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. It is well settled that the provisions which take away or impair vested rights acquired under existing laws, must be presumed to be intended not to have retrospective effect unless, as aforesaid, it is made retrospective expressly or by necessary implication.

18. On the basis of the above mentioned principles of statutory construction, it is contended on behalf of the debtors that right to have the interest scaled down by

reopening the transaction, acquired or accrued to them already before the coming into force of S. 21-A by virtue of the provisions of Act 10 of 1918, and the same cannot be taken away by the application of Section 21-A of Regulation Act, 1949 and therefore, the said provision should be construed as prospective.

19. Therefore, the first and foremost point to be considered is whether the debtors acquired any vested right under the provisions of Act 10 of 1913 to have the interest scaled-down by reopening the transaction. For considering this point, it is necessary to refer to the provisions of Act 10 of 1918 as amended by the Usurious Loans (Madras Amendment) Act 8 of 1936 insofar as it is relevant for the purpose of present discussion which is as follows:

"Section 3: Reopening of transactions:--(1) Notwithstanding anything in the Usury Laws Repeal Act, 1855 (28 of 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,

(i) reopen the transaction, take an account between the parties, and relieve the debtor of all-liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that, in the exercise of these powers, the Court shall not-

(i) reopen any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation (i):

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.

Explanation (ii):

In the case of a suit brought on a series of transactions the expression "the

transaction" means for the purpose of proviso (i), the first of such transactions.

(2)(a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

Provided that in the case of loans to agriculturists, if compound interest is charged, the Court shall presume that the interest is excessive.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account and circumstances materially " affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security."

20. Proviso to clause (b) of sub-section (2) of Sec. 3 is to the effect that in the case of loans to agriculturists if compound interest is charged, the Court shall presume that the interest is excessive. If the interest is excessive, explanation (i) to Section 3 raises a presumption that the transaction was substantially unfair. If the transaction between the parties thereto is substantially unfair, the court shall reopen the transaction and relieve the debtor of all liability in respect of any excessive interest or if the debtor paid more than the amount required to be paid and then order the creditor to repay the sum which it considers to be repayable in respect of the said transaction. However, there is an important aspect referred to in explanation (i) to Section 3, viz., that though a presumption is raised that the transaction is substantially unfair between the parties thereto, it is made a rebuttable presumption. Therefore, the creditor can rebut the presumption that the transaction was substantially unfair, by proof of special circumstances justifying the rate of interest. Having regard to the above, the scheme of the

above mentioned provisions of Act 10 of 1918 is that in the case of loans to agriculturists if compound interest is charged, the Court shall presume that the interest is excessive and if it is excessive, the transaction is presumed to be substantially unfair. However, the presumption is rebuttable one which requires the creditor to prove special circumstances justifying the rate of interest. If he is able to rebut the presumption, the question of exercising the power of reopening the transaction by the Court u/s 3(1) will not arise. Therefore, merely because compound interest is charged in the case of loans to agriculturists, it will not automatically give a right to compel the Court to reopen the transaction exercising the powers u/s 3(1). The mere fact a loan is given to agriculturist charging compound interest, will not ipso facto give a right to the said agriculturist-debtor to have the transaction reopened by the Court and get relief. It may be that the creditor may be able to satisfy the Court that there are special circumstances justifying the rate of interest in which case the agriculturist-debtor seeking the aid of the Court for reopening the transaction will not arise.

21. Therefore, it is not correct to say that in the case of an agriculturist where compound interest is charged, a right accrued or was acquired by the agriculturist-debtor to have the transaction reopened and get relief u/s 3(1) of Act 10 of 1918. This provision was considered in a judgment of a Division Bench of this Court in *Godugula Lakshi Narasimja Murthy v. Muthakumalli Venkata Subba Rao* (L.P.A. No. 69 of 1968 dated 5-8-1970), wherein the position was summarised as follows:--

"(1) The Court can reopen the transaction and give appropriate relief in the matter of interest when the transaction is substantially unfair;

(2) If the interest is excessive, the Court shall presume that the transaction is substantially unfair, but this is a rebuttable presumption;

(3) No hard and fast rule can be laid down as to what is a reasonable or excessive rate without reference to the several circumstances enumerated in clauses (a), (b) and (c) of subsection (2) of S. 3 of the Act.

(4) In determining whether the rate is reasonable or not, the court has to be take into consideration the following circumstances.

(a) The value of the security offered;

(b) The financial condition of the debtor including the result of any prior transaction;

(c) The known or probable risks in getting repayment;

(d) If compound interest was provided for the frequency of the period of calculation of the interest and

(e) The advantage which the debtor reasonably expected to derive from the transaction."

22. In *Konakalla Venkata Satyanarayana (Died) and Others Vs. State Bank of India and Others*, , the learned Judges referred to the above decision with approval. In fact, in AIR 1949 57 (Federal Court) , it was held that the circumstances under which the appellant therein borrowed monies from the creditor, the availability of credit facilities and possibility of borrowing on easier terms in that part of the country where the transactions took place etc., are relevant considerations to come to the conclusion to find out as to whether the transaction is substantially unfair. It is open to the creditor to adduce evidence on those aspects and satisfy the court that the interest charged in a given case is not excessive and thereby rebut the presumption raised by explanation (i) to Section 3.

23. In *General and Credit Corporation (India) Ltd. Vs. Sri Raja Inuganti Venkata Rama Rao Bahadur Garu and Others*, , the learned Judges stated that the relevant consideration to rebut the presumption that the interest is excessive is to adduce evidence regarding the prevailing rates of interest in the locality/town and the availability of credit facilities and the advantage gained by the debtor and any other special circumstances to rebut the presumption raised by explanation (i) to Section 3. Further, it is pertinent to notice, at this stage, that the creditors, in the case before us, are all nationalised banks. They are bound by the directions issued by the Reserve Bank of India. Section 21 of Regulation Act, 1949 says that where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interest of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies and when such a policy is so determined, all banking companies shall be bound to follow the policy so determined. Clause (e) of sub-section (2) of Section 21 is to the effect that the Reserve Bank of India may give directions to banking companies, among others, as to the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given. Subsection (3) of Section 21 is to the effect that every banking company shall be bound to comply with any directions given to it under this section. Violation of the directions given by the Reserve Bank of India by any of the banking companies entails penal consequences under sub-section (4) of Section 46 of the Regulation Act, 1949. These directions issued by the Reserve Bank of India are common to all the banking companies and, therefore, all the nationalised banks will have to charge the same rate of interest in respect of different transactions as directed by the Reserve Bank of India. The above circumstances can be justifiably pleaded by the nationalised banks as special circumstances, apart from the other circumstances mentioned above, to rebut the presumption raised by explanation (i) to Section 3 of Act 10 of 1918.

24. Having regard to the above, we are of the view that the contention of the debtors before us that the moment they entered into a loan transaction, the right for reopening the transaction and scaling down of the interest accrued to them has no substance. In other words, the debtors are at liberty to apply to the Court

for reopening the transaction and if the Court is satisfied after enquiry that the creditor was not able to rebut the presumption, it shall reopen the transaction. But that liberty i.e. the right to approach the Court cannot be said to be an accrued right for reopening the transaction.

