ANDHRA PRADESH HIGH COURT

Mellacheruvu Pundarikakshudu

Vs.

Kuppa Venkatakrishna Sastri

Letters Patent Appeal No. 52 of 1956, reported in 1955 Andhra WR 870

(Subba Rao, C.J. and Qamar Hasan, J.)

16.11.1956

JUDGMENT

Subba Rao, C.J.

1. This is a Letters Patent Appeal against the judgment of our learned brother Viswanathasastry J.

2. The facts are not in dispute and they may be briefly stated. The appellant sued the respondent for recovery of a sum of Rs. 1330/- on the foot of a promissory note dated 14-8-1948 for a sum of Rs. 1050/- repayable with interest at the rate of 9 per cent per annum. That promissory note was executed in renewal of a prior promissory note dated 14-3-1945. The Court below held that there was no proof of the earlier borrowing than that evidenced by the promissory note dated 14-3-1945. Though the earlier promissory note was not produced the courts below fixed the principal of that promissory note by working back and deducting from the sum of Rs. 1050/- due under Ex. A-1 interest over the statutory rate of 5-1/2 per cent included therein and gave a decree for that amount with subsequent interest at 6-1/2 per cent per annum from 14-3-1945 till 29-7-1947 and at 5-1/2 per cent from the latter date. It was contended before Viswanatha Sastri J. that, as the suit promissory note was executed after the Madras Agriculturists'Relief Act (hereinafter referred to as the Act) came into force, the respondent would not be entitled to trace back his debt to the earlier promissory note of the year 1945. The learned Judge rejected that contention and held that the latter promissory note sued on should be held not to be supported by consideration to the extent of the excess over the sum legally payable under the earlier document calculated with interest at the rate provided by the Act. In that view and relying on the provisions of Section 44 of the Negotiable Instruments Act, the learned Judge confirmed the decree given by Courts below. Hence the appeal.

3. Learned counsel for the appellant contends that, under the provisions of Section 13 of the Act which applies to debts incurred after the coming into force of the Act, the Court is not entitled to go behind the contract and, therefore, he would to entitled to a decree for the amount covered by Ex. A-l with simple interest at 6i per cent per annum. Section 13 reads :-

> "In any proceedings for recovery of a debt, the Court shall scale down all interest due on

> any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6-1/2 per cent per annum, simple interest that is to say one pie per rupee per mensem simple interest or one anna per rupee as per annum simple interest :"

4. This section was subjected to judicial scrutiny by the Madras and Andhra High Courts. In *Thiruvengadatha Aiyangar v. Sannapan Servai*[1], a Division Bench of the Madras High Court held that Section 13 applied to all debts incurred after the commencement of the Act, whether they be in discharge of prior debts or not. One of us in *Krishnayya v. Venkata Subbarayudu*[2], following the Bench decision, expressed a view to the same effect thus :

> "It is well settled that a debt incurred after the commencement of Madras Act IV of 1938, cannot be scaled down except in accordance with Section 13 of the Act."

The short question, therefore, is whether Section 13 of the Act enables a debtor to trace back his debt to the original debt incurred after the Act came into force.

5. Learned Counsel for the respondent relied upon the express terms of the Section in support of his contention that it could be so done. He emphasised upon the words 'on any debt'in Section 13 and argued that a duty is cast upon the Court in a proceeding for recovery of a debt to scale down all interest due on any debt incurred after the Act under that Section. To illustrate his contention : In the present proceedings for recovery of the amount due under Ex. A-1, the Court should scale down the earlier debt incurred after the Act. of which the suit debt was only a renewal and, if so done, the amount covered by the suit promissory note in excess over that which would be due under the promissory note so scaled down would be without consideration. We find it difficult to accept the argument. For one thing, in the case of a debt incurred after the commencement of the Act. Section 13 does not, in express terms, provide for tracing back a debt to its origin. For the other, the use of the word "any" instead of the definite article "the" qualifying the word "debt"became necessary as the word "debt" in the opening line of the Section is used in general terms without being limited to a debt incurred after the Act. If in the opening sentence the words "incurred by an agriculturist after the commencement of this Act" qualified the word "debt", the definite article "the" would have been used instead of "any"to qualify the word "debt" in the succeeding line. Any debt could, therefore, only mean a debt incurred after the commencement of the Act, which is sought to be recovered in a Court. That apart, Section 13 does not provide for any statutory discharge as 8. 8 (1) of the Act. Under Section 8 (1) all interest outstanding on the 1st October, 1937, in favour of any creditor of an agriculturist.....shall be deemed to be discharged and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date, whereas under Section 13, the Court is enjoined to reduce the interest in terms of the Section in a proceeding for recovery of a debt incurred after the Act. Under Section 13, therefore, no question of automatic

