Bank of Baroda

Vs

Rednam Nagachaya Devi

Civil Appeal No. 3090 of 1988

(L. M. Sharma, M. N. Venkatachaliah, Kuldip Singh JJ)

31.08.1989

JUDGMENT

VENKATACHALIAH, J. -

1. This appeal, by special leave, is by the plaintiff - Bank of Baroda - a nationalised bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act (Act 5 of 1970) and is directed against the judgment and decree dated June 29, 1988 of the High Court of Andhra Pradesh in Second Appeal No. 832 of 1987 affirming the concurrent decrees of dismissal of plaintiff's suit recorded by the trial and the first appellate courts. The two courts below dismissed the suit principally on the ground - upholding the respondent's defence in that behalf - that Section 13 of the Andhra Pradesh (Andhra Area) Agriculturists Relief Act (4 of 1938) (A.R. Act, 1937, for short) prohibited the charging of compound interest. Appellant's case that Section 4(e) of the said 'Act' itself excluded its application to banks constituted under a statute was not accepted.

2. On October 16, 1982, appellant instituted Original Suit No. 47 of 1983 on the file of Subordinate Judges, Eluru, for the recovery of a sum of Rs. 18,076.45 alleged to be due towards principal and the balance of accrued interest under an agricultural loan obtained by the respondent on January 16, 1971 on the security of certain properties respecting which a charge was created in favour of the appellant under a mortgage by deposit of title deeds. Appellant claimed to be entitled to interest, as agreed to between the parties, at 41/2 per cent above the Reserve Bank rate, with quarterly rests. Appellant alleged that respondent who had periodically acknowledged the liability for repayment of the balance outstanding having failed and neglected to repay, appellant had had to call up the account and institute the suit.

3. Respondent inter alia, contended that she had, indeed, paid far in excess of what the appellant was legitimately entitled to recover under the law; that as against the sum of 15,000 originally borrowed she had paid two sums of Rs. 20,000 each on September 8, 1980 and December 15, 1981 respectively; that she was entitled to the benefit and protection of the "A.R. Act" and that, accordingly, she was herself entitled to a refund of Rs. 14,756.90 paise for the recovery of which she preferred a counter-claim. The trial court by its judgment dated November 4, 1985 accepted the defence of the respondent and while entering a decree of dismissal of the plaintiffs suit, it, however, proceeded to decree the counter-claim of the respondent in the sum of Rs. 14,756.90 paise. In doing so the trial court almost entirely placed reliance upon and followed an earlier decision of the same High court in Indian Bank, Alamuru v. Muddana Krishna Murthy ((AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90). The trial court felt bound by the view taken therein as to the scope of Section 4(e) of the A.R. Act which denied to banks constituted under the banking Companies (Acquisition and Transfer of Undertakings) Act (5 of 1970), the exemption from the

provisions of the 'A.R. Act'.

4. Against this judgment and decree of the trial court appellant preferred two appeals, one against the dismissal of its suit and the other against the decree of the counter-claim, in A.S. Nos. 153 and 154 of 1985 on the file of the District Judge, West Godavari. The appellate court found no merit in the appeals and dismissed them by its judgment dated April 13, 1987.

5. The Second Appeal No. 832 of 1987 preferred by the appellant before the High Court of Andhra Pradesh also came to be dismissed by a learned Single Judge who heard the matter by the judgment dated June 29, 1988 now under appeal. The defence urged by the respondent, and upheld by the courts below, was that the respondent was entitled to the benefit of the "A.R. Act" and of the laws against usury. Indeed, the controversy between the parties was appropriately summed up by the High Court :

> "The defendants admitted the borrowings of the principal sum and execution of the prissory (sic promissory) note and the agreement and the hypothecation of the crops, above referred to. The fact that the agreement stipulated for payment of interest at the above rates with quarterly rest was never in dispute. Their only defence was based on the provisions of A.P. Agriculturists Relief Act, 1938 (Act 4 of 1938) hereinafter called 'the Rajali Act' and also the Usurious Loans Act (Act 10 of 1918) as amended by the Tamil Nadu Act 8 of 1937 and the protection which those Acts afford to them. According to the defendants, those two Acts had forbidden the Plaintiff-bank from charging of compound interest from the agriculturists".