25. In this connection, it will be useful to refer to the case in *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721. In the said case, the facts are as follows: --

One "K" held a lease from the Crown in respect of certain premises which expired in December, 1951. There were tenants and subtenants of the premises. On the application for renewal of the lease, an agreement was entered into in June, 1955 between "K" and Director of Public Works, according to which, "K" was to develop the site by erecting buildings thereon within a certain time. If that is done, "K" was to have a new lease or leases on terms which, effectively, would give him a period of seventy-five years from December, 1951. The erection of the new buildings obviously necessitated the demolition of the then existing buildings. The said existing buildings were subject to the Hong Kong Landlord and Tenant Ordinance. As per the terms of the said Ordinance, when a Crown lessee wanted to demolish the existing building, he could Only recover the vacant possession of the premises after the Director of Public Works issues a rebuilding certificate. The Director of Public Works gave notice of his intention to grant rebuilding certificate and the lessee served notices in the prescribed form on the tenants. According to the provisions of the Act, the tenants can file an appeal within three weeks of the receipt of the notice to the Governor in Council against the proposal of the Director of Public Works to give a rebuilding certificate. The lessee could also present a cross-petition. On a consideration of the petition and cross-petition, the Governor in Council had an absolute discretion to direct the rebuilding certificate to be given or not to be given. If rebuilding certificate is given by the Director of public Works, the lessee could serve a notice on the persons in occupation to quit and thereafter he can claim vacant possession. In 1956, "K" applied to the Director of Public Works for the issuance of rebuilding certificate and the Director of Public Works gave notice of his intention to give such Certificate to "K". Consequently, "K" served notice of the intention of the Director of Public Works to issue rebuilding certificate on the tenants and subtenants who were in occupation. The tenants and sub-tenants filed petitions before Governor in Council and cross-petition was also filed by "K". However, no decision was taken by the Governor in Council. While the petition and cross-petitions were pending consideration before the Governor in Council, the provisions which enable consideration to be given to any pending petitions or cross-petitions or which permitted the subsequent giving of any rebuilding certificate etc., were repealed by Landlord and Tenant (Amendment) Ordinance, 1957 with effect from 9-4-1957. The contention of Crown lessee was that on his application for the issuance of rebuilding certificate, the Director of Public Works gave notice of his intention to give such certificate and that notice was served on the tenants and sub-tenants to vacate the premises. The matters were pending

before the Governor in Council during which time the relevant provisions referred to above were repealed.

26. On the above mentioned facts, two contentions were raised on behalf of the Crown lessee-- (1) that the agreement of June 7, 1955 having been concluded was valid and effective as between the parties to it, at least to the extent to which an obligation is imposed on the lessee to redevelop the property by demolishing the existing buildings; and (2) that the Crown lessee had an accrued right to possession under the Ordinance prior to the repeal, and that right survived the repeal, and the lessee is entitled to have his application for rebuilding certificate determined in accordance with the provisions as they stood prior to repeat and entitled to have vacant possession of the whole of the premises. On the other hand, it was contended on behalf of the tenants and sub-tenants who were in possession, that the agreement was merely an agreement for lease and not for disposition of land. Until and unless the lessee had established the right to specific performance, he cannot claim that by virtue of the agreement a right was accrued to him etc.

27. While dealing with the said contention, the learned Judges stated as follows:--

"In their Lordships" view, such an approach is not warranted by the facts. On April 9 the lessee had no right. He had no more than a hope that the Governor in Council would give a favourable decision. So the first submission fails.

Again the learned Judges stated as follows :

"In their Lordships" view, the entitlement of the lessee in the period prior to April 9 to have the petitions and cross-petition considered was not such a "right". On April 9 the lessee as quite unable to know whether or not he would be given a rebuilding certificate, and, until the petitions and cross-petition were taken into consideration by the Governor in Council, no one could know. The question was open and unresolved. The issue rested in the future. The lessee had no more than a hope or expectation that he would be given a rebuilding certificate, even though he may have had grounds for optimism as to his prospects."

The learned Judges further made the following significant observations:

"But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given."

The above judgment was referred to and followed in *Free Lanka Insurance Co. Ltd. v. Ranasinglie*, (1964) 1 All ER 457.

28. Therefore, what all the debtors were having on the date of the loan transaction as well as on the date of filing of the suit, if at all they have anything, is to ask for an investigation which is to decide whether the right claimed by them should or should not be given. As the learned Judges in the above mentioned judgment (1961 (2) All ER 721) (*supra*) put it, with great respect

succinctly, that cannot be called a right, much less a right accrued or acquired by them to have the transactions re-opened. It all depends upon the investigation by the Court, which investigation may decide, whether they should or should not be given the relief. We are clearly of the opinion that the contention advanced on behalf of the debtors that on the date of the transactions or at least on the date of filing of the suit, they acquired a right to have the transactions reopened by the Court under the provisions of Act 10 of 1918 is not sustainable. They cannot claim that they acquired any right much less a vested right.

29. Mr. Murthy, learned counsel next contended that on a plain reading of the language of Section 21-A of Regulation Act, 1949, as inserted by Amending Act 1 of 1984, the Parliament enjoined the Courts from giving relief under the provisions of Usurious Loans Act, 1918 (Act 10 of 1918) whenever they are called upon to do so. In other words, it is contended that the question whether Section 21-A is prospective or retrospective does not arise and as and when the matter is brought before the Court and a relief is sought under the provisions of Act 10 of 1918, Section 21-A comes into action and bars the Court from giving such relief. In elaboration of the above, it is contended that even though the loan transaction took place prior to the coming into force of Section 21A and in respect of which the suit was filed earlier or subsequent to the coming into force of the said provision or whether the suit instituted was pending in the trial Court, appellate Court or second appellate Court by the time the provision came into force, the jurisdiction of the Court to give relief under Act 10 of 1918 is ousted. As and when the matter is brought before the Court, the Court is debarred from giving relief. The learned counsel strongly relied upon the language of S. 21-A of the Regulation Act, 1949.

30. It is necessary in this connection to refer to the said provision which is as under :

"21-A. Rates of interest charged by banking companies not to be subject to scrutiny by Courts .-- Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any Court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

According to the learned counsel, the words "a transaction between a banking company and its debtor", indicates that the transaction can only be anterior in point of time to the re-opening by any court. Question of reopening of any transaction by the court arose with reference to a transaction which was anterior to the time at which the Court was called upon to re-open. Likewise, it is contended that the mandate of the Parliament is so clear, viz. that the court is debarred or enjoined from re-opening of any transaction irrespective of the fact whether the suit is filed earlier or filed subsequent or it is pending on the date of coming into force of S. 21-A of the Regulation Act, 1949. In this connection, the learned counsel relied upon a judgment in *Amarjit Kaur Vs. Pritam Singh* and

Others, . The facts of the said case are that the property which was the subject matter of the litigation belonged to fourth defendant. He sold the same to defendants 1 to 3 under a sale deed dated 29-7-1965 which was registered on 14-10-1965. The appellant therein, who was the daughter of the fourth defendant, filed the suit claiming a right to pre-empt. The trial Court decreed the suit, against which an appeal was preferred by the purchasers. Appeal was also dismissed on 17-7-1971. Thereafter, a second appeal was preferred to the High Court against the said decree. Meanwhile, the Punjab Pre-emption (Repeal) Act, 1973 (Act 11 of 1973) which received the assent of the Governor of Punjab on 6-4-1973 was published on 9-4-1973. Section 3 of the Punjab Pre-emption (Repeal) Act, 1973, inter alia, provided that on and from the date of the commencement of the said Repeal Act, no Court shall pass any decree in any suit for pre-emption.

31. The contention raised therein was, that the bar contained in S. 3 of the said Repeal Act is only in respect of the passing of a decree in a suit and that suit having been decreed and first appeal having been dismissed, the bar will not apply to the second Appellate Court and, therefore, applying the said provisions at the second appellate stage by the High Court is not sustainable. Section 3 of the said Act is as under :

"Bar to pass decree is suit for pre-emption. -- On and from the date of commencement of the Punjab Pre-emption (Repeal) Act 1973, no Court shall pass a decree in any suit for pre-emption."

32. While dealing with the said contention, the learned Judges held that an appeal is a re-hearing of a suit and if a decree is passed in the appeal, it would be a decree in the suit for pre-emption and the prohibition contained in S. 3 applies to every stage of the suit.

33. The above decision clearly indicate that irrespective of the fact whether a suit was filed and a decree was passed and appeal or second appeal is pending in the Courts, whatever is applicable to a suit is equally applicable even to an appeal or second appeal as they are nothing but stages in the suit and any decree that is passed in the appeal or second appeal will be a decree in the suit. On that ground, the learned Judges upheld the dismissal of the suit by the High Court at the second appellate stage by applying the bar contained in S. 3 of the Punjab Pre-emption (Repeal) Act, 1973.

