ANDHRA PRADESH HIGH COURT

Sait Nainamul

Vs.

Balabhadra Subba Rao

Appeal No. 728 of 1951

(Subba Rao, C.J., Manohar Pershad and Mohd. Ahmed Ansari, JJ.)

17.04.1957

JUDGMENT

Subba Rao, C.J.

1. This appeal raises two questions and both are covered by the decisions of two Division Benches, one of the Andhra High Court and the other of the Madras High Court.

2. The relevant facts may be briefly stated. Defendants 1 and 2 executed a promissory note dated 7-12-1946 for a sum of Rs. 6400/- in favor of late Sait Anjarmal repayable with interest at Rs. 1-14-0 per cent. per mensem. Plaintiffs 1 to 3 are the sons of Anjarimal and the 4th plaintiff is his widow. The 3rd defendant is the undivided son of the 1st defendant and the 4th defendant is the widow of the brother of late Anjarimal. The defendants borrowed various sums from Anjarimal between 16-1-1946 and 11-11-1946 together making up a sum of Rs. 6100/-. Adding to that amount the interest that accrued due till 7-12-1946, the suit promissory note was executed for Rs. 6400/-. Subsequently on 14-2-47, the 1st defendant paid to the plaintiffs two amounts of Rs. 2800/- and Rs. 300/- and they were duly endorsed on the promissory note, Rs. 2800/- being appropriated towards principal and Rs. 300/- towards interest. The endorsement was signed by the 1st defendant. One of the contentions raised before the learned Subordinate Judge was that the debt was liable to be scaled down under the provisions of the Madras Agriculturists' Relief Act (hereinafter referred to as the Act). The other contentions raised by the defendants and the findings of the learned Judge on the said contentions need not be stated as nothing turns upon them in the appeal. The learned Judge held that the defendants are agriculturists and that, therefore, they are entitled to the benefits of the Act. For the purpose of the application of the provisions of the Act, he reopened the suit transaction and the appropriations made. The principal originally advanced i.e., Rs. 6100/-was taken as the principal and the sum of Rs. 300/- appropriated towards interest payable under the suit promissory note according to the contract rate was re-appropriated towards interest calculated on the original principal as per the rate fixed under Section 13 of the Act. Learned Counsel for the appellants contends that the learned Judge was wrong on both the points.

3. A Division Bench of this Court, of which one of us was a member, in *Pundarikakshudu v. Venkata Krishna Sastri*[1], held that, under section 13 of the Act, a debt incurred after the

commencement of the Act cannot be traced back to its origin and that the relief to which the debtor will be entitled to is only a concession in the rate of interest prescribed thereunder. We are bound by that judgment and it follows that, for the purpose of scaling down the debt, the sum of Rs. 6400/-should be taken as the principal.

4. The second question raised is covered by the decision of a Division Bench of the Madras High Court in *Ramalakshmi v. Gopalkrishna Rao*[2], There, towards a promissory note dated 11th April, 1938, carrying interest at 12-3/8 per cent. there was a series of payments of interest expressly appropriated by endorsements with the result that all the interest was paid at the contract rate up to 11th August 1941. In a suit on the note for the principal together with interest at the contract rate from 10th August 1941, the debtor claimed relief under Section 13 of the Act and the lower court scaled down the debt by the process of calculating the total amount of principal and interest at the statutory rate of 6-1/2 per cent and deducting therefrom the payments made. The learned Judge held that the payments having been made and appropriated towards interest at the contract rate under a mistake of law cannot be got back and re-appropriated towards the principal so as to make the whole of the accrued interest amenable to the process contemplated under Section 13 of the Act. This, being a decision of a Division Bench of the Madras High Court delivered before 5-7-1954, is binding on us. But, the learned counsel for the respondents contends that this decision is no longer good law in view of the Full Bench decision in *Veerraju v. Balakoteswara Rao*[3], of which one of us was a member. The question raised in that Full Bench decision was whether a creditor was not entitled to retain payments made after 1-10-1937 towards interest in excess of the interest payable under the provisions of the Act without adjusting them towards the principal. The Full Bench held that appropriation made towards interest after 1-10-1937 could be reopened and the balance readjusted towards the principal and that there was no distinction in principle between a debt to which the provisions of Section 8 applied and that governed by the provisions of Section 9. But, before the Full Bench, no question was raised as regards the interpretation of Section 13 and, therefore, that decision cannot be considered to have expressly or impliedly overruled the aforesaid Bench decision. But, at the same time, it cannot be argued that the same principle will apply to a case under Section 13 and that the interest payable at the contract rate could be reopened and reappropriated under the terms of that section. Govindrajachari J., had occasion to consider the scope of the decision in 1944-2 Mad LJ 285 . The learned Judge came to the conclusion that where an unilateral appropriation was made by the creditor towards interest payable at the contract rate, the court can, under section 13 of the Act, reopen it and reappropriate it towards interest calculated at the reduced rate. But the learned Judge distinguished the decision of the Division Bench on the ground that the debtor by signing the endorsement waived his right under Section 13. This question arises very often and it is necessary that there should be an authoritative decision of a Full Bench. We, therefore, refer the following question to the Full Bench, namely,