6. In the second appeal, however, a new dimension to the controversy was imparted by the circumstances that the decision in Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), on which both the trial court and the first appellate court had relied was itself overruled by this Court in Bank of India v. Vijay Transport ((1988) Supp SCC 47 : AIR 1988 SC 151), in which it was held that a nationalised bank within the purview of the Banking Companies (Acquisition and Transfer of Undertakings) Act (5 of 1970) ('Banking Companies Act' for short) fell within the ambit of and attracted the exemption contained in Section 4(e) of the A.R. Act and that, therefore, loans advanced by such banks did not attract the provisions of the "A.R. Act". It is relevant to recall that Section 4(e) of the A.R.Act exempted from the scope of its provisions debts and liabilities owed by the agriculturists to "any corporation formed in pursuance of an Act of Parliament of United Kingdom or of any special Indian Law of Royal Charter or Letters Patent". In the Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983)) 2 Andh WR 90), the Andhra Pradesh High Court was persuaded to the view that the words "special Indian Law " occurring in Section 4(e) of the A.R. Act had no application to law made by any of the legislatures in India; but had reference only to a law made by the British Parliament and that banks constituted under the said "Banking Companies Act " were not entitled to the exemption under Section 4(e). This view was not approved by this Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151). This Court held : (SCC pp. 52-53, para 12)

> "Although, theoretically, there may be a distinction between the words 'in pursuance of' and the words 'by or under', but by using the expression 'in pursuance of' in Section 4(e) the legislature, in our opinion, has not meant that the corporation in question should be formed by a third party in pursuance of the law and not by the law itself in order to come within the purview of Section 4(e) of the Act,... It will be highly unreasonably and illogical to think that as a corporation has been formed by

> or under a special Indian law and not in pursuance of such a law, it will not come with in the purview of Section 4(e) of the Act the legislature, in our opinion, has not meant that the corporation in question should be formed by a third party in pursuance of the law itself in order to come within the purview of Section 4(e) of the Act. ... It will be highly unreasonable and illogical to think that as a corporation has been formed by or under a special Indian law and not in pursuance of such a law, it will not come within the purview of Section 4(e) of the Act. Accordingly, we hold that the Banking Companies, Act is a special Indian law and the provision of Section 4(e) is applicable to the appellant bank."

7. In view of the pronouncement of this Court disapproving the decision of the High Court taken in Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), the substratum of the reasoning in the judgment of the courts below had disappeared. But the High Court proceeded to examine the constitutional validity of the said Section 4(e) itself and recorded a finding that the provision violated the constitutional pledge of equality under Article 14. It might, perhaps, also be relevant to mention here that respondent does not appear to have raised any contention as to the constitutional validity of the said Section 4(e) either in the courts below or before the High court. The learned Judge appears to have embarked upon this enquiry to as to the constitutionality of the provision in view of what he considered to be the general importance of the question and its impact on the rural economy in general.

8. The reasoning of and the conclusions and findings recorded by the High Court is somewhat on these lines :

> (a) Though banks constituted under the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970, were held by the Supreme Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), to be entitled to the exemption under Section 4(e), however, as the Supreme Court had not considered the constitutional validity of Section 4(e) that question was vet open to the High Court to examine and pronounce upon.
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> The classification of debtors implicit in the scheme of Section 4(e) is not based on any differentium special to them but on the identity of the creditor. In the ultimate analysis, the differentium has no rational nexus with the object sought to be achieved by the A.R. Act. viz. relief to agriculturists from excessive interest. Accordingly Section 4(e) of the A.R. Act, to the extent it exempts loans advanced by banks to agriculturists from the operation of the said Act,brings about an impermissible classification of debtors based on the irrelevant consideration as to who their respective creditors are. This classification is violative of Article 14. This principle is recognised in State of Rajasthan v. Mukan Chand. (AIR 1964 SC 1633).
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> If Section 4(e) is thus out of the way, there is no impediment to the attraction of the benefit of Section 13 of the A.R. Act to the debtors in the position of the respondent.
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> (b) That Section 21-A of the Banking Regulation Act, 1949, introduced by the Banking Laws (Amendment) Act, 1983 (1 of 1984), with effect from February 5, 1984, did not override the provisions of the A.R. Act.
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> (c) That the appellant bank, even as any other creditor, is forbidden under Section 13

