
(1971) 03 KAR CK 0018
In the Karnataka High Court
Case No : Second Appeal No. 570 of 1967

Tholamamidi Suryanarayana Rao

APPELLANT

Vs

Singam Setty Venkataramiah Setty and Sons

RESPONDENT

Date of Decision : 26-03-1971

Acts Referred:

Madras Agriculturists Relief Act, 1938 — Section 13, 8, 9

Citation : AIR 1971 Kar 293 : (1971) 1 MysLJ 494

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; B. Ramachandra Rao and P.G.C. Chengappa, for the Respondent

Judgement

E.S. Venkataramiah, J.—This appeal arises out of a suit instituted in the Court of the Principal Munsiff, Bellary in O. S. No, 802 of 1964 by the plaintiff for recovery of Rs. 3909-93 due on a promissory note executed by the defendant for Rs. 3550-63 on 15-8-1962 with interest of Rs. 358-50 thereon and a sum of Rs. 0-80 Ps. towards demand charges. In paragraph 3 of the plaint, this is what the plaintiff stated :

"The defendant was borrowing sums now and then from the plaintiff's shop for his family necessity. After settlement of the entire account and account was stated between the parties on 15-8-62, the defendant became due in a sum of Rs. 3550-63 nP.. for which consideration, the defendant executed a promissory note in favour of the plaintiff on that date agreeing to repay the same on demand together with interest at 12% per annum. Till now, the defendant failed to pay any amount towards the suit pronote debt."

In effect, what the plaintiff thereby meant was that the promissory note on the basis of which the suit was instituted was one which came into existence in lieu of the earlier transactions" between the plaintiff and the defendant under which certain sum of money was found to be due after looking into the accounts. The defendant while admitting the execution of the promissory note, pleaded that he

was an agriculturist as defined in Section 3 (ii) of the Madras Agriculturists' Relief Act 1938 (hereinafter referred to as the Act) and he prayed that the accounts between himself and the plaintiff had to be reopened and reliefs should be given u/s 13 of the Act.

2. The trial court as well as the lower appellate Court have both found that the defendant is an agriculturist and is entitled to the relief under the Act and that finding is not disputed before me.

3. The courts below found that prior to the suit promissory note, the defendant had executed another promissory note for a sum of Rs. 3,000/- as per Exhibit P-2 on 11-8-1961 in settlement of which the suit pronote came to be executed. The trial Court treating the debt due under the suit pronote Exhibit P-1 as the Principal sum due, made a decree for Rs. 3722-27 by applying Section 13 of the Act. The lower appellate Court however treated that the amount of Rs. 3,000/- shown as the Principal in Exhibit P-2 dated 11-8-1961 as the Principal and made a decree for a sum of Rs 3466-00 by applying Section 13 of the Act. The defendant feeling aggrieved by the decree of the lower appellate court, has filed this Second Appeal.

4. The contention of Sri T. S. Ramachandra, learned counsel for the defendant is that the court below was wrong in not reopening the accounts between the plaintiff and the defendant in respect of the period prior to the date of Exhibit P-2 namely 11-8-1961 and in treating the sum of Rs. 3,000/- shown as the principal in the Exhibit P-2 as the principal debt for purposes of applying Section 13 of the Act. He also contended that the finding of the lower appellate court that the transaction evidenced by Exhibit P-2 was a fresh transaction between the plaintiff and the defendant having nothing to do with the earlier transactions between them is an erroneous one and has been arrived at by the lower appellate court by misreading the evidence. Before going into the question whether the defendant is entitled to reopen the accounts prior to 11-8-1961, it is necessary to determine whether the finding of the lower appellate court that on 11-8-1961 a fresh loan was advanced to the defendant is correct or not. As already stated in the beginning the plaintiff in his plaint admitted that Exhibit P-1 the suit promissory note was executed by the defendant in favour of the plaintiff in settlement of the amount due by the defendant to the plaintiff under several other earlier transactions between them. He did not state in the plaint that the said document was executed in settlement of a debt which was due under Exhibit P-2 the promissory note dated 11-8-1961. The case of the defendant in reply to the allegation made in the plaint was that there were dealings between the plaintiff and the defendant from the year 1947-48 and all the past transactions between them should be reopened and the amount due from him should be determined in accordance with the provisions of the Act. In the rejoinder filed by the plaintiff, for the first time, he referred to the promissory note dated 11-8-1961 marked as Exhibit P-2 in the case and stated that there were no outstanding transactions between the parties and all earlier transactions had

come to an end long prior to 11-8-1961. On the basis of the aforesaid pleadings, the trial court framed the issues and recorded evidence adduced by the parties.