[1] LPA No. 52 of 1956 [3]1951-1 Mad LJ 42

[2]1944-2 Mad LJ 285

> "Whether in the case of a debt incurred after the Act came into force a payment made expressly towards interest at the contract rate can be re-opened and re-appropriated towards interest payable under the provisions of Section 13 of the Act."

Opinion of the Full Bench (27-3-1957)

Subba Rao, C.J.

5. The question referred to the Full Bench reads as follows :

> "Whether in the case of a debt incurred after the Act came into force a payment made expressly towards interest at the contract rate can be re-opened and re-appropriated towards interest payable under the provisions of Section 13 of the Act."

6. The facts that gave rise to the reference may be briefly stated. Defendants 1 and 2 borrowed a sum of Rs. 6400/- from one Anjarimal, the deceased father of plaintiffs 1 to 3, and executed a promissory note dated 7-12-46 in his favour agreeing to pay the said amount with interest at Rs. 1-14-0 per cent. per mensem. On 14-2-1957, the 1st defendant paid to the plaintiffs two sums of Rs. 2800/- and Rs. 300/-. The first amount was appropriated towards principal and the second towards interest. Relevant endorsements were made on the promissory note and they were duly signed by the 1st defendant. The plaintiffs, who are the heirs of Anjarimal, instituted O. S. No. 13 of 1950 on the file of the Court of the Subordinate Judge, Amalapuram, to recover the amount due to them under the promissory note.

7. The defendants, inter alia, pleaded that under Section 13 of the Madras Agriculturists' Relief Act (hereinafter referred to as the Act), the amount paid towards interest, though appropriated, should be reopened and credited towards the interest payable under the provisions of that section.

8. The learned Subordinate Judge accepted the contention of the defendants. In the appeal, the correctness of the Subordinate Judge's view was canvassed. A Division Bench of this Court, of which one of us was a member, having regard to the conflict of views, referred the aforesaid question for the authoritative decision of a Full Bench.

9. It would be convenient at the outset to give in juxta-position the material provisions of Sections 7, 8, 9, 12 and 13 of the Act, which embody a well-knit scheme for scaling down debts. Section 7 :

> Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this chapter.
> No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belong to him.....

Section 8 :

> Debts incurred before the 1st October 1932 shall be scaled down in the manner mentioned hereunder, namely:
> (1) All interest outstanding on the 1st October 1937, in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, 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.

Section 9 :

> Debts incurred on or after the 1st October 1932 shall be scaled down in the manner mentioned hereunder, namely :
> (1) Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of court under which it arises or at five per cent. per annum simple interest, whichever is less and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due.

Section 12 :

> All debts which have been scaled down under the provisions of this Act shall, so far as any sums remain payable thereunder, carry from the date upto which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise :
> Provided that it shall not in any case exceed 6-1/2 percent per annum simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

Section 13 :

> In any proceeding 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 per annum simple interest. Provided that the State Government may by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

10. Under the said proviso, the Government issued the following notification dated 29-7-1947 :

> "In exercise of the powers conferred by the proviso to Section 13 of the Madras Agriculturists' Relief Act (Madras Act IV of 1938) His Excellency the Governor of Madras hereby alters the rate of 6-1/2 per cent. per annum simple interest specified in the said section and fixes in lieu thereof 5-1/2 per cent. per annum simple interest."