> of the A.R. Act from charging compound interest on agricultural loans and that court is bound to deny the bank its help in the recovery of the compound interest from agriculturists.
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> (d) That, at all events, Section 21-A of the Banking Regulation Act, 1949 (as amended by Banking Regulation (Amendment) Act 1 of 1984) is prospective in operation and that in relation to debts incurred prior to February 5, 1984 the provisions of the Usurious Loans Act, 1918, continue to be applicable to loans advanced by banks.

9. If Section 4(e), upon its true construction, is held to include the appellant bank and is not held to be unconstitutional, the second point (b) does not survive, Point (c) is merely the expression of the effects and consequence of point (a). The main question turns on point(a) and on whether the High Court have itself embarked upon the enquiry as to constitutionality of Section 4(e).

10. The correctness of the reasoning and findings of the High Court are seriously assailed by the appellant. Sri. Bobde, learned senior advocate for the appellant submitted that the High Court fell into a serious error in embarking upon an enquiry - without any plea being raised and urged in that behalf by the respondent - as to the constitutionality of Section 4(e) of the A.R. Act. The question of constitutionality of a statutory provision enacted by a competent legislature after due formality cannot, contends counsel, be decided on hypothetical, academic or theoretical considerations in the absence of specific grounds raised by a party seeking to dislodge the presumption of its constitutionality and that the learned Judge of the High court was not justified in examining this question virtually in a state of vacuum of pleadings and of specific grounds which alone would have enabled the appellant specifically to traverse them. Accordingly to the learned counsel the conclusion reached by the learned Judge, in part at least, were based on factual assumption which appellant had no opportunity to contest. However laudable the anxiety and concern of the learned Judge on the vexed problem of the indebtedness of the Indian agriculturist might otherwise be, the present case, says counsel, was, in view of the conspicuous absence of any pleadings, singularly inappropriate for the examination of that question.

11. It was further contended by Sri. Bobde that the following observation of the learned Judge :

> "The scope of Act 1 of 1984 (The Banking Laws (Amendment) Act, 1983), would, however, have to be examined in the event that exemption granted by Section 4(e) of the Rajaji Act is for any other reason held by this Court not available to the plaintiff bank. As the Supreme Court neither considered the constitutional validity of Section 4(e) of the Rajaji Act nor the scope of Act 1 of 1984, consideration of those two question is still open to this court."

is factually and demonstrably inaccurate in view of the circumstance that at paras 16 and 17 of the judgment of this court in Bank of India case ((1988) Supp SCC 47 : AIR 1998 SC 151), this Court had specifically considered the contention as to the vice of discrimination and the consequent invalidity of Section 4(e) under Article 14 and negatived the same. Sri. Bobde invited our attention to the following passages in the judgment of this Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), (SCC pp. 54-55, paras 16 and 17)

> "At this stage, it may be stated that in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), it has been held by the Division