34. The learned Judges also put it on another ground, viz., that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

35. To a similar effect is the judgment in Sadhu Singh and Another Vs. Dharam Dev and Others, . In this case also the effect and applicability of S. 3 of Punjab Pre-emption (Repeal) Act (11 of 1973) came up for consideration. The learned Judges clearly pointed out that even though a decree was already passed by the

trial Court, which was the subject matter of an appeal pending on the date of coming into force of Repeal Act, that appeal also would fall within the mischief of S.3, and the said section interdicts the passing of a decree, even in appeal. The learned Judges stated that the prohibition contained interdicts the passing of a decree even in appeal in view of the fact that the moment an appeal is disposed of, the decree of the trial Court merges in the decree of the appellate Court and that will be the decree in the suit. The learned Judges affirmed the judgment referred to supra *Amarjit Kaur Vs. Pritam Singh and Others*, . The ratio of these decisions is that irrespective of the fact that a decree was passed and affirmed in first appeal and in case second appeal is filed challenging the same, in view of the fact that the appeal is nothing but a re-hearing of the suit and continuation of the suit, the prohibition equally applies to the first appellate Court or even to the second appellate Court.

36. To a similar effect is the judgment of *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, . In this case, the facts were that a decree for eviction was passed by the trial Court against the tenant under the provisions of Transfer of Property Act. On appeal, it was confirmed by the first Appellate Court. The second appeal preferred by the tenant was pending. During the pendency of the said second appeal, West Bengal Premises Tenancy Act, 1956 was extended to the concerned area. Sub-section (1) of S. 13 of the said Act which fell for consideration is as follows *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, :

"Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds....."

In view of the injunction contained in the said provision to the effect that no order or decree for recovery of possession of any premises shall be made by any Court..... the High Court allowed the second appeal and dismissed the suit for eviction.

37. The learned Judges of the Supreme Court affirmed the same holding that the word "decree" occurring in sub-section (1) of S. 13 of the Act refers to "decree which dispose of the suit finally." It was held that when a decree passed by the trial Court is challenged in appeal, the appeal is considered as a continuation of the suit and when the appellate Court affirms, modifies or reverses the decree on the merits, the trial Court's decree merges in the appellate decree and it is only the appellate Court's decree which rules. Further, the learned Judges, while dealing with the argument that a decree was already passed in a suit instituted by the time the Tenancy Act was made applicable to the concerned area and, therefore, the prohibition contained in sub-section (1) of S. 13 will not apply, stated as follows:

8. "The next point is whether sub-section (1) of S. 13 can be invoked where the suit was instituted before the Act came into force. In the instant case, the suit

was instituted long before the Act was extended to Memari. Sub-s. (1) of S. 13 directs the Court not to make any order or decree for possession subject, of course, to the statutory exceptions. The legislative command in effect deprives the Court of its unqualified jurisdiction to make such order or decree. It is true that when the suit was instituted the Court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear and regard must be had to its object."

It is necessary, in this connection, to high- light the observations of the learned Judges in the said case with respect to retrospectivity of the provisions which are as under Lakshmi Narayan Guin and Others Vs. Niranjana Modak, :

"In passing, it may be noted that the learned Judges expressed a degree of hesitation on whether a statutory injunction of that nature could be applied retrospectively to appeals against decrees already made. But any doubt on the point must be considered to have been finally removed by this Court when in Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, another Bench of five Judges, which included J.C. Shah, J. who was a member of the Bench in the earlier case, held on an interpretation of clause (a) of sub-s. (1) of the Assam Non-agricultural Urban Areas Tenancy Act, 1955, which prohibited the eviction of a tenant, that the statutory provision came into play for the protection of the tenant even at the appellate stage. The learned Judges relied on the principle that "an appeal was a continuation of the suit and that the appeal would be governed by the newly enacted clause (a) of sub-s. (1) of S. 5 even though the trial Court decree had been passed earlier."

The learned Judges categorically laid down that "decree" means "decree which dispose of the suit finally" and that an appeal is nothing but continuation of the suit and when the appeal is disposed of, the trial Court's decree merges in the appellate Court's decree and the appellate Court's decree will be the decree in the suit, and the words "shall be made by any Court" in the West Bengal Premises Tenancy Act include the appellate Court and second appellate Court and that the injunction against the Court to pass a decree can be applied even at the second appellate stage or at every stage in the suit till it is finally disposed of in appeal and the question of retrospectivity does not arise in this regard. One more aspect to be noticed is that even though a decree was passed earlier to the coming into force of the provisions, the learned Judges clearly held that the provisions which came into force subsequently can be applied to the appeal filed against the said decree which was anterior to the coming into force of the provisions.

38. Sri Murthy, learned counsel in support of his contention, next relied upon the case in Darshan Singh Vs. Ram Pal Singh and another, . The question that arose in the said case before the learned Judges of the Supreme Court was whether the Punjab Custom (Power to Contest) Amendment Act, 1973 (Act 7 of 1973) which came into force on 23-1-1973 would or would not apply to the pending

proceedings. In fact, in this case, suits were filed earlier to the coming into force of the Act and they were pending in appeals in different appellate stages. Section 7 of the Amending Act 7 of 1973 is as follows (para 14 of AIR):

"Alienation of non-ancestral property :--Notwithstanding anything to the contrary contained in S. 5, Punjab Laws Act, 1872, no person shall contest any alienation of non-ancestral immovable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom."

A contention was raised before the learned Judges of the Supreme Court that the Amending Act of 1973 shall not affect any right to contest any alienation or any appointment of an heir made before the date on which the Act came into force. The basis of the said contention was that S. 7 of the Amending Act 7 of 1973 will not affect the proceedings already instituted and in particular, the proceedings which culminated in passing of a decree or otherwise. The learned Judges of the Supreme Court in-para 41 of their decision stated that the words "no person shall contest any alienation on the ground that such alienation is contrary to custom" are very significant and a plain reading of the same even if they are construed as prospective, leads to the result that the right to contest contrary to custom has been totally effaced and taken away and expressed their view in the following words Darshan Singh Vs. Ram Pal Singh and another, .

"In the instant case the words "no person shall contest any alienation on the ground that such alienation is contrary to custom" are very significant. A plain reading of the above provision even when construed prospectively leads to the result that the right to contest being contrary to custom has been totally effaced and taken away. Thus no person has any right to contest any alienation of immovable property whether ancestral or non-ancestral on the ground of being contrary to custom after 23-1-1973. This provision will thus apply to all pending actions whether at the stage of trial or before the appellate court. It is well settled that an appeal is a continuation of the suit and if a right to contest an alienation on the ground of being contrary to custom has been taken away, such right to contest cannot be permitted even at the stage of first appeal or second appeal."

The learned Judges also referred to earlier case for the proposition that an appeal is a continuation of a suit and is only a rehearing of it and, therefore, whether it is at the stage of suit or appellate stage or otherwise, no person is entitled to contest after coming into force of the Act. The following sentence also clearly brings out the reason in support of the decision of the learned Judges as contained in para 48 of their decision.

"The right to contest wherever needed, namely, at any stage of a suit is expressly barred."

While so stating, the learned Judges held that S. 7 of the Principal Act as amended by Amending Act 7 of 1973 is retroactive and is applicable to pending

proceedings, whether in suit, appeal or even at further appellate stage.

39. Mr. Murthy, learned counsel also relied upon a judgment of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, for the proposition that the suit, appeal and second appeal etc., are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. Therefore, it is contended that whatever may be the stage at which the suit is pending, whether at the stage of suit, appeal or second appeal etc., when once the Court is prohibited from re-opening any transaction on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive, the Court cannot re-open the transaction. It is significant to note that the prohibition contained in the said section for re-opening the transaction is in respect of "any Court". That means, whether it is a trial Court, appellate Court or any Court for that matter, the Court is enjoined from re-opening the transaction between a banking company and its debtor on the ground that interest charged is excessive notwithstanding anything contained in Usurious Loans Act, 1918 or any other law relating to indebtedness in force in any State.