11. From the aforesaid provisions, it is apparent that the object of the Act is to give relief to agriculturists in respect of debts incurred by them. The extent of the relief varies with the date of the indebtedness. In regard to debts incurred before 1st October 1932, all interest outstanding on 1st October 1937 is statutorily discharged. In respect of debts incurred thereafter but before the commencement of the Act, the rate of interest is reduced, if the contract rate is more than 5 per

cent to 5 per cent per annum simple interest and the amounts paid notwithstanding their appropriation towards the contract rate of interest are re-appropriated towards the statutory rate of interest. After the interest is scaled down, the principal or a portion of it as is due will carry the interest prescribed under Section 12. But, as regards debts incurred after the Act came into force, the maximum rate of interest is fixed at 6--1/2 per cent per annum and later on reduced to five and half per cent and a duty is cast upon a Court to scale it down to that extent in a proceeding taken for recovery of debt so incurred after the Act. Whatever may be the date of the debt, the Act gives relief to an agriculturist debtor in regard to interest. In regard to debts incurred before 1st October 1932, the interest is wiped out interest on debts incurred thereafter but before the Act is statutorily reduced to 5 per cent and, in the case of post-Act debts, it is scaled down to five and half per cent. It is, therefore, clear that, though the extent of the relief varies, the nature of the relief is the same so far as interest is concerned. It is not relevant for the present enquiry to notice the other differences in the nature and the extent of relief provided by the Act between three debts. Bearing in mind, therefore, the object of the Act, namely, the reduction of interest on debts incurred by agriculturists, we shall proceed to scrutinise the respective contentions of the parties.

12. The argument of the learned Counsel for the appellants may be summarized thus :
A comparative study of Sections 8, 9 and 13 indicates that, while under Sections 8 and 9 the debt is scaled down, the scope of Section 13 is confined to the scaling down of interest due and that only in a proceeding taken by a creditor to recover a debt. There is neither automatic discharge nor reduction of interest. Nor can a debtor apply for scaling down a debt as in the case of a debtor seeking relief under Sections 8 and 9 of the Act. The intention of the Legislature is made clear by the use of words "interest due" and in the context they could only mean interest outstanding at the time the relief is sought under the Act. In this view, where earlier payments were appropriated towards interest calculated at the contract rate, to that extent the interest is paid off and, therefore, it is not due. That that should have been the intention of the Legislature is also manifested by its making a specific provision in respect of debts covered by Section 9 for reopening appropriations made and reappropriating the amounts towards the interest payable under the statute and omitting to make any such provision in the case of debts under Section 13. The gist of the argument of the learned counsel for the respondents may be stated thus. The object of the Act is to give relief to an agriculturist debtor. The extent of the relief is made to depend upon the time factor. The expressed intention of the Legislature must be the true guide in giving relief. While in the case of debts incurred before 1st October 1932, the words "interest outstanding" are used, in the case of debts covered by Section 13, the words "all interest due" are used indicating thereby that in one case presumably because it relates to old transactions the appropriations made are not intended to be reopened and in the other as the debts were incurred after the Act the entire interest payable under the debts irrespective of appropriations is scaled down. Any other construction will defeat the purpose underlying Section 13 and introduce a double standard, namely, interest at the contractual rate in respect of amounts appropriated and statutory rate in other respects. The fact that the Legislature definitely indicated its intention in Section 9 is no ground to ignore the express words used when they are capable of carrying out the general object of the Legislature without doing violence to the language.

13. Much can be said in support of both the views. The decision of a Division Bench of the Madras High Court in 1944-2 Mad LJ 285 , supports the appellants' contention, while that of another Division Bench in *Sreenivasa Rao v. Abdul Rahim Sahib*[3], accepts the argument of the respondents. It will be useful at this stage to notice the facts in the two decisions and the reasons

on which the conflicting views are expressed. In the former, the debt due on a promissory note dated 11-4-38 carrying interest at 12-3/8 per cent. was sought to be scaled down. There was a series of payments of interest expressly appropriated by endorsements with the result that all the interest was paid at the contract rate up to 11th August 1941. In a suit on the note for the principal together with interest at the contract rate from 10-8-1941, the debtor claimed relief under Section 13 of the Act. The Subordinate Judge scaled down the debt by the process of calculating the total amount of principal and interest at the statutory rate of 6-1/2 per cent. per annum and deducting therefrom the payments made. But, the learned Judges Wadsworth and Patanjali Sastri JJ., held that the payments having been made and appropriated towards interest at the contract rate could not be reappropriated towards the principal so as to make the whole of the accrued interest amenable to the process contemplated under Section 13. In coming to that conclusion, the learned Judges gave the following two reasons :

> "(1) There is no provision for the scaling down of interest already paid and
> (2) The payments having been made and appropriated towards interest at the contract rate under a mistake of law, they cannot be got back and reappropriated towards the principal."