> Bench that the latter part of Section 4(e) of the Act containing the words 'any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or any special Indian Law or Royal Charter or Letters Patent if offensive to Article 14 of the Constitution and, accordingly, void. The learned counsel for the respondents submits that in view of the decision in Krishna Murthy case. (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), this court should declare the latter part of section 4(e) of the Act to be void as offending Article 14 of the Constitution, although no such point has ever been taken by the respondents up to this Court. On the other hand, it is submitted by the learned Additional Solicitor General that the said finding of the Division Bench in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), to the effect that the latter part of Section 4(e) of the Act is void is erroneous.
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> The reason given by the Division Bench of the Andhra Pradesh High court in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), for holding the latter part of Section 4(e) of the Act as void are that Section 4(e) of the Act was enacted to protect the British economic interests and although such a law could permissibly be enacted under the constitutional scheme of the 1935 Government of India Act, that law after the inauguration of our Sovereign Democratic Republic cannot but be held to have become void as making invidious discrimination in favour of the British Corporation offending against the equality clause under Article 14 of the Constitution. Before declaring the same as void, the Division Bench took the view that the words 'any special Indian law ' could d not have been intended to refer to any law made by any legislature of our country, but to a law made by the British Imperial Parliament as a piece of special legislation applicable to India. It has already been discussed by us that the words 'any special Indian law' refers and relates to a law made by the Indian legislature and not by the British Parliament. In that view of the matter, the reasons given by the Division Bench for holding the latter part of Section 4(e) to be void as making a discrimination in favour of corporations created by British Parliament, will not apply to corporations formed or created by any special Indian law which, in the instant case, is the Banking Companies Act."

Referring to the A.R. Act, it was held : (SCC p. 55, paras 18 and 19)

> "(W)e hold that the provisions of the Act are not applicable to the appellant bank and, therefore, there is no question of sealing down the debt to the bank by the respondents.
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> For the reasons aforesaid, the judgment and decree of the High Court insofar as the same direct the scaling down of the debts due to the bank by the respondents, are set aside. The bank will be entitled to realise the amount decreed in its favour by the High Court without any scaling down of the same under the provisions of the Act."

12. Sri. Bobde submitted that it was not open to the High court to examine the constitutionality of Section 4(e) even if it be that a particular ground or argument, however weighty, had not been considered in the decision of this Court. Learned counsel referred to the following observations in Smt. Somavanti v. State of Punjab ((1963) 2 SCR 774, 794 : AIR 1963 SC 151 : (1963) 33 Com Cas 745) :

> "The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above."

The decisions in T. Govindaraja Mudaliar v. State of Tamil Nadu ((1973) 1 SCC 336), Anil Kumar Neotia v. Union of India ((1988) 2 SCC 587), and Kesho Ram & Co. v. Union of India ((1989) 3 SCC 151), on the point were also referred to.

13. In our opinion, the submissions of Sri Bobde on the point are not without force. This court had rejected the attack on Section 4(e) on the grounds of violation of Article 14. That apart, the burden of showing that a classification is arbitrary is basically on the person who impeaches the law. If any state of facts can reasonably be conceived as sustaining the constitutionality, the existence of that state of facts as at the time of the enactment of the law, must also be assumed. The allegations on which violation of Article 14 are based must be specific, clear and unambiguous and must contain sufficient particulars. In Harman Singh v. Regional Transport Authority (1954 SCR 371, 376-77 : AIR 1954 SC 190), Calcutta Mahajan, J. observed :

> "In our judgment, this question can be answered only in the negative. It has been repeatedly pointed out by this Court that in construing Article 14 the courts should not adopt a doctrinaire approach which might well choke all beneficial legislation and that legislation which is based on a rational classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial or equal protection of the laws if any state of facts may reasonably be conceived to justify it."

14. In Sir. Venkata Seetaramanjaneya Rice & Oil Mills v. State of Andhra Pradesh ((1964) 7 SCR 456, 469-70 : AIR 1964 SC 1781), it is said :

> "This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judged from that point of view, there is absolutely no material on the record of any of the appeals forming the present group on which a plea under Article 14 can even be raised.

15. Apparently, the learned Judge of the High Court felt greatly disturbed at what he conceived would be the serious adverse consequences if the agricultural loans advanced by banks were exempted from the A.R. Act. After neatly formulating the question which, according to him, should be examined as a constitutional question, the learned Judge made these somewhat impassioned and emotive, pace-setting prefatory observations :

> "The first issue in this second appeal is of considerable moment both for the agriculturists as a class and the State, but more for the agriculturists than for the State. Let it be noted that can the agriculturist be legally charged compound interest by the banks is not a metaphysical and speculative enquiry. It is a question of life and death for the agriculturist. The recent spate of suicides committed by the young

> agriculturists of Guntur and Prakasam districts sometimes in tragic compact with their young wives and children being unable to pay the banks the quarterly compounded interest only highlight the tragic dimensions of this question. For ages the Indian agriculturist has been the victim of vigorous monsoons and predatory debt laws...."