40. It is necessary to refer to the relevant portion of S. 3 of Usurious Loans Act (Act 10 of 1918) in juxtaposition with S. 21-A of the Regulation Act, 1949 insofar as it is relevant for the purpose of the present discussion.

41. Section 3 (1) of Act 10 of 1918 gives power to the Court for re-opening the transactions. The relevant portion is as follows:

3(1) x

The Court shall exercise one or more of the following powers, namely,

(i) re-open the transaction.....

The relevant portion of S. 21-A is as under :

"Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any Court....."

That means, according to S. 3(1), if the other things are satisfied, the Court shall re-open the transaction, while we come to S. 21-A, it says "shall not be re-opened by any Court notwithstanding the provisions of Act 10 of 1918.

42. The language of the above two provisions indicate clearly the intention of the Parliament that whatever may be the stage of the suit or even the date of the transaction, the moment the aid of the Court is sought to re-open the transaction between the banking company and its debtor under the provisions of S. 3 of the Usurious Loans Act, the injunction/prohibition against re-opening contained in S. 21-A of Regulation Act, 1949 comes into play. Having regard to the well established principle of law laid down by the decisions of the Supreme Court

referred to above, that an appeal is nothing but a continuation of the suit or re-hearing of the suit and is a stage in the suit and that suit, appeal, second appeal etc., are but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding, the contention advanced on behalf of the banking companies that the injunction/prohibition or the bar directed by S.21-A to any Court comes into play irrespective of the fact that the transaction between the banking company and its debtor is prior to the coming into force of S. 21-A of Regulation Act, 1949 is well founded. The bar will apply at all stages of the suit, viz., suit, appeal or second appeal etc., and to any Court, trial Court, appellate Court or second appellate Court until the suit is , finally disposed of by a final Court of appeal, which decree alone is the decree in the suit. As the learned Judges of the Supreme Court put it, with great respect, in the decision referred to supra Lakshmi Narayan Guin and Others Vs. Niranjan Modak, , it is not a case where the provision is prospective or retrospective, but as and when the matter comes before the Court, whether in a suit, appeal or second appeal etc., so long as the proceeding is pending in any Court as on the date of coming into force of S. 21-A of Regulation Act, 1949, the prohibition automatically comes into play and the Court is bound to apply the same and refuse to re-open the transaction in view of the mandate contained in S. 21-A.

43. In this connection, it must be stated that the fact that S. 21-A came into force with effect from 15-2-1984 is not at all decisive to come to the conclusion that the section has no application to the transactions entered into prior to the coming into force of the provision.

In fact, sub-section (2) of S. 1 of the Punjab Custom (Power to Contest) Amendment Act, 1973 specifically provided that the amend- ment shall be deemed to have come into force on 23-1-1973. On the basis of the said provision, it was contended in the case referre.d to supra Lakshmi Narayan Guin and Others Vs. Niranjan Modak, that since"the amendment came into force on 23-1-1973 only, the same cannot be interpreted to have retrospectivity. The said contention was rejected having regard to the fact that the jurisdiction of the Court to give relief was divested by the Amending Act. Therefore, in the present case also, any Court before which the proceedings are pending, wherein the relief is sought under the provisions of Usurious Loans Act 10 of 1918, S. 21-A of the Regulation Act, 1949 applies and the Court is divested of the power to give relief to the debtor under the provisions of Usurious Loans Act 10 of 1918. This will be the effect of S. 21-A, even assuming for a minute that the debtors have a vested right to seek relief under the provisions of Act 10 of 1918. The intention of the Parliament, from the above mandate to the Court, is clear that even assuming any vested right accrued to the debtors, the said right is taken away by Section 21-A of the Regulation Act, 1949.

44. Having regard to the above discussion, it is clear that a distinction must be drawn between the cases where the provision contained a mandate to the Court not to give relief and divests the Court of its jurisdiction to give relief and the

cases where no such mandate is imposed against the Court, but a power to re-open on satisfaction of certain conditions is conferred on the Court. In the former case, all pending matters irrespective of the fact whether they are pending before the trial Court, appellate Court or second appellate Court, the prohibition must be made applicable to every Court till a finality is reached in the proceedings. In such a case, assuming that vested rights are accrued to the persons earlier, the intention of the Parliament was to put off even the vested rights and that will be the necessary implication. That means the vested rights are also taken away by necessary implication. This distinction was also drawn by the learned Judges of the Supreme Court in *Darshan Singh Vs. Ram Pal Singh* and another, referred to *supra* on the ground that those cases were not dealing with a mandate given to a Court and whether the jurisdiction of the Court to give relief is divested.

45. To a similar effect is the judgment in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, relied upon by Mr. Murthy, learned counsel for the banks. This case was dealing with the application of Benami Transactions (Prohibition) Act (45 of 1988). Section 4 of the said Act reads as follows:

"(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

46. A similar contention was raised to the effect that the Act was not made retrospective by any specific provision or can be said to be retrospective by necessary implication and, therefore, it will not affect the suits which are already pending. After an exhaustive consideration of the case law on the subject and the provisions of the Act, the learned Judges of the Supreme Court stated as follows in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, :

"The expression "any property held benami" is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim or action to enforce any right in respect thereof shall lie."

It was further stated as follows (Para 22):

"Where the remedy is barred, the right is rendered unenforceable. In this sense it is a disabling statute. All the real owners are equally affected by the disability provision irrespective of the time of creation of the right. A right is a legally protected interest. The real owner's right was hitherto protected and the Act has resulted in removal of that protection.

The learned Judges further stated as follows (Para 23):

"When the law nullifies the defences available to the real owner in recovering the benami property from the benamidar, the law must apply irrespective of the time of the benami transactions."

While considering the point that the suit can be said to be pending when an appeal therefrom is pending, the learned Judges answered it in the affirmative. The learned Judges clearly held that the hearing of the appeal is in the nature of hearing of the suit itself, and consequently, the appellate Court is competent to take into account the legislative changes occurred since the decision under appeal was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood when its decision was given. The learned Judges after referring to the earlier cases, stated that the word "suit" includes appeal from the judgment in the suit.

47. Having regard to what is stated above, it is clear that even though the transaction between the banking company and the debtor is anterior to the coming into force of S. 21-A, the provision applies and the Court is divested of its power to give relief under the Usurious Loans Act. This is so even if the suit is filed earlier and pending as on the date of coming into force of the provision.

48. It was next contended by the learned counsel appearing for the banks that the object of the Amending Act in respect of the above provision also will have to be taken into consideration in interpreting the statute. In this connection, it is contended that there were divergent views expressed by different Courts with regard to the applicability or otherwise of the Debt Laws of the respective States and the Usurious Loans Act to the transactions between the banking companies and its debtors. A Division Bench of this Court held that notwithstanding the directions of the Reserve Bank of India to the Banking Companies to charge interest on the loans given by them at certain rates, the Courts are empowered to give relief under the provisions of Act IV of 1938. This was the view expressed in *Union Bank of India v. Dhanekula Koteswara Rao*, (1979) 2 AWR 165 as well as by the Kerala High Court in *State Bank of Travancore Vs. C.T. George and Another*, while the Madras High Court held in *Indian Bank, Tiruvannamalai Vs. V.A. Balasubramania Gurukal*, that the provisions of the Banking Regulation Act, 1949, alone regulate the rate of interest on advances by nationalised bank and the provisions of the Regulation Act prevail over the provisions of Usurious Loans Act.

49. On the other hand, a Division Bench of Karnataka High Court in *D.S. Gowda Vs. Corporation Bank*, held that even though directions issued by the Reserve Bank of India under the Banking Regulation Act, 1949 are statutory, the transactions entered into by the Banking companies with their customers cannot be treated as statutory agreements and, therefore, the directions of the Reserve Bank of India will not disable the Courts from granting necessary relief when the Courts find that the rate of interest was excessive.

