State Bank of India

Vs

Yasangi Venkateswara Rao

Civil Appeal No. 4607 of 1989

(B. N. Kirpal, S. Rajendra Babu JJ)

21.01.1999

JUDGMENT

B. N. Kirpal J.

1. The challenge in this appeal is to the judgment of the High Court which, while allowing the appeal filed by the respondent, had declared Section 21-A of the Bank Companies Regulation Act as being *ultra vires.*

2. Briefly stated the facts are that a suit for recovery of money was filed by the appellant before the District Munsif, Eluru. The trial court passed a preliminary decree and the same was substantially upheld by the District Court.

3. In the second appeal which was filed, one of the contentions which was raised related to the charging of interest by the appellant. After the decree of the trial court, by the Banking Laws (Amendment) Act 1 of 1984, new Section 21-A was inserted in the Banking Companies Regulation Act. The said Section reads as follows :

> "Notwithstanding anything contained in the Usurious Loans Act, 1918 or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

4. Relying upon this provision, the contention of the appellant was that there would be no occasion for the court to reduce the rate of interest which the borrower had contracted to pay.

5. The High Court in the second appeal, even without an issue being framed to this effect, entertained the plea regarding the validity of the said Section and observed as follows :

> "Considering the fact that grant of debt relief has always been treated in our country as a legislative subject to be passed upon by the regional Governments alone and that the words "Relief of agricultural indebtedness" were specially added by our constitution to enable the State Legislatures to alleviate the suffering of the farmers from their agricultural indebtedness and that the Constituent Assembly had deliberately rejected an amendment moved seeking to transfer this item to the concurrent list, I hold that Section 21-A of the Banking Companies Regulation Act which forbids the Courts from reopening the bank loans on the ground of excessive

> interest is not a law enacted by the Parliament with respect to the item of Banking."
>
> The learned Additional Solicitor General contends that the aforesaid observation of the High Court is not correct. He also submits that the High Court had erred in observing that "normally where security offered by the debtor is good and adequate as it is in a case of mortgage of property, the Courts will hold charging of compound interest to be excessive."

We are unable to understand as to how the High Court could come to the conclusion that the Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21-A deals with the question of the rate of interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers the Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of the Parliament. The said Section applies to all types of loans which are granted by a banking company, whether to an agriculturist or a non-agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted. We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be paid, we fail to understand as to how the court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged. With the aforesaid observations, this appeal is allowed, the judgment and decree of the High Court is set aside and that of the lower appellate court restored. No order as to costs.