Quoting Mahatma Gandhi the learned Judge said :

> "No sophistry, no jugglery in figures can explain away the evidence that the skeletons in many villages present to the naked eye. I have no doubt whatsoever that both England and the town dwellers of India will have to answer, if there is a God above, for this crime against humanity which is perhaps unequalled in history."

Adverting to the considerations, according to the High Court, that impel the conclusions reached on the point it was held :

> "Today, agriculture is financed largely by the banks. It is estimated that more than 80 per cent of the agricultural loans in this State are advanced by the banks. Thus bank loans play a major role in agricultural financing. If the bank loans are today exempted from the purview of the Rajaji Act and the banks are permitted to charge compound interest the beneficial provisions of the Rajaji Act would Act would be utterly defeated..."

16. The learned Judge proceeded to say :

> "It cannot be denied that the agriculturists suffer equally from the burden of indebtedness whether that burden is thrown upon them by lending bank or by an ordinary moneylender. The burden of indebtedness cannot change from a change in the status of moneylender. Prima facie therefore, one can find no justification in such classification which is clearly irrational.... (C) an the Act single out the agricultural debtors of the banks as different from other agricultural debtors for the purpose of according differential treatment ?"

17. It is true that in the bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), this Court did not examine these aspects as to the unconstitutionality of Section 4(e). Only the insufficiency and, indeed, the irrelevance of the test applied for holding that Section 4(e) as discriminatory, were pointed out. While we are sensible of the anxious concern of the learned Judge for the acuteness and magnitude of the problem of agricultural indebtedness it appears to us that even if the question had not been trammelled by a decision of this Court, it would be appropriate to examine the question in a properly constituted action where pleas challenging the vires of the provision had been properly raised and urged.

18. It is not disputed before us that respondent in this case did not bestir herself to raise this contention. The learned Judge, in view of what he considered to be the general importance of the matter, pondered over the question himself and claim to record a finding that Section 4(e) suffered from the vice of hostile discrimination. It is, perhaps, relevant to recall the observations of Fazal Ali, J. in Rajput Ruda Meha v. State of Gujarat ((1980) 1 SCC 677 : 1980 SCC (Cri) 317. AIR 1980 SC 1707, 1708) : (SCC p. 679, para 6)

> "Neither in the application for adducing additional grounds or in the order of the

> court directing the matter to be placed before the constitution Bench, there was any reference to the validity of Section 384 of the CrPC. Neither was it pleaded during the arguments that Section 384 of the CrPC is ultra vires of the Constitution. As the question of validity of Section 384 of the CrPC was neither raised no argued, a discussion by the court after 'pondering over the issue in depth' would not be a precedent binding on the courts."

19. On a consideration of the matter we think we ought to hold that it was not appropriate for the High Court to have itself taken up this question in the present case. We accordingly set aside the finding of the High court on the unconstitutionality of Section 4(e) of the A.R. Act. Consequently we hold that on defence under the A.R. Act could be urged against the appellant's claim in these proceedings. We are unable to accept the submission Sir Subba Rao for the respondent that the High Court would have failed in its duty if it did not, by itself, and even in the absence of any prayer by the parties, pronounce on the question where the provision bore the clear marks of unconstitutionality on its forehead.

20. So far as point (d) is concerned, the High Court came to find that Section 21-A of the Banking Regulation Act, 1949, did not interdict the provisions of the Usurious Loans Act, 1918. Indeed, the trial and the first appellate courts proceeded almost entirely on the basis that respondent debtor was entitled to relief under the of the "A. R. Act". The said two courts merely followed the earlier decision of the High Court in Indian Bank case. (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90). They did not examine either the applicability of or the permissibility of any relief under, the Usurious Loans Act, 1918. In the second appeal before the High court the question was still the same and while the two courts below denied the exemption claimed by the appellant on a point of construction of Section 4(e) the High Court, however, denied the exemption holding Section 4(e) to be unconstitutional. Whether the exemption of the banks from A.R. Act was denied on a point of construction or on one of constitutionality, the result was same. The applicability of and the defences open to the creditor under the Usurious Loans Act were not examined. This aspect assumed importance only after the respondent's claim for relief under A.R. Act, for whatever reason, is negatived. This question arises now and this Courts will be considering it virtually for the first time in their proceedings.