50. Having regard to the views expressed by different High Courts and also in

view of the fact that the banking companies are bound by the directions issued by the Reserve Bank of India in respect of charging interest, violation of which will entail penal consequences, the Parliament stepped in to set at rest the controversy and enacted Section 21-A to enable the banking companies to charge interest as per the directions issued under the provisions of Regulation Act, 1949. Therefore, the intention of the Parliament is clear that the laws relating to indebtedness prevailing in the respective States and the provisions of Usurious Loans Act 10 of 1918 should not be made applicable to the banking companies which are bound to charge the rates of interest as directed by the Reserve Bank of India under the provisions of Banking Regulation Act, 1949. If this is to be construed otherwise, there will be conflict with reference to the actions taken pursuant to the respective laws themselves. If the banking companies are bound to charge the interest as per the directions of the Reserve Bank of India under the provisions of Regulation Act, 1949, it cannot be said at the same time that the transactions can be reopened by the Courts and the rates of interest are scaled down as per the different laws relating to indebtedness of the respective States and Usurious Loans Act on the ground that the rate of interest charged is impermissible. This is the mischief which the Parliament wanted to remedy and therefore, according to the learned counsel for the Banks, the intention of enacting Section 21-A is made clear by necessary implication that Parliament wanted to divest the Court of the power to give relief under the respective debt laws of the States as well as under the provisions of Usurious Loans Act 10 of 1918.

51. The decision cited by the learned counsel appearing for the banks in Kamla Prasad Jadawal Vs. Punjab National Bank, New Delhi and Others, ; Vijaya Bank and etc. Vs. Art. Trend Exports and etc., and Syndicate Bank v. Kailashchandra, (1993) 76 Cc 392 (Bom) support their contention that Section 21-A overrides the provisions of Usurious Loans Act and the prohibition contained in the said provision applies even to the suits pending before the Courts in respect of the transactions entered into prior to the coming into force of Section 21-A.

52. In Kamla Prasad Jadawal Vs. Punjab National Bank, New Delhi and Others, , the facts of the case are as follows:

Respondent No.2 in the appeal before the High Court was advanced a loan of Rs. 10,750/- by the Punjab National Bank on 25-2-1972 for purchase of a Tempo. The appellant and the respondent No. 3 before the High Court were the guarantors. The rate of interest was 5% above the Reserve Bank of India rate with the minimum of 11% P.A. with quarterly rests. The Bank was forced to file the suit as the loan was not repaid. Suit was decreed granting compound interest from 1-1-1977 to 1-11-1979 (suit having been filed on 5-11-1979) and thereafter simple interest till realisation. Questioning the said judgment and decree, appeal was preferred by one of the guarantors to the High Court of Madhya Pradesh. The contention raised before the High Court was that the interest charged is excessive and is liable to be reopened and scaled down in the

light of Section 3 of Usurious Loans Act, 1918. The learned Judge rejected the contention holding that Section 21-A of the Regulation Act, 1949 which came into force on 15-2-1984 relates to procedure in the matter of re-opening of account and, therefore, will be applicable to the suit transaction which took place in the year 1972. It is true that there is not much of discussion with regard to the point raised before us. However, the conclusion accords with the view taken by us.

53. Similarly in *Vijaya Bank and etc. Vs. Art. Trend Exports and etc.*, referred to supra, a Division Bench of the Calcutta High Court had to consider the very same point among others. In those cases before the Calcutta High Court, several suits filed by the banking companies for recovery of the amounts due to them were considered. The main argument was with regard to applicability of Order 34, Rule 11 C.P.C. and what is the rate of interest to be granted under those provisions and whether there is any conflict between Section 34 and Rule 11 of Order 34 or not. The Court had to consider also the applicability of Section 21-A of Banking Regulation Act, 1949 to the transactions in question. While dealing with the same, the learned Judges stated as follows (Para 8.7 of AIR):

"Therefore, it follows that in the case of a Banking Company, a fortiori, its claim to interest at the agreed rate for the period prior to the suit cannot be ignored and the Court is bound to grant interest at that rate. The Court has no discretion in the matter."

It is true that there is no detailed discussion with regard to the question whether Section 21-A is prospective or retrospective and what is its effect on the pending proceedings in Court etc.

54. Likewise in *Syndicate Bank's* case referred to supra (1993 (76) Com Cas 392) a Division Bench of the Bombay High Court considered the effect of Section 21-A of the Regulation Act, 1949, vis-a-vis the provisions of Usurious Loans Act, 1918. In this case, two loan facilities were granted by the plaintiff-bank of October 16, 1978 for the purchase of weighing scales. Interest was charged with quarterly rests and a suit was filed for recovery of the amount with compound interest. Suit was resisted by the debtor on the ground that the plaintiff-bank cannot charge interest more than the rate permitted by the Usurious Loans Act. The trial Court accepted the said contention and stated that in view of the first proviso to Section 3(2)(a) of the Usurious Loans Act, 1918, the transaction is liable to be re-opened and the debtor is relieved of the excess rate of interest. Questioning the said judgment and decree of the trial Court, appeal was preferred to the High Court and it was admitted on October 14, 1983. During the pendency of the appeal, Section 21-A was inserted by the Amending Act 1 of 1984. It came into effect from 15-2-1984. At the time of hearing of the appeal, it was contended on behalf of the bank that in view of Section 21-A of the Regulation Act, 1949, the Courts are barred from re-opening the loan transaction. The Division Bench of the Bombay High Court after referring to the judgment of the Supreme Court in *Amarjit Kaur Vs. Pritam Singh and Others*, which stated that the appeal is a rehearing of the suit, applied Section 21-A of

Regulation Act, 1949 and allowed the appeal and decreed the suit as prayed for. The relevant observations of the Division Bench are as follows:

"We find much substance in this appeal and we hold that Section 21-A of the Banking Act is applicable in this case and, therefore, the learned trial Court has committed an error in ordering reopening of the accounts from the beginning of the transaction. The trial Court's judgment and decree to this extent is, therefore, liable to be set aside."

Therefore, it is clear that the Division Bench of the Bombay High Court applied Section 21-A of the Regulation Act, 1949 to a transaction entered into on 16-10-1978 which was the subject matter of the suit filed and decreed prior to the coming into force of Section 21-A, at the appellate stage in the High Court, during pendency of which the provision came into force.

55. For the reasons mentioned in the foregoing paragraphs, we are of the view that though no detailed discussion is available in those decisions, they accord with the view expressed by us.

56. Sri B. Adinarayana Rao, learned counsel appearing for the debtors strongly relied upon the judgment of the Division Bench of this Court in Yogendranath Raj case (1987 (1) Andh LT 316) (supra) and the judgment of Iyyapu Panduranga Rao, J. in Central Bank of India Vs. Popuri Sarangaiah and Others, and the judgment of N. D. Patnaik J. in Bank of Madhura Ltd., v. M/s. Maddi Venkata Subrahmanyam, (1990) 1 ALT 225, which was reiterated by the same learned Judge again in Bank of India, Vijayawada Vs. Katamaneni Suryanarayana and others, .

57. Iyyapu Panduranga Rao, J. and N. D. Patnaik, J. in the above mentioned three judgments, followed the Division Bench judgment in Yogendranath Raj case (1987 (1) AIT 316) (supra). Therefore, it is necessary to consider the judgment of the said case. The facts which arose in the said case are as follows:--

State Bank of India filed a suit, out of which the proceedings arose, for recovery of a sum of Rs. 2,35,927-86 ps. with interest at the rate of 14% P.A. from the date of suit till realisation. Suit was filed with reference to a transaction entered into on 5-5-1971. Suit was based on a mortgage. The defendants therein raised a defence that the plaintiff bank charged compound interest which is illegal. They have also taken certain other defences which are not relevant for the purpose of the present discussion. One of the issues framed was whether the rate of interest charged by the plaintiff is excessive or not and whether the defendants are entitled to the benefit of Hyderabad Agricultural Debtors' Relief Act, 1956.

