Srinivasavardachariar and Ors.

Vs

Gopala Menon and Ors.

Civil Appeal No. 636 of 1964

(K. N. Wanchoo, J. M. Shelat, G. K. Mitter JJ)

04.10.1966

JUDGMENT

MITTER, J.

This is an appeal from a judgment of the High Court at Madras on a certificate granted by it.

The main question in this appeal relates to the rate of interest payable in respect of four mortgages executed in between March 20, 1936 and January 2, 1938. Both the learned trial Judge, Ramaswami J. of the Madras High Court and the Bench of two Judges in appeal were of the view that the provision for interest in the impugned mortgages should be reduced; but whereas the learned trial Judge reduced the rate of interest from 15 per cent compoundable every quarter to 15 per cent compoundable with yearly rests, the Judges in appeal after taking all the circumstances into consideration held that 10 per cent compound interest with yearly rests would not be excessive and they reduced the rate accordingly. They also scaled down the rate of interest to 6 per cent from the date of the institution of the suit. The creditor has come up before this Court in appeal and his substantial complaint is that the rate of interest should not have been cut down by the Division Bench of the Madras High Court.

The power of the court to reduce interest in a case like this is derived from s. 3 of the Usurious Loans (Madras Amendment) Act VIII of 1937. Sub-section (1) of that section gives the court the power to give relief in various ways if it has reason to believe that the transaction as between the parties thereto was substantially unfair. One of such reliefs is the reopening of the transaction and relieving the debtor of all liability in respect of any excessive interest. Explanation I to the section lays down that "if the interest is excessive, the court shall presume that the transaction was substantially unfair; but such presumption may be rebutted by a number of special circumstances justifying the rate of interest." Sub-section (2) of s. 3 provides by clause (a) that the word "excessive" in the section 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. Under clause (b) of the said sub-section the court has also to take into account any amounts charged or paid etc. and if compound interest is charged, the period at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction. Clause (c) of sub-section 2 provides that 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. Clause (d) of the said sub-section enjoins upon the court to consider also all 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.

In effect the provisions of the section which are relevant for the purpose of this appeal are as follows :-

> (a) If the Court has reason to believe that the transaction was unfair it will exercise the powers given by sub-section (1).
>
> (b) The court shall presume the transaction to be substantially unfair if the interest is excessive, such presumption being a rebuttable one by the special circumstances of the case;
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> (c) In order to find out whether the interest is excessive the court must examine the circumstances of the case in the light of the risk incurred or the risk as would be apparent to the creditor at the date of the loan, and then judge whether compound interest at the rate prescribed and with the rests provided for was justifiable keeping also in view the security given by the mortgagor, the value of such security and the condition of the debtor including the result of any previous transaction.

The net result of the above seems to be that the Court must go back to the date of the original transaction and form an opinion as to the rate of interest which would be reasonable after considering :-

> (a) the value of the security offered;
>
> (b) the financial condition of the debtor including the result of any prior transaction;
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> (c) the known or probable risks in getting repayment,
>
> (d) whether compound interest was provided for and if so the frequency of the period of calculation of interest for being added to the principal amount of the loan.

The facts of the case may now be briefly stated. The original mortgagor Dhanakoti Ammal had succeeded to the properties of her father along with her sisters under a will executed by him on the basis that the properties were his self-acquired properties. Her brother Alavandar filed a suit in the year 1919 through a next friend claiming that the properties were not the self-acquired properties of his father and as such not capable of bequest under a will. This suit was dismissed as also the appeal therefrom to the Madras High Court preferred in 1922. By the year 1936 when the first mortgage in favour of Srinivasavaradachariar, the appellant, before us, was executed, Dhanakoti Ammal was involved in debts. The most important item of her properties was a market on the outskirts of the city of Madras which had become dilapidated and the Corporation of Madras was refusing to renew the licence unless it was put in good order. She had further borrowed a sum of money repayable with interest at 20 per cent compoundable monthly. Her brother Alavandar who was due to attain majority very soon threatened to file another suit impeaching the decree in the earlier suit. As a matter of fact, the first two mortgages were executed in 1936 before Alavandar had filed his suit and the last mortgage was executed in January 1938. Dhanakoti Ammal got more and more involved in debt and was adjudicated an insolvent in O.P. 148 of 1949. Her properties got vested in the Official Assignee of Madras. The Official Assignee brought the properties to sale which were ultimately purchased by Dr. Gopala Menon for Rs. 5,000/-. Dr. Gopala Menon tried to come to an arrangement

with Srinivasavaradachariar but nothing came out of it and the suit out of which this appeal has arisen was filed in the year 1950. Other alienees were involved in the suit but we are not concerned with them. According to the learned trial Judge the risks which the creditor ran in advancing the money were considerable in that the adequacy of the security was questionable in view of the threat of suit by Dhanakoti Ammal's brother and the condition of the property in an undeveloped area of Kodambakkam. The learned trial Judge could not find anything unfair in the transaction, but nevertheless he thought that the rate of interest should be scaled down to 15 per cent compoundable at the end of each year.

