Smt. Dayawati and Another

Vs

Inderjit and Others

Civil Appeal No. 246 of 1964

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

14.01.1966

JUDGMENT

HIDAYATULLAH, J. -

In this appeal by special leave against the judgment and decree of the Punjab High Court dated October 15, 1959 the only question is whether, in the facts to be stated presently, the High Court was right in reducing interest in a preliminary mortgage decree dated August 12, 1953 by applying ss. 5 and 6 of the Punjab Relief of Indebtedness Act which were extended to Delhi on June 8, 1956.

On January 17, 1946, Hazarilal (predecessor of respondents 1 to 5) and one Jagat Narain (respondent 6) executed a simple mortgage deed for Rs. 50,000 with interest at 9% per annum or in default of payment of interest for 3 months at Re. 1 per cent. per month for the period of default. As the mortgagors made default in payment of interest and also did not pay anything out of the mortgaged amount a suit was filed for enforcement of the mortgage by sale of properties. The claim was for Rs. 76,692/9/8, by calculating interest at 9 per cent. per annum for the first 3 months and at 12 per cent. per annum till institution for the suit and allowing credit for Rs. 14,000 as repayment. The defendants admitted the mortgage and the consideration but pleaded that the rate of interest was both penal an excessive. This plea was not accepted and a preliminary decree was passed for the full claim on August 12, 1953. Hazarilal along appealed on January 5, 1954 (R.F.A. No. 1-D of 1954) and asked for reduction of interest by Rs. 7,900 and of the rate of future interest to 9 per cent. per annum. Court fee was paid on Rs. 7,900. During the pendency of this appeal the decree was made final on April 3, 1954.

Before the appeal was disposed of Inderjit and Satya Narain, sons of Hazarilal, filed a suit for a declaration that the properties were ancestral and belonged to a joint family. They claimed that the properties could not be sold and asked for a temporary injunction which was first granted and later vacated. Against the order vacating the stay they filed an appeal (F.A.O. 68-D of 1957) and obtained temporary stay from the High Court. The mortgagees also filed in that appeal a petition (S.M. 1318-D of 1957) for vacation of the stay order. On February 10, 1958 a conditional stay order was passed by a learned single Judge of the High Court but we need not trouble ourselves with it.

On October 29, 1958 the legal representatives of Hazarilal (respondents 1 to 5) presented an application under s. 3 of the Usurious Loans Act, as amended by s. 5 of the Punjab Relief of Indebtedness Act, when the latter Act was extended to Delhi on June 8, 1956 under s. 2 of Part C States (Laws) Act, 1950 (30 of 1950) and claimed that interest in excess of 7 1/2 per cent. per annum could not be awarded in this suit. We may, at this stage, read the relevant sections. Section 3 of the Usurious Loans Act, in so far as it is material to our purpose, reads as follows :-

"3. Re-opening of transactions.

(1) Notwithstanding anything in the Usuary Laws Repeat Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe, -

(a) that the interest is excessive; and

#(b) . . . . .##

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

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

. . . .##

(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) . . . . .(c) . . . . .(d) . . . . .##

(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.

. . . .##

By s. 5 of the Punjab Relief of Indebtedness Act, it was provided :-

"5. Amendment of the Usurious Loans Act, 1918. -

In section 3 of the Usurious Loans Act, 1918 (X of 1918) -

(i) for the word "and" in clause (a) of sub-section (i) the word "or" shall be substituted.

(ii) for the word "may" where it appears for the first time in sub-section (1) the word "shall" shall be substituted.

(iii) for the word "may" after the word "namely" in sub-section (1) the word "shall" shall be substituted.

(iv) to sub-section (2) the following clause shall be added, namely :-

"(e) The Court shall deem interest to be excessive if it exceeds seven and-a-half per centum per annum simple interest or is more than two per centum over the Bank rate, whichever is higher at the time of taking the loan, in the case of secured loans, or twelve and-a-half per centum per annum simple interest in the case of unsecured loans; Provided that the court shall not deem interest in excess of the above rates to

be excessive if the loan has been advanced by the State Bank of India or any bank included in the Second Schedule to the Reserve Bank of India Act, 1934, or any banking company registered under the Indian Companies Act, 1913 prior to the first day of April, 1937 or any co-operative society registered under the Bombay Co-operative Societies Act, 1925, as extended to the State of Delhi."

Section 6 of the Act gave retrospective effect to the above provisions by enacting :-

"6. Retrospective effect. -

The provisions of this part of the Act shall apply to all suits pending on or instituted after the commencement of this Act."

The decree-holders opposed the application on several grounds. The main grounds (and they are the grounds urged in this Court) were that s. 5 of the Punjab Relief of Indebtedness Act merely amended s. 3 of the Usurious Loans Act, that neither section applied to the facts of the case and that no such plea was taken in the court below. R.F.A. 1-D of 1954 came up for hearing on October 15, 1959 before a Divisional Bench and by the judgment under appeal the amount of interest in the mortgage was reduced by Rs. 15,027 by applying the provisions of the Punjab Relief of Indebtedness Act. The Divisional Bench followed an earlier decision of the same court reported in L. Ram Sukh Das v. Hafiz-ul-Rahman and others. (A.I.R. 1945 Lah. 177.) It was held in that case that the provisions of the Punjab Relief of Indebtedness Act applied to a casein which a decree had already been passed and an appeal was pending at the time the amendment was brought into force. The Divisional Bench in this case held that on the date on which they decided the appeal the provisions of the Punjab Relief of Indebtedness Act had been extended to Delhi and they were required to apply those provisions and interest in excess of 7 1/2 per cent. per annum could not be awarded

The preliminary decree was modified by reducing interest up to the date of the suit to Rs. 11,665 by applying the rate of 7 1/2 per cent. per annum simple and future interest was awarded also at the same rate. The judgment debtors who had applied in the High Court were ordered to make good the court fee on Rs. 7,127. After sundry unsuccessful proceedings which included an application for review and another for a certificate, the decree-holders filed this appeal after obtaining special leave of this Court.