5. In the course of his evidence the plaintiff was confronted with a notice of demand dated 25-7-60 marked as Ex. D-1 issued by him to the defendant in which he demanded a sum of Rs. 2938-23 being the sum due under a promissory note dated 9-12-1959 and was questioned about it. The plaintiff admitted the said notice but stated that the said sum was repaid by the defendant. But he could not give the date of repayment. No accounts were produced in support of repayment of the debt. He further stated as follows:--

"Without going through my accounts I cannot say whether the amount or pronote referred to in Ex. D.1 was for cash consideration for past dealings. The defendant had dealings in my shop since 1947-48. I cannot deny or say whether pronote referred to Ex. D.1 was towards the dues since 1947-48 About Ex. P. 11 cannot say orally what is the principal."

The defendant in the course of his evidence stated that no cash was paid to him when he executed Ex. P.2 on 11-8-61. He further deposed as follows:--

"On the date of Ex. P.2 my personal Khata with the plaintiff's shop had been closed. I again say I owed them some amount but I do not remember the amount."

The fact that the amount demanded under Ex. D.1 had been repaid by him was also not put to the defendant in the course of his evidence. From the statement of the defendant extracted above the lower appellate court erred in holding that long prior to Ex. P-2 the earlier dealings between the parties had been settled and that under Ex. P.2 a sum of Rs. 3,000/- was advanced in cash as loan. The finding of the court below is the result of misreading of the evidence. The pleadings in the case do not justify the finding of the court below that the sum of Rs. 3,000/- advanced under Exhibit P-2 was a fresh loan having nothing to do with the earlier transactions between the parties. The plaintiff, at the first instance did not refer to Exhibit P-2 in his plaint and he made it appear in paragraph 3 of the plaint that the suit pronote was executed in settlement of certain earlier transactions which the plaintiff had with the defendant. It was only in the rejoinder the plaintiff referred to Exhibit P-2 the promissory note dated 11-8-61 by way of an afterthought. The course of conduct between the parties shows that the plaintiff was in the habit of taking promissory notes from the defendant from time to time by way of renewal of earlier debts. The plaintiff who was in possession of the relevant accounts to show that prior dealings between the parties had been closed long prior to 11-8-1961, had not produced them before the court. In the circumstances, the lower appellate court should have drawn an adverse inference against the plaintiff on the above question. No attempt was made by the court below to decide the above question in the light of the undisputed material before it. The finding of the lower appellate court that the transaction represented by Exhibit P-2 was a fresh transaction between the

plaintiff and the defendant and on that basis the liability of the defendant should be determined u/s 13 of the Act, is therefore liable to be set aside.

6. The next question that arises for consideration is whether it is permissible for the court to reopen all past dealings between a creditor and a debtor who is an agriculturist under the Madras Agriculturists' Relief Act, 1938 when the debt in question is one advanced after the coming into force of the Act, The lower appellate court did not go into this question in detail, but held that interest was payable as per Section 13 of the Act on Rs. 3,000/- from 11-8-61 on the sum of Rs. 3,000/- without giving any reasons, even though some decisions were cited before it and the question was argued by the parties. The trial Court however referred to the Full Bench decision of the Madras High Court in V.S.T. Sheik Mansoor Theraganar and Another Vs. S.V.S. Sankarapandia Mudaliar, and the Full Bench decision of the Andhra Pradesh High Court in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others dealing with the above question and held that it would prefer the view of the Madras High Court to the view of the High Court of Andhra Pradesh. Following the decision of the High Court of Madras the trial court came to the conclusion that it was not permissible for the defendant to seek reopening of accounts prior to the date of suit pronote. The said question has again been raised in this Court.

7. In order to appreciate the point involved in this case, it is necessary to refer briefly to the provisions of the Act. Chapter II of the Act deals with scaling down of debts and future rate of interest. Section 7 provides that notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this Chapter. Section 8 deals with cases relating to debts incurred before the 1st October, 1932. Section 9 deals with debts incurred after 1st October, 1932 Section 13 of the Act which is the relevant section reads as follows :--

"In any proceeding for recovery of a debt, the Court shall scale down all interest, due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6 1/2 per cent, per annum, simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple Interest."

