

(1940) 08 MAD CK 0040
In the Madras High Court

V. Srinivasachariar and Another

APPELLANT

Vs

The Conjeevaram Hodgsonpet Dharmarakshaka Nidhi,
Limited

RESPONDENT

Date of Decision : 14-08-1940

Acts Referred:

Citation : AIR 1940 Mad 937 : (1940) 52 LW 432 : (1940) 2 MLJ 478

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The question involved in this Civil Revision Petition is the interpretation of Section 10(2)(iii) of Madras Act IV of 1938. The

respondent is the Conjeevaram Hodgsonpet Dharmarakshaka Nidhi, Ltd., from whom the petitioner borrowed Rs. 1,500 in February, 1927, upon

a mortgage bond. The suit is brought upon this mortgage bond in March, 1932, and a decree has been granted to the respondent and the

mortgaged property has been sold. The petitioner has applied u/s 23 of the Act to have the sale set aside. He will not be entitled to this relief if in

the words of the sub-section with which we have to deal the interest payable in respect of his liability is not more than 9 per cent, per annum as the

respondent here is a public company as defined in the Indian Companies Act.

2. The terms of the bond are somewhat complicated. The 4 interest chargeable upon the money borrowed is only 6 1/4 per cent, in the first

instance but it is payable at the end of every month and there are provisions also that subscriptions are to be made to the company and those

subscriptions are to be credited towards repayment of the principal. If there is no default in the payment of interest and the payment of those

subscriptions there is no question but that the rate of interest will be only 6 1/4 per cent, but on default further interest is chargeable on both interest

and the amount due for subscriptions. The learned! District Munsif who tried the suit in the first instance has held that Section 10(2)(iii) prevents the

petitioner from taking advantage of the provisions of the Act. He says that the Legislature in drafting this sub-section is dealing only with the

primary rate of interest charged and that the section cannot apply to any rate which is chargeable in case of default. I am unable to accept this view

of the section as correct. It seems to me contrary to all logic and all principles of interpretation to limit so general a word as liability to a liability

incurred only by a borrower who is guilty of no act of default. Clearly the liability in my opinion must mean whatever liability may fasten upon the

borrower under the terms of the bond.

3. I am prepared however to concede that this matter should not be disposed of merely upon a strict interpretation of the terms of the bond and

the liability which might arise in certain hypothetical circumstances but should be determined upon an examination of the actual state of accounts as

between the two parties. I proceed therefore to such an examination and I find that towards the sum of Rs. 1,500 borrowed in February, 1927, a

sum of Rs. 1,396-3-3 has been credited as part repayment. The suit is for the balance, namely, Rs. 807-13-2 and the accounts have been closed

shortly before the filing of the suit in March, 1932,, The result then is that for a debt of Rs. 1,500 incurred in February, 1927, a total sum of Rs.

1,396-3-3 plus Rs. 807-13-2, that is, Rs. 2,204-0-5 has to be repaid and this repayment is related to a period of just over five years. Of this sum,

Rs. 1,500 of course represents the principal and the remaining Rs. 704 represents what is claimable in addition to the principal. It is argued for the

respondent that this may not be interest in the strict sense of the word because of the provision relating to the monthly payment of subscriptions.

But when we probe into the heart of the transaction it seems to me clear that is in all respects analogous to the payment of interest. When money is

borrowed and a larger sum is to be repaid the excess over the principal must in my opinion be treated as interest. Therefore in this matter the sum

of Rs. 704 represents the interest charged under the terms of this bond on a debt of Rs. 1,500 for a period of just over five years. Arithmetical

calculation will show that this interest represents a rate of slightly more than 9 per cent, per annum. It seems to me therefore that with respect to the present claim as the interest works out at more than 9 per cent, per annum the respondent cannot successfully argue that Section 10(2)(iii) applies.

If it does not apply, then of course the petitioner on the assumption that he is an agriculturist can claim to have the debt scaled down u/s 8 and being thus entitled to the benefits of this Act can make an application u/s 23.

4. In the result therefore this petition will be allowed and the petitioner's application remanded to the learned District Munsif for being allowed or dismissed according as he finds, the petitioner to be an agriculturist or not. The respondent must pay the costs of the petitioner in this petition.