
(1942) 04 MAD CK 0006
In the Madras High Court

Tatikonda Subbarow

APPELLANT

Vs

Malladi Sitarama Lakshmi Narasimham and Others

RESPONDENT

Date of Decision : 10-04-1942

Acts Referred:

Usurious Loans Act, 1918 — Section 3

Citation : AIR 1942 Mad 600 : (1943) ILR (Mad) 56 : (1942) 55 LW 479 :
(1942) 2 MLJ 170

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The only question arising for determination in this second appeal relates to the construction of Section 3 of the Usurious

Loans Act, 1918.

2. The facts are simple and not in dispute. The appellant brought the suit to enforce a mortgage for a sum of Rs. 800 carrying interest at Rs. 1-0-6

per cent, per mensem payable annually and in default of such payment, compound interest at Rs. 1-4-6 per cent. per mensem with yearly rests. On

26th July, 1937, there was a payment of Rs. 700 which was endorsed on the bond thus:

Rs. 617 being interest in full due up to this date according to the terms of the bond and Rs. 83 towards the principal of the bond...The balance of

the principal of the bond is Rs. 717.

The suit was for recovery of this balance of Rs. 717, no interest being claimed from 26th July, 1937, up to 14th October, 1939, when the suit was

filed. It was argued in the Court below that the rate of interest provided in case of default was excessive and should be reduced and that the

payment already made for interest at the rate stipulated should be re-appropriated on the basis of the reduced rate, under the provisions of the

Usurious Loans Act. This argument was accepted by the Court below which reduced the rate to 12 3/8 per cent. per annum compound and

adjusting, on this basis, the payment already made passed a decree for Rs. 663-15-0 as payable on the date of suit with proportionate costs.

3. The appellant did not question the finding of the lower Court that the default rate of interest was excessive but he urged that the Court had no

power under the Usurious Loans Act in the circumstances of this case to re-open the appropriation of the payment made on 26th July, 1937 in

terms of the endorsement referred to above. It was contended that Section 3 (1) (ii) which empowers the Court to re-open an appropriation

already made applies only to cases where there has been an agreement between the parties purporting to close previous dealings and to create a

new obligation, and as there was no such agreement in the present case it had no application here. Clause (ii) of Section 3 (1) so far as it is material

here runs as follows:

the Court may exercise all or any of the following powers, namely, may ...(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.

The appellant sought to read the words ""notwithstanding any agreement purporting to close previous dealings and to create a new obligation"" as

limiting the application of the provision only to cases where the parties have entered into an agreement purporting to close previous dealings and to

create a new obligation. I am unable to accept this construction. The opening words are, in my opinion, inserted in order to make it clear that the

Court can exercise the power although the parties have by agreement closed their previous dealings and created a new obligation, and the words

cannot have the effect of confining the operation of the provision to cases where there has been such an agreement. It was suggested that unless the

operation of the clause is so restricted, there would be a redundancy, as the

words "reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest" in Clause (ii) were practically a repetition of Clause (i). I see no force in this suggestion. The words quoted do not constitute a repetition of Cl.(i) and they envisage a different class of cases. Clause (i) deals with cases where the parties have entered into no subsequent agreement in relation to the original transaction of loan, and confers upon the Court the power to reopen the transaction and reduce the excessive interest, while Clause (ii) provides for cases where the parties have subsequently made payments, appropriations or adjustments towards the debt on the basis of the stipulated rate of interest, and it empowers the Court in such cases to reopen such appropriations or adjustments with a view to give relief to the debtor by reducing excessive interest and even to direct a refund if any sum is found to be repayable to the debtor on the basis of such reduction. In this view there would be no redundancy or overlapping in Clauses (i) and (ii) and it is not necessary on any such ground to restrict the operation of Clause (ii) to cases where the parties have entered into a subsequent agreement purporting to close previous dealings and to create a new obligation. Such a restriction of its scope seems to be unwarranted by the terms of the clause and would deprive it of much of its usefulness.

4. My attention was drawn to the observations of Henderson, J., in *Audh Behari Bhakat and Others Vs. Akshay Kumar Dutta*, where the learned Judge construed Clause (ii) in the manner contended for on behalf of the appellant. The learned Judge observed that he was not prepared to follow an earlier decision of Edgley, J., in *Ghanasyam Das Marwari v. J. Nichols* (1938) 42 C.W.N. 665 giving a more extended meaning to that clause. But he thought it unnecessary to refer the matter to a Division Bench as he was disposing of the case on another point. The observations relied on are thus obiter and with due respect I am unable to agree with them. The construction placed upon the section by Edgley, J., is, to my mind, the correct one and I have no hesitation in agreeing with it.

5. The appeal therefore fails and is dismissed with costs.