In this appeal it is contended on behalf of the decree holders that s. 5 of the Punjab Relief of Indebtedness Act can only apply to a suit instituted or pending after the section comes into force and not in an appeal after the suit has ended in a decree. It is further contended that this will be all the more so, because the section itself is made retrospective for suits pending on or instituted after the commencement of the Act and thus cannot affect the vested right which the judgment had given to the appellants. We have, therefore, to decide whether the provisions of ss. 5 and 6 of the Punjab Relief of Indebtedness Act could be invoked by the Divisional Bench to reduce the interest as stated above.

The amended section 3 of the Usurious Loans Act is plainly mandatory because it makes it obligatory for a court to re-open a transaction if there is reason to believe that the interest is excessive. Further, where the rate of interest exceeds seven and a half percentum per annum simple, the court must hold that it is excessive. Therefore if the amended section 3 of the Usurious Loans Act applies to the case in hand, the High Court was right in acting as it did. To this Mr. S. T. Desai

raises no exception. He contends, however, that s. 6 of the Relief of Indebtedness Act in giving retrospection to section 5 by which the amendments were made, limits it to suits pending on or instituted after the commencement of the Relief of Indebtedness Act and submits that the suit here was neither pending on nor instituted after June 8, 1956 when that Act commenced in the Union Territories of Delhi. The respondents in reply submit that the appeal court must apply the provisions of the Relief of Indebtedness Act same as the court of trial, because the word 'suit'. where the section speaks of a pending suit, includes an appeal from the decision in the suit.

Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke, whose maxim - a new law ought to be prospective, not retrospective in its operation - is oft-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. 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 intendment, 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 judgment. See Quilter v. Mapleson ((1882) 9 Q.B.D. 672.) and Strovin v. Fairbrass, ((1919) 88 L.J.K.B. 1004.) which are instances of new laws being applied. In the former the vested rights of the landlord to recover possession and in the later the vested right of the statutory tenant to remain in possession were taken away after the judgment. See also Maxwell's Interpretation of Statutes (11th Edn.) pp. 211 and 213, and Mukerjee (K. C) v. Mst. Ramratan, where no saving in respect of pending suits was implied when s. 26(N) and (O) of the Bihar Tenancy Act (as amended by Bihar Tenancy Amendment Act, 1934) were clearly applicable to all cases without exception.

Section 6 of the Relief of Indebtedness Act is clearly retrospective effect. Indeed, the heading of the section shows that it lays down the retrospective effect. This being so, the core of the problem really is whether the suit should be said to be pending on June 8, 1956 when only an appeal from the judgment in the suit was pending. This requires the consideration whether the word 'suit' includes an appeal from the judgment in the suit. An appeal has been said to be "the right of entering a superior court, and invoking its aid and interposition to redress the error of the court below." (Per Lord Westbury in Attorney General v. Sillem (63 I.A. 47.). The only difference between a suit and a appeal is this that an appeal "only reviews and corrects a proceedings in a cause already constituted but does not create a cause." As it is intended to interfere in the cause by its means, it is a part of it and in connection with some matters and some statutes it is said that an appeal is a continuation of a suit. In the present Act the intention is to give relief in respect of excessive interest in a suit which is pending and a preliminary decree in a suit of this kind does not terminate the suit. The appeal is a part of the cause because the preliminary decree which emerges from the appeal will be the decree, which can become a the final decree. Such an appeal cannot have an independent existence. If this be not accepted for the purpose of the application of s. 3 of the Usurious Loans Act (as amended) curious results will follow. The appeal court in the appeal is not able to resort to the section but if the suit were remanded the trial court would be compelled to apply it. For although, in the appeal proper, that judgment must be rendered which could be rendered by the court of trial, but if the suit is to be reheard, then the judgment must be given on the existing state of the law and that must include s. 5 by reason of s. 6 of the Punjab Relief of Indebtedness Act. It is hardly to be suggested

that this obvious anomaly was allowed to exist. It would, therefore, appear that in speaking of a pending suit, the legislature was thinking not only in terms of the suit proper but also of those stages in the life of the suit which ordinarily take place before a final executable document comes into existence. The words of the section we are concerned with, speak of a suit pending on the commencement of the Act and it means a live suit whether in the court of first instance or in an appeal court where the judgment of the court of first instance is being considered. It only excludes those suits in which nothing further needs to be done in relation to the rights or claims litigated, because an executable decree which may not be reopened is already in existence. The decision of the High Court was right in applying s. 3 of the Usurious Loans Act (as amended) to the case.

The appeal thus fails and it will be dismissed with costs.

Appeal dismissed.

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