21. That the High Court did not directly examine the question of the applicability of and the defences that may be raised by the creditor under Usurious Loans Act is clear from its following observations :

> "But the substantive claims of agriculturists are based on the Rajaji Act under which charging of compound interest has been made into a forbidden act for the banks. Under the Rajaji Act no compound interest could ever legally accrue in favour of any bank that has advanced loans to the agriculturists. In view of this legal prohibitation the question of courts allowing the compound interest under Act 1 of 1984 or not allowing the compound interest under the Usurious Loans Act cannot arise..."

The learned Judge referred to certain other decisions of the Division Bench of the High Court which according to him had held against the applicability of the Usurious Loans Act, 1918, to any debt due to a banking company and observed.

> "The Division Bench in Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), of which Kodandaramayya, J., was also a party

> held that the rate of interest charged by the banking companies to an agriculturist cannot be reopened because of Section 21-A of the Banking Regulation Act. The Division Bench held that the Usurious Loans Act is no longer applicable to any debt due to a banking company..."

22. In Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), referred to by the learned Judge a Division Bench of the High Court had held :" (AIR p. 291, para 5)

> "It is clear that the said provision makes the provisions of Usurious Loans Act inapplicable to any transaction between a banking company and its debtor. The courts' power to reopen the transaction under the provisions of the Usurious Loans Act on the ground that the rate of interest charged is excessive is no longer available. It is not disputed that it affects the pending proceedings also that the Act came into force on February 15, 1984. Thus it is clear that the Usurious Loans Act is no longer applicable to any debt due to a banking company."

The learned Judge also referred to another decision of another co-ordinate bench which appears to have understood Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), in a particular manner in regard to effect of Section 21-A on pending proceedings.

23. The learned Judge of the High Court also referred to certain decisions of other High courts which referred to certain grounds of relief to agricultural debtors in the position of the respondent. The learned Judge said :

> "... Jagannatha Shetty J. (as he then was) in the above two Karnataka cases held that Act 1 of 1984 forbids the courts from reopening the transaction only on the ground of excess of interest. He held that provision has no application to the reopening of the loan transaction on other grounds..."

24. We must observe that the question of the applicability of Usurious Loans Act, 1918, to debts advanced by banks and the effect of Section 21-A of the Banking Regulations Act, 1949, have not, received proper consideration in the second appeal. Even if the Usurious Loans Act, 1918, is held attracted to the transaction, notwithstanding the said Section 21-A, and a presumption under the proviso to clause (b) of sub-section (2) of Section 3 of the Act is drawn, the appellant bank must have an opportunity to rebut such a presumption. Attention to these aspects of the matter have not been focussed as these aspects stood relegated to the background in view of the fact that relief was granted to the respondent principally on the basis of the A.R. Act.

25. We think it is necessary in the circumstances that the judgment of the High court is set aside without any pronouncement on the merits of this controversy and the second appeal remitted to the High Court for consideration of contention pertaining to the effect of Section 21-A of the Banking Regulations Act on the applicability of Usurious Loans Act, 1918, and if the said Act is held attracted whether the appellant is able to rebut the presumption of excessiveness of interest and also whether there were other legal impediments of the nature adverted to by the High Court, a reference to which is made in para 23 (supra), to charge compound interest on agricultural advances. On this point the respondent shall be entitled to raise additional grounds before the High Court and the High Court shall examine the same if additional grounds are so raised.

26. It appears appropriate that the second appeal be placed before a Division Bench for the High

court for hearing. It is so directed. The appeal is disposed of accordingly without an order as to costs.

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