[1] ILR (1942) Mad 57: (AIR 1941 Mad 799)
[2] 1952-1 Mad LJ 638

discharge of an interest would arise so as to support the contention of failure of consideration in whole or in part for the renewed debt. It provides only for a limited relief to a judgment-debtor in the matter of interest and there is no jurisdiction for invoking the doctrine of

tracing back to the earlier debt though incurred after the commencement of the Act. This contention was repelled by Wadsworth J. in *Krishnamurthi v. Narayana*[3] There the petitioner sued on a promissory note dated 16th March 1942 for a sum of Rs. 1818-3-0 executed in settlement of previous debts, one of May 1939 and the other of June 1939. It will be seen that the debt had its origin only after the commencement of the Act. It was sought to trace back the suit debt to the debt incurred in May, 1939. While rejecting the contention, Wadsworth J., observed :-

> "The lower court, in applying Section 13 of the Act, has apparently laboured under the misapprehension that Section 13 was to be applied not to the actual suit contract but to the previous debts which it superseded. There is nothing in Section 13 which imports the explanation to Section 8 and allows the court to go behind the contract. The defendant may of course raise contentions under the ordinary law such as failure of consideration or a plea that the suit debt is nothing more than an acknowledgment of the antecedent debt, which would justify the court into going into the amount due under the antecedent debt."

We respectfully accept the above said observations as laying down the correct law on the subject.

6. In the present case, the suit promissory note is a renewal of an earlier note of the year 1945. Except that fact, there is nothing on record to establish that the parties agreed to acknowledge the earlier promissory note or that there was failure of consideration in any other manner. The mere fact that if a suit had been filed on the earlier promissory note, it would have been scaled down under the Act could not itself be a ground for holding that there was failure of consideration for the renewed promissory note.

7. The decision of Krishnaswami Nayudu J. in *Dhanakotia Pillai v. Narayana Iyer*[4], is strongly relied upon. There, the suit promissory note was of the year 1948 and that was in renewal of an earlier promissory note dated 9-7-1945. Following the Bench Decision in A. S. No. 290 of 1944, the learned Judge held that the judgment-debtor was entitled to re-open the earlier transaction dated 9-7-1945, and he would be liable only to pay the principal advanced under that document with interest as provided under Section 13. The facts of the Bench Decision referred to by the learned Judge are : The suit was on a pronote dated 25th January 1940, and the pronote recited that it was executed for the amount of the principal and interest found due till that day after deducting the payments made under an earlier pronote dated 13-2-1934. The learned Judges held that the promissory note sued on was not supported by consideration to the extent of the payment made under the earlier note and that he would not be entitled to recover anything more than what would be found properly payable under

[3]1944-2 Mad LJ 298
[4]1955-2 Mad LJ 569

the earlier promissory note of the year 1934. The difference between that case and the present one is that in the former, the earlier debt was incurred before the commencement of the Act, whereas, in the latter, the earlier debt also was incurred after the Act, In regard to the debts incurred before the commencement of the Act, there is a statutory discharge of the debt or a portion of the debt as the case may be. Under Section 9, a debt incurred on or after the 1st October 1932, shall be scaled down in the manner mentioned in that section and only the amount as scaled down under that section shall be deemed to be payable together with the principal

amount or such portion of it as is due. Therefore, in the case of a debt incurred after 1st October, 1932, and before the commencement of the Act, the debt is scaled down under the provisions of Section 9 and therefore, it can be argued that the renewed promissory note to the extent it has covered the debt wiped out under Section 9 is not supported by consideration, whereas in the case of a debt incurred after the Act came into force, there is no such discharge of a debt and the limited relief of reduction of interest could be secured only in a proceeding to recover the debt. The Bench decision does not, therefore apply to a debt incurred for the first time after the Act came into force.

8. The judgment of Rajamannar C. J. in *Mallikharjuna Rao v. Tripurasundari*[5] relates to the case of a debt incurred on 30-4-1936, and therefore, the learned Chief Justice followed the Bench decision in holding that the subsequent promissory note was to some extent not supported by consideration. We cannot therefore, agree with the view of Krishna Swami Nayudu J. that the same principle applied to the case of a debt incurred after the Act came into force. The appellant would be entitled to a decree for the amount covered by the suit promissory note with interest at 6-1/2 per cent simple from the date of the promissory note up to the date of the decree and therefore at 6 per cent on the total amount till the date of realisation. The appeal is allowed with costs throughout.

Appeal allowed.

[5]1953-2 Mad LJ 313