The learned Judges of the Division Bench of the Madras High Court found that the amount advanced under the old mortgages came to nearly Rs. 48,000/- that there was already a prior mortgage in respect of which nearly Rs. 8,000/- was due and the value of the security though not very ample could not be said to be markedly inadequate and there was a shadow on the title of the mortgagor by reason of the threat of suit by her brother. On a consideration of the entire evidence bearing on the point revealing the circumstances in which the loan transaction came into existence the appellate bench held that 15 per cent compound interest calculated with quarterly rests was certainly excessive. Taking note of several decisions of the Madras High Court to which we shall presently refer, the learned Judges thought that the rate of interest to be allowed was 10 per cent compound interest with yearly rests.

It is difficult to predicate of any rate of interest as being excessive divorced from the circumstances of the case unless the rate fixed is so high as to be suggestive of an unfair transaction on the face of things. It is not for us to speculate as to why the Legislature of the State of Madras proceeded in such a round about way in making amendments to the Usurious Loans Act of 1918 for the purpose of giving relief to borrowers when it is well known that at or about the time of the Madras amendment the Legislature of other States in India had fixed certain rates as being the maximum beyond which the courts of law were not competent to go. So far as we are aware difference was made in the treatment of unsecured loans and secured loans and even in the case of the former the rate allowed was not to exceed 12 per cent simple in most of the States. With regard to the rate of interest allowed by the Madras High Court after 1937 we find that in Venkatarao v. Venkataratnam (A.I.R. 1952 Madras 872.) a bench consisting of Govinda Menon and Ramaswami JJ. observed, "that anything above 12 per cent per annum simple interest is excessive, considering the nature of transaction in this State." There the suit was on a mortgage which provided for payment of interest at 12 1/2 per cent per mensem with annual rests. In Sri Balasaraswati v. A. Parameswara Aiyar (A.I.R. 1957 Madras 122, 129.) a Division Bench consisting of Rajamannar C.J. and Panchapekesa Ayyar J. observed, "in normal cases where the security is ample to cover the loan and there is no danger at all to the principal and interest the court will hold more than 12 per cent simple interest to be excessive, as held in A.I.R. 1952 Madras 872 and by us in A.S. 348 and 361 of 1948". According to the learned Judges "Where the security is not sound, 10 per cent compound interest can be allowed as in A.I.R. 1954 Madras 764." In the result the learned Judges only allowed simple interest at 12 per cent per annum. In the instant cases the learned Judges in appeal also referred to a judgment of Subba Rao J. (as he then was) in C.S. 163 of 1949 as containing an observation that the dictum in Venkatarao v. Venkatratnam (A.I.R. 1952 Madras 872.) that "anything above 12 per cent simple interest was excessive would not be taken as a principle of law applicable to all cases irrespective of the circumstances obtaining at the time of the transaction". That transaction also related to Dhanakoti Ammal - the original debtor in this case and Subba Rao J. (as he then was) reduced the rate of interest from 15 per cent compound interest to 12 per cent per annum simple. We have not had the benefit of reading the judgment of his Lordship, but we take it that the result of it is as indicated in the judgment in appeal before us.

It appears to us therefore that in the opinion of a number of Judges of the Madras High Court who were cognizant of the state of affairs prevailing in the State interest beyond the rate of 12% per annum simple would be considered excessive by court of law where the security was not inadequate and the risk run by the creditor was not abnormal. There can be no dispute that interest payable at the rate of 10 per cent compoundable annually over a number of years would be more in the interest of the creditor than 12 per cent per annum simple for the same period. In our opinion the learned Judges of the Division Bench of the Madras High Court were right in holding that 10 per cent compound interest with yearly rests would meet the justice of the case. The security was not inadequate and the threat of suit by Alavandar in view of the fact that his earlier suit which had been taken in appeal to the Madras High Court and subsequently lost, was never regarded seriously. This is corroborated by the fact that even after the institution of that suit in 1937 the appellant before us advanced further sums of money to Dhanakoti Ammal at the same rate of interest as before; if he had thought that his security was put in jeopardy by the institution of the suit he would have been careful not to advance any further amounts and would in any case have insisted on the rate of interest being higher than that provided for in the earlier mortgages.

In our opinion the Division Bench of the Madras High Court made a correct assessment of the situation and their pronouncement with regard to the rate of interest prior to the date of the suit ought not to be disturbed.

We also find no reason to interfere with the sealing down of the rate of interest to 6 per cent from the date of the filing of the suit. Although the reasons are not indicated, it seems fairly plain that their Lordships were using their discretion as regards interest pendente lite. We cannot overlook the fact that the mortgages were executed as far back as 1936 and 1938 and that the creditor who had waited till 1950 for the institution of the suit would, in any event, get interest substantially exceeding the principal amount of the loans. In this view of things we are not prepared to interfere with the exercise of the discretion exercised by the learned Judges of the Madras High Court even though they have given no reasons for the reduction of rate of interest pendente lite.

In the result the appeal fails and is dismissed with costs.

G.C

Appeal dismissed.

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