14. In the latter decision, the facts were : the defendant executed a promissory note in favour of the plaintiff for a sum of Rs. 200/- agreeing to pay interest at 12 per cent. per annum. On 13-3-1947, there was a payment of Rs. 70/- endorsed on the promissory note and expressly stated to be towards interest due. Similarly, on 8-6-1949, another payment of Rs. 30/- towards interest was made and there were further payments of Rs. 35/- on 23rd February 1950 and Rs. 50/-on 1st September 1952 towards interest as such. Appropriating these payments towards interest, the plaintiff brought the suit for recovery of Rs. 233-5-0 which, according to him, constituted the principal and balance of interest at the contract rate. The contention of the defendant was that the payments already made should be appropriated in the manner contemplated under Section 13 of the Act, that is to say, the rate of interest should be only five and half per cent. as contemplated by that section and any amount paid in

[3]1956-2 Mad LJ 189

excess of that sum should be adjusted towards the principal. The learned Judges accepted the contention. For coming to this contrary conclusion, the learned Judges gave the following two reasons (1) the payment of interest was made under the mistaken belief that in law the plaintiff was entitled to a higher rate of interest and, therefore he would be entitled to get back the amount and (2) the expression "interest due" must be understood as legally due or payable. The question is which view is correct?

15. Unhampered by decided cases, I shall proceed to consider the scope of section having regard to the aforesaid declared object of the Act and the express words used in the section. The object of Section 13 is to give relief to agriculturists, in the matter of interest in respect of a debt incurred after the Act. If such a debt is sought to be enforced, it is caught in the net of the scaling down process. At that stage, all the interest due on the debt is reduced to the statutory level or, to put it differently, whatever may be the contract rate of interest, it is replaced by the statutory rate. If the appropriations made earlier are not reopened, the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage. Doubtless the courts are concerned with the expressed intention of the legislature. The crucial words in Section 13 are "all

interest due on any debt." The word "interest" is qualified by two words 'all' and 'due'. If interest outstanding alone is scaled down, the emphatic word 'all' becomes otiose. If that was the intention, the words "interest outstanding" would serve the purpose as well. The word "all", therefore, cannot be ignored and must be given a meaning. It indicates that the entire interest, which a debt earned, is scaled down.

16. Adverting to the next crucial word 'due', what is the meaning attributable to that word? The dictionaries consulted by me give the following meanings :
WEBSTER'S NEW INTERNATIONAL DICTIONARY
Due : Payable.

WHARTON'S LAW LEXICON :

> Due : Anything owing. That which one contracts to pay or perform to another : that which law or justice requires to be paid or done. It should be observed that a debt is said to be due the instant that it has existence as a debt; it may be payable at a future time.
> RAMANATHA AYYAR'S LAW LEXICON;
> Due : As a noun, an existing obligation; and indebtedness. A simple indebtedness without reference to the time of payment a debt ascertained and fixed though payable in future; As an adjective : capable of being justly demanded : claimed as of right : owing and unpaid : remaining unpaid : payable. Due in an installment bond means payable.

What is the appropriate meaning in the context which if substituted for the word 'due' in the section, would bring out the real intendment of the legislature? The meaning that which one contracts to pay fits in the context. The meaning "payable" is also not inappropriate. If so, all interest one contracts to pay or all interest payable is scaled down under Section 13.
The word 'due' is descriptive of the word 'interest' and does not connote any particular tense, past, present or future. The interest the debt earns is scaled down. If so understood, payments or appropriations made towards interest payable on the debt will have to be ignored for reducing the interest.

17. The following well-settled rules of construction may also be called in aid to sustain the aforesaid construction :

> (1) At page 