Under the proviso to Section 13 a lower rate of interest at 5 1/2 per cent per annum is stated to have been fixed.

8. The facts of the Full Bench decision of the Andhra Pradesh High Court in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others refer, red to above are these: the defendant in that case had borrowed a sum of Rupees 6400/- from the father of the plaintiffs and had executed a promissory note dated 7-12-1946 in his favour agreeing to pay the suit amount with interest at Rs. 1-14-0 per cent, per mensem. On 14-2-1947 one of the defendants paid to the plaintiffs two sums to Rs. 2,800 and Rs. 300/- respectively. The first amount was

appropriated towards the principal and the second amount was appropriated towards the interest. Thereafter, the plaintiffs who were entitled to recover the amount under the promissory note filed the suit to recover the same. The defendants, inter alia, pleaded that u/s 13 of the Act, the amount paid towards the interest though appropriated should be reopened and credited towards the interest payable under the provision of that section. In the context of the above facts, the question which was referred to the Full Bench for its decision was whether in the case of a debt incurred after the Act came into force a payment made expressly towards interest at the contract rate can be reopened and represented towards interest payable under the provisions of Section 13 of the Act. That question was answered in the affirmative by the Full Bench which observed as follows:

"The object of Section 13 is to give relief to agriculturists, in the matter of interest in respect of a debt incurred after the Act. If such a debt is sought to be enforced, it is caught in the net of the scaling down process. At that stage, all the interest due on the debt is reduced to the statutory level or, to put it differently, whatever may be the contract rate of interest, it is replaced by the statutory rate. If the appropriations made earlier are not reopened, the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage. Doubtless, the courts are concerned with the expressed intention of the legislature.

The crucial words in Section 13 are "all interest due on any debt." The word "interest" is qualified by the words "all" and "due". If interest outstanding alone is scaled down, the emphatic word "all" becomes otiose. If that was the intention, the words "interest outstanding" would serve the purpose as well. The word "all", therefore, cannot be ignored and must be given a meaning. It indicates that the entire interest, which a debt earned, is scaled down."

The above decision of the High Court of Andhra Pradesh does not appear to have been noticed by the Full Bench of the Madras High Court which decided V.S.T. Sheik Mansoor Theraganar and Another Vs. S.V.S. Sankarapandia Mudaliar, . In that case it was held thus:

"There being thus neither a prohibition against a stipulation for payment nor an automatic discharge of higher rates of interest agreed to be paid by an agriculturist debtor, it cannot be said that when a creditor with the assent of his debtor added to the principal loan the interest accrued in terms of the contract, and the debtor entered into a fresh contract treating the consolidated amount as principal for the fresh loan, there would be anything illegal or even a failure of consideration in regard to the new loan. Such a new loan would constitute a debt incurred on the date of renewal and if a suit is based on that debt, the provisions of Section 13 could be attracted to that debt alone and not to the earlier debts of which it was a renewal or substitution. Under the ordinary law where parties enter into a contract in substitution of an earlier one, the later contract alone would govern the rights of the parties. The court would itself have no power to

go behind that contract except in cases where the latter contract fails for some reason known to law or where a statute gives an express power to reopen the same."

In the above view of the matter, the Full Bench of the Madras High Court held that an agriculturist would not be entitled to relief by way of reopening the settled accounts and that the last of the settlement on which the suit is based should be deemed to be the debt for purposes of Section 13.

9. Shri Ramachandra learned counsel for the defendant brought to my notice a decision of Supreme Court in *Gamini Krishnayya and Others Vs. Curza Seshachalam and Others*, in which the provisions of Sections 8, 9 and 13 of the Act came up for construction by the Supreme Court. No doubt the said case refers to a debt which had been incurred prior to the coming into force of the Act, but which had been renewed by a fresh document after the coming into force of the Act. While dealing with the said case, the Supreme Court observed that a provision of a statute should be given full effect and wherever possible the court should not place that construction upon a provision which would tend to make it redundant or to overlap another provision or to limit its application in disregard of its general applicability unless, of course, that is the only construction which could be reasonably placed upon it. It was argued before the Supreme Court by the appellant in that case that it was not permissible for the debtor to seek to reopen the previous account when the transaction on the basis of which the suit had been instituted was one subsequent to the Act and therefore only Section 13 of the Act should be applied and not Section 9. Rejecting that contention the Court held as follows:--