58. The trial Judge held that the first defendant is not an agriculturist because horticulture will not come within the meaning of expression "Agriculture" and, therefore, not entitled to the benefits of Usurious Loans Act 10 of 1918 as amended by Usurious Loans (Madras Amendment) Act 8 of 1936. On the above finding, apart from others, the learned trial Judge decreed the suit as prayed for.

Suit was instituted on 9-11 -1974 and it was decreed on 19-8-1977 in favour of the plaintiff bank. Appeal was preferred to the High Court on 16-1-1978 and it came up before the Division Bench of this Court for hearing in March/ April, 1986. As stated earlier, Section 21-A of the Regulation Act, 1949 was inserted by the Amending Act 1 of 1984 and came into force with effect from 15-2-1984. The learned Judges held, while reversing the judgment of the trial Court, that the appellant in the High Court was an agriculturist within the meaning of Usurious Loans Act as amended by the Usurious Loans (Madras Amendment) Act, 8 of 1936. Having held that the debtor is an agriculturist, the learned Judges had to consider the effect of Section 21-A of the Regulation Act, 1949 which came into force with effect from 15-2-1984. The learned Judges held as follows:

"Applying the principle of this decision to the facts of the case before us, we must hold that the interest on the debt advanced by the plaintiff-Bank to the 1st defendant was subject to the liability or obligation of being scaled down, in accordance with the provisions of the Usurious Loans Act, as amended by the Madras (Amendment) Act, and that the said right cannot be taken away by Section 21-A. In any event, in the case before us, not only the suit, but also the decree of the trial Court is earlier to the date of coming into force of Section 21-A."

In coming to the said conclusion, the learned Judges relied upon the decision of the Supreme Court in Life Insurance Corporation of India Vs. Kota Ramabrahmam and Others, .

59. Before us also, Sri B. Adinarayana Rao, learned counsel appearing for the debtors relied upon the said judgment. Therefore, we have to necessarily consider the said judgment of the Supreme Court in detail.

60. In the "said case, loan transaction between Andhra Insurance Company of Masulipatnam and the defendants therein took place in the year 1950. A mortgage was executed for the credit given by the Andhra Insurance Company to the debtor. In the meanwhile, Life Insurance Corporation Act, 1956 was enacted. The Act provided for the nationalisation of Life Insurance Corporation business in India by transferring all such business to a Corporation established for the said purpose. Sub-section (1) of Section 7 of the Act provides that on the appointed day all the assets and liabilities appertaining to the life insurance business of all insurers shall be transferred to and vested in the Corporation. "Appointed day" has been defined in Section 2(1) as the date on which the Corporation is established, which was September 1, 1956. The liabilities mentioned in sub-section (I) of Section 7 includes all debts and liabilities and obligations of whatever kind existing on the appointed day and relating to the life insurance business of the insurer. The general effect of business is mentioned in Section 9 and it is described as, unless otherwise expressly provided by the Act, all contracts, agreements and other instruments subsisting immediately before the appointed day to which the insurer whose business has vested was a party or which are in favour of such insurer shall "be of as full force and effect against or

in favour of the Corporation, as the case may be, and may be enforced or acted upon as fully and effectually as if, instead of the insurer, the Corporation had been a party thereto or as if they had been entered into or issued in favour of the Corporation". It also provided that any suit, appeal or other legal proceeding pending by or against the insurer relating to his life insurance business, it will not be prejudicially affected by reason of the transfer to the Corporation of the business of the insurer but may be continued by or against the Corporation.

61. The defence was raised in the suit which was brought in the year 1961 by the debtor that he is an agriculturist and entitled to the benefits under Act IV of 1938 and contended that he is entitled to have the transaction re-opened and the excess interest scaled down. The trial Court upheld the contention of the debtor-defendant, scaled down the interest and decreed the suit for the amount found after scaling down the interest. On appeal, the High Court affirmed the decision of the trial Court. Life Insurance Corporation of India preferred appeal to the Supreme Court of India. In that connection, the learned Judges had to consider whether the Life Insurance Corporation is exempted from the provisions of Act IV of 1938 and whether the relief can be granted to the agricultural debtor.

62. While dealing with the said case, the learned Judges stated that under sub-section (1) of Section 7 of the Act all assets and liabilities of the insurers relating to their life insurance business vest in the Corporation on the appointed day and that sub-section (2) of Section 7 stated that the liabilities include obligations of whatever kind existing on the appointed day. Therefore, the debts due to the insurers were liable to be scaled down in accordance with the provisions of Madras Act which was a liability or obligation appertaining to the debts on September, 1, 1956 i.e., the appointed day. The learned Judges held that the liability attached to the loan transaction for scaling down the debt under the provisions of Act IV of 1938 is an obligation annexed to the debt, which is an obligation vested in the Corporation on the appointed day by virtue of sub-section (2) of Section 7 and therefore, the defendants are entitled to enforce the obligation. In that view of the matter, the learned Judges dismissed the appeal. The learned Judges held that the liability which was annexed to the transaction vested in the Life Insurance Corporation under the provisions of Life Insurance Corporation Act, can be enforced. This decision entirely proceeded on the basis that the assets and liabilities of the Andhra Insurance Company were taken over and vested in the Life Insurance Company by virtue of the provisions of Life Insurance Corporation Act, 1956. The liability to scale down the debt is a liability attached to the transaction itself which was taken over and vested in the Life Insurance Corporation and therefore, the Corporation, though entitled to exemption u/s 4(e) by itself, could not claim the exemption for the reason that the above mentioned liability vested in it. The said decision has no application to the facts of the present case. This is not a case where any liability to have the debt scaled down under the provisions of Usurious Loans Act as amended by Usurious Loans (Madras Amendment) Act is taken over by any of the nationalised Banks. It is also not a case where the power of the Court to give relief is taken

away by any provision as in the case on hand.

63. Having regard to what is stated above, we are of the opinion that the decision of the Division Bench in Yogendranath Raj case (1987 (1) Andh LT 316) (supra) referred to above does not reflect correct position in law.

64. The learned Judges of the Division Bench of this Court in Yogendranath Raj case (supra) also placed reliance on The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . The said case in our opinion has no application to the present case. Section 11A of the Industrial Disputes Act was introduced by Amendment Act, 1971 and it came into force with effect from 15-12-1971. Question was whether it applies to an industrial dispute raised earlier to the coming into force of the Act, Learned Judges of the Supreme Court having noted that the proviso to Section 11A itself stated that it will apply "in any proceedings under this section", held that the proceedings under the section mean only the proceedings instituted after the section has come into force. On that premise, among others, the learned Judges held that Section 11A has no application to disputes referred prior to 15-12-1971. This decision is not relevant for resolving the present controversy.

65. Consequently, we are of the opinion that the decisions rendered by Iyyapu Panduranga Rao, J. and M. D. Patnaik, J. in the cases referred to (1991 (1) Andh LT 455, 1990 (1) Andh LT 225 and Bank of India, Vijayawada Vs. Katamaneni Suryanarayana and others,) (supra) following the judgment of the Division Bench of this Court in Yogendranath case (1987 (1) Andh LT 316) (supra) cannot be said to represent correct position of law.

66. Sri B. Adinarayana Rao, placing reliance on Garikapatti Veeraya Vs. N. Subbiah Choudhury, contended that the right to claim the relief under the provisions of Usurious Loans Act, 1918 that accrued to the debtor on the filing of the suit which is a vested right cannot be taken away by a subsequent legislation unless the subsequent legislation expressly or by necessary implication nullifies the right. It was further contended that the law which was applicable on the date of filing of the suit (Usurious Loans Act 10 of 1918) shall be the law applicable throughout the career of the suit, viz., appeal, second appeal etc., till the proceedings are finally culminated in the appellate Court. This argument has no substance. Garikapatti Veeraya Vs. N. Subbiah Choudhury, is only an authority for the proposition that the right of appeal is not a matter of mere procedure but is a substantive right and the institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. When once a suit is filed, the suitor gets the right to file an appeal or second appeal or further appeal as per the law applicable on the date of the institution of the suit. The suitor has no right to ask that the appeal or further appeal should be decided on merits in a particular manner even though the law has changed. The above mentioned case is of no assistance to the points which are being debated in these proceedings. In this connection, it is necessary to refer to those cases wherein the Supreme Court clearly and

categorically held that when once the law is changed during the pendency of the proceedings, the Court is bound to take note of the same and apply it to the pending proceedings and if necessary by moulding the relief in accordance with the changed law. (Vide Pasupuleti Venkateswarlu Vs. The Motor and General Traders, and Bai Dosabai Vs. Mathurdas Govinddas and Others, .

67. Sri B. Adinarayana Rao, learned counsel next relied upon a judgment of the Supreme Court in Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others, for the proposition that the right of illegitimate son of a Sudra for maintenance under old law was a vested right and the same could not be taken away by Act 78 of 1956, viz., Hindu Adoptions and Maintenance Act, 1956. It was held in this case that the children born to a Sudhra through his Brahmin concubine as well as the concubine were entitled under the old law to be maintained from his estate and that is a vested right and the same cannot be affected by Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956).

68. Having regard to the above discussion wherein we have held that there is no right, muchless a vested right, accrued to the debtors for getting the relief under the Usurious Loans Act 10 of 1918, we are of the opinion that the above case has no application. Even otherwise, the learned Judges clearly stated that it is a well recognised rule that a statute should be interpreted, if possible, so as to respect vested rights, and such a construction should never be adopted if the words are open to another construction. In the case on hand, we have held that no right was vested in the debtor to claim any relief under the provisions of the Act either on the date of transaction or on the date of filing of the suit or otherwise. The language of Section 21-A of Regulation Act, 1949 indicates clearly that even if vested rights accrued, they are taken away by the said section by necessary implication. We are also of the opinion, as stated in the foregoing paragraphs, that Section 21-A contained a mandate to the Court not to re-open the transaction entered into between the banking companies and its debtors by applying the provisions of Usurious Loans Act.

69. The next case relied on by the learned counsel appearing for the debtors is Smt. Dayawati and Another Vs. Inderjit and Others, . The relevant facts in the said case are:

70. On 17-1-1946, the predecessor of respondents 1 to 5 and 6th respondent executed a simple mortgage-deed for a sum of Rs.50,000/- payable with interest at 9% per annum or in default of payment of interest for three months at Re. 1/- per cent per month for the period of default. The mortgagor not only defaulted in payment of interest but also did not pay anything out of the mortgaged amount. Therefore, a suit was instituted on the basis of the mortgage for recovery of the amount by sale of the property. They claimed interest as agreed. The defendants admitted the mortgage and the consideration but raised the defence that the rate of interest was both penal and excessive. It was not accepted by the trial Court and a decree was passed as prayed for. Predecessor of respondents 1 to 5 (Hazarilal) alone preferred an appeal praying for the reduction of the interest.

During the pendency of the appeal, final decree was passed on 3-4-1954. In the meanwhile, Section 3 of Usurious Loans Act as amended by Section 5 of the Punjab Relief of Indebtedness Act was extended to Delhi with effect from 8-6-1956. The effect of the amendment is that the Court shall deem interest to be excessive if it exceeds 7 1/2% per annum simple interest or is more than 2% over the Bank rate, whichever is higher at the time of taking the loan, in the case of secured loans, or 12 1/2% per annum simple interest in the case of unsecured loans etc.

71. Having regard to the applicability of the above mentioned provision to Delhi, Hazarilal claimed that the interest in excess of 7 1/2% cannot be awarded in the suit. The decree-holder opposed the application on the ground that the provisions of the Punjab Relief of Indebtedness Act cannot be made applicable to a case in which a decree had already been passed and appeal is pending at the time when the amendment was brought into force. However, the Division Bench felt that in view of the fact that the provisions of the Punjab Relief of Indebtedness Act had been extended to Delhi, it was required to apply those provisions even at the appellate stage. Therefore, the relief was granted.

72. The learned Judges of the Supreme Court clearly stated that the amended Section 3 of the Usurious Loans Act is plainly mandatory because it makes it obligatory for a Court to reopen a transaction if there is reason to believe that the interest is excessive. Further, when the rate of interest exceeds 1% per annum, the Court must hold that it is excessive. The learned Judges also took into account the provisions of Section 6 which state that the provisions of the Usurious Loans Act as amended by Punjab Relief of Indebtedness Act apply to all suits pending or instituted after the commencement of the Act. Having regard to the same, the learned Judge applied the provisions of the Act and upheld the judgment and decree of the Appellate Court.

73. If it is the contention of Sri B. Adi-narayana Rao, learned counsel that this decision held that the relief claimed under the Usurious Loans Act is a right which was vested in him on the date of entering into the transaction or on the date of filing of the suit, we must hold that the same is unsustainable. In the said case, Clause (iv) (a) of sub-section (2) of Section 5 of the Punjab Relief of Indebtedness Act categorically stated that if the interest exceeds 7 1/2% per annum simple interest etc., it shall be deemed that it is excessive and the debtor has a right, without any further enquiry, to have the transaction reopened and be relieved of excess interest. Therefore, the learned Judges of the Supreme Court held that it is a right accrued to them by the extension of the provisions to Delhi and therefore, the Courts are bound to apply the law even though it was enacted during the pendency of the proceedings at appellate stage. In our case, we have dealt with in-extenso on the aspect whether any right is accrued under the provisions of Usurious Loans Act in favour of the debtor. We have already held that the provision by itself does not create any right. Under the provisions of Usurious Loans Act as amended by Usurious Loans (Madras Amendment) Act,

1936, an enquiry is necessary to find out whether the interest is excessive and the transaction is liable to be re-opened and interest is liable to be scaled down. Therefore, this decision is not relevant for the purpose of the present controversy.

74. It is pertinent to notice in this connection the observations of the learned Judges in the above mentioned case contained in para 10 of the report which are as under:

"Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear in-tendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the Court is invited by law to take away from a successful plaintiff, what he has obtained under a judgment."

These observations, having regard to what is stated by us in the foregoing paragraphs, clearly support the contention of the counsel appearing for the banks that the language of Section 21-A by necessary implication, even assuming any rights accrued under the provisions of Usurious Loans Act to the debtors, affected those rights also.

75. Sri T. S. Harnath, learned counsel appearing for the Union Bank of India in A.S. No. 1778 of 1984 brought to our notice that Section 34 of the CPC was also amended by the CPC (Amendment) Act, 1976 so as to enable the Courts to grant interest in pending proceedings, at the rates charged by the banks in respect of commercial transactions. According to the learned counsel, this indicates that the Parliament recognised the rates of interest charged by the banks on commercial transactions and made it legal to grant the same even granted during pendency of the proceedings. It is also stated that the provisions of Act IV of 1938 are now held by the Supreme Court not to be applicable to the transactions between a banking company and its agriculturists-debtors and that a loan taken by an agriculturist even for agricultural purpose from banking companies cannot be re-opened for the purpose of scaling down the interest. Therefore, it is contended by the learned Counsel that if Sec. 21-A of the Regulation Act, 1949 is held to be not applicable to the transactions between the banking companies and its debtors (including agriculturists-debtors) it will amount to allowing something indirectly which cannot be done directly. In other words, it is contended that loans to agriculturists-debtors by the banking companies cannot be re-opened under the provisions of Act IV of 1938 but can be re-opened under the provisions of Usurious Loans Act. This, according to the learned Counsel, leads to an anomaly. We find some substance in this contention. However, it is not necessary for us, having regard to what is stated above in the foregoing paragraphs, to rest our decision on this ground.

76. The last and final aspect that has to be considered is whether any distinction is drawn by Sec. 21-A of the Banking Regulation Act between an advance made for agricultural purpose and for commercial purpose. We find no such distinction being drawn by the provisions of Act 10 of 1918. It is significant to notice that there is no definition of the word "debt" as well as the word "agriculturist" contained in Act 10 of 1918. Irrespective of the fact whether the advance is made for agricultural purpose or for commercial purpose, provisions of Act 10 of 1918 will apply, provided the other requirements of the provisions are satisfied. The only distinction made in respect of an agriculturist is that, if compound interest is charged in respect of a loan transaction to an agriculturist, presumption is raised that the interest charged is excessive by virtue of the Usurious Loans (Madras Amendment) Act, 1936. The prohibition contained in Section 21-A of the Regulation Act makes no distinction between an advance for agricultural purpose and commercial purpose. It equally applies to all advances made by commercial banks to its debtors. It may be that in the actual determination of the usurious nature of loan, the Court, may take into account the purpose of loan. But that is a different aspect.

77. For the reasons mentioned above, the judgment in Yogendranath's case (1987(1) Andh LT 316), referred to supra is overruled. Likewise, the judgment in Central Bank of India's case (1991 (1) Andh LT 455) referred to supra to the extent it stated that Section 21-A of Banking Regulation Act is only prospective and will not apply to suits instituted prior to 15-2-1985, is overruled.

78. The judgment of N.D. Patnaik, J. in the case referred to supra Bank of India, Vijayawada Vs. Katamaneni Suryanarayana and others, was only dealing with Sec. 4(e) of Act IV of 1938. The learned Judge held that the distinction drawn between the transactions entered into by the banking companies and its debtors and others is based on a rational criteria and it cannot be said that the distinction attracts the vice of Article 14 of the Constitution of India. The constitutional validity of Section 4(e) of Act IV of 1938 in respect of the transactions entered into by a banking company and its debtor is not referred to us and it is not before us and therefore, it is not necessary for us to go into the same.

79. The judgment of the same learned Judge in the case referred to supra (1990(1) Andh LT 225), to the extent it applied S. 21-A of the Regulation Act, 1949 to the suits instituted subsequent to the coming into force of the said provision is in accordance with the opinion expressed by us.

80. The opinion expressed by Sivaraman Nair and Jagannadha Raju, JJ. while referring the matter to the Full Bench that, the entitlement for re-opening of transaction under the Usurious Loans Act or the Agriculturists Relief Act is attached to the very transaction and that entitlement or right cannot be impaired by the provisions of Section 21-A of the Banking Regulation Act, 1949 is not correct and does not represent correct position in law.

81. Having regard to the above discussion and for the reasons mentioned in the

foregoing paragraphs, we answer the questions referred to us as follows :

- 1) Section 21-A of the Banking Regulation Act, 1949 applies to all transactions entered into between the banking company and its debtor whether the transaction was entered into prior to its commencement or after.
- 2) Section 21-A of the Banking Regulation Act, 1949 applies to suits pending on the date of coming into force of the said section.
- 3) Section 21-A applies to pending appeals irrespective of the fact whether a decree was passed giving relief to the debtor or not.
- 4) Section 21-A makes no distinction between an advance made for agricultural purpose or for commercial purpose and it equally applies to both.

82. Now, we proceed to dispose of individual cases in the light of the above opinion.

83. We will briefly refer to the relevant facts arising out of the proceedings before us.

S.A. No. 268 of 1985 :

84. Suit, O.S. No. 141 of 1979, on the file of the District Munsif, Miryalaguda, was filed by the State Bank of Hyderabad for recovery of Rs. 9,996-10 p. The said suit was based on a promissory note executed on 19-8-1969. A cash credit (crop loan) facility was applied for and obtained by the defendants/respondents herein. Suit was filed for the recovery of the amount on 30-7-1979. Execution of the promissory note was admitted. One of the issues framed was, whether the interest claimed is excessive. Relying upon the judgment in *Union Bank of India v. Dhanekula Koteswara Rao* (1979 (2) AWR 165) (supra), the learned trial Judge, while holding that the interest is excessive, applied the provisions of Act 10 of 1918 and decreed the suit granting only 9% compound interest by re-opening the transactions. Questioning the same, the plaintiff-bank filed A.S. No. 66 of 1980 on the file of the learned District Judge, Nalgonda. The said appeal was dismissed by the learned District Judge confirming the judgment of the trial Court. Questioning the said judgment and decree of the learned District Judge, this second appeal was filed by the plaintiff-bank in this Court. During pendency of this appeal, Section 21-A of Regulation Act, 1949 came into force.

85. Having regard to the opinion given by the Full Bench today, this second appeal is allowed and the judgments and decrees of the Courts below are set aside and the suit is decreed as prayed for, with interest at 12 1/2 % p.a. from the date of suit till realisation. But in the circumstances, no order as to costs.

S.A. No. 832 of 1987:

86. In this case, suit was filed by the plaintiff-bank on 16-10-1982 for recovery of Rs. 18,075-45 p., being the amount due on account of agricultural loan given to the defendant, The debt was incurred on 16-1-1971 for agricultural purpose.

While the suit was pending, Section 21-A came into force i.e., on 15-2-1984. The learned trial Judge, relying upon the judgments in *Indian Bank v. M. Krishna Murthy*, (1983) 1 APLJ (HC) 371; (AIR 1983 AP 347) and also *Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru*, , re-opened the transaction and scaled down the debt as per the provisions of Act IV of 1938 and on that basis a decree was passed in favour of the defendant for the excess amount paid by him to the plaintiff-bank as claimed by the defendant. The same was confirmed on appeal by the learned District Judge in A.S. No. 153 of 1985. The bank preferred this second appeal.

87. Having regard to the opinion given by the Full Bench today, and also the judgment of the Supreme Court in *Bank of India Vs. Vijay Transport and Others*, , neither the provisions of Act IV of 1938 nor the provisions of Usurious Loans Act, 1918 empower the Court to give relief to the defendant by re-opening the transaction. Accordingly, this second appeal is allowed and the judgments and decrees of the Court below are set aside. Suit is decreed as prayed for and a preliminary decree shall be passed for the suit amount with interest at 9 1/2 % per annum with quarterly rests from the date of the suit till the date of redemption and thereafter at the rate of 6% per annum till the date of realisation. Six months" time is granted, for redemption. But in the circumstances, no order as to costs.

S. A. No. 378 of 1986 :

88. In this case, the amount was borrowed by the defendant from the plaintiff bank towards crop loan on 8-11-1974. Suit was filed on 6-6-1983. On 15-2-1984 S.21-A came into force. The trial Court re-opened the transaction and scaled down the interest following *Krishna Murthy's* case (AIR 1983 AP 347) (supra) as well as *Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru*, , decreed the suit for the resultant amount on 23-3-1984 after S. 21-A came into force. The appeal filed by the plaintiff bank was also dismissed following the above mentioned judgments on 16-10-1985 by the learned District Judge. Questioning the same this second appeal was preferred by the plaintiff bank.

89. Having regard to the opinion given by the Full Bench today, this second appeal is allowed and the judgments and decrees of the Courts below are set aside. The suit is decreed as prayed for and a preliminary decree shall be passed for the suit amount with interest at 14% per annum with quarterly rests from the date of the suit till the date of redemption and thereafter at the rate of 6% per annum till the date of realisation. Six months" time is granted for redemption. But in the circumstances no order as to costs.

A. S. No. 1778 of 1984:

90. Defendant borrowed the amount for the purchase of tractor from the plaintiff bank on 15-2-1971. Suit was filed for recovery of the outstanding amount on 4-2-1980. Issue No. 1 framed by the trial Court was with regard to the question whether the interest claimed by the plaintiff bank is usurious and excessive.

However, no specific defence or argument was advanced before the trial Court with reference to the provisions of Usurious Loans Act or the provisions of Act IV of 1938. The trial Judge held that the interest claimed is not usurious or excessive. Against the said judgment, this appeal is filed by the defendants.

91. Having regard to the opinion expressed by the Full Bench today, the transaction between a banking company and its debtor cannot be re-opened on the ground that the interest claimed is usurious notwithstanding the provisions of Act 10 of 1918 or the other provisions of Debt Laws prevailing in the State. No other argument was advanced in this appeal. Accordingly, this appeal is dismissed. No order as to costs.

92. Order accordingly.