"It has to be remembered that where the plaintiff sues upon a document executed after the commencement of the Act the Court has to bear in mind also the provision of Section 9 inasmuch as the document is one executed after October 1, 1932. If the pleadings show that the original indebtedness commenced before the coming into force of the Act the court will first have to deal with the document with reference to the provisions which precede Section 13 of the Act. It is not as if the Court has to shut its eyes to every thing except the fact that the document sued upon was executed subsequent to the commencement of the Act. Therefore, if the Court finds that the original indebtedness arose prior to the commencement of the Act either Section 8 or Section 9 will apply and it would not be relevant for it to consider whether by executing a renewal after the commencement of the Act the parties agreed to treat the interest accrued up to the date of renewal as principal from the date of the renewal of the debt. That consideration may be relevant in cases which completely exclude the applicability of Sections 8 and 9."

10. The case on hand is one which relates to a debt incurred subsequent to the commencement of the Act. Even according to the defendant, the transactions between the plaintiff and the defendant commenced in or about the years 1947 and 1948. But the question however remains whether the document on which

the suit is based is one by way of renewal of an earlier debt owed by the defendant to the plaintiff and whether it is permissible to go behind that document to find out the actual amount which was advanced by way of principal and to scale down interest payable by the debtor to the creditor by applying the rule prescribed u/s 13 of the Act. The Supreme Court in the above case referred to the Full Bench decision of the Andhra Pradesh High Court in support of its view. But while dealing with the view of the Madras High Court expressed in V.S.T. Sheik Mansoor Theraganar and Another Vs. S.V.S. Sankarapandia Mudaliar, the Supreme Court observed that to the extent indicated in the course of the judgment of the Supreme Court it did not approve of that decision. I am of the view that the Supreme Court, by implication intended to say that the principle underlying its decision should also be extended to a Case where the debt in question is one Incurred after the commencement of the Act. Having regard to the scheme and object of the Act, there is nothing wrong in holding that even in case of debts Which are incurred subsequent to the commencement of the Act, it would be appropriated to go behind the last document on the basis of which the suit is filed to find out the actual amount advanced by the plaintiff to the defendant and to calculate the interest at the rate prescribed u/s 13 of the Act. The view of the Full Bench of the Andhra Pradesh High Court, namely that even in the case of those debts which are incurred after the commencement of the Act it would be permissible to take into account the interest which has been Paid at the higher rate than what is stipulated u/s 13, even though the said amount may have been appropriated in discharge of the liability in order to determine the actual amount due by the creditor by applying the provisions of Section 13 right from the commencement of the dealings between the parties, is one having the effect of preventing the mischief and advancing the remedy contemplated by the Legislature. I respectfully, therefore, follow the view expressed by the Full Bench of Andhra Pradesh High Court in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others and hold that in this case also, the defendant is entitled to seek reopening of the accounts between the plaintiff and himself in respect of the period prior to the date of the promissory note Ex. P.2, i. e., 11-8-1961. I have already held that the finding of the Court below that the sum of Rs. 3,000/- shown as the principal under Ex. P-2 Was a fresh loan is wrong. Hence it is necessary to find out after going into accounts prior to 11-8-61 the extent of Indebtedness of the defendant and to give relief by applying Section 13 of the Act,

11. In the result, the judgment and decree of the lower appellate court are set aside and the matter is remanded to the trial court with a direction that the trial court should, after reopening the accounts between the plaintiff and the defendant find out what amount was actually advanced by the plaintiff to the defendant by way of debt from time to time. It shall calculate interest on that principal at the rate stipulated u/s 13 of the Act and find out the actual amount due by the defendant to the plaintiff after giving credit to whatever amount the defendant may have paid to the plaintiff including any sum paid by way of

interest. The sum arrived at on the above basis shall be the amount which will be due to the plaintiff by the defendant and a decree may be made for the said sum. The appeal is disposed of accordingly.

12. The parties shall bear their own costs in all the three courts. The court fee paid on the memorandum of appeal in this as well as in the lower appellate court, shall be refunded.

13. The question whether the plaintiff is entitled to costs hereafter in the proceeding before the trial Court, is a matter which is left entirely to the discretion of the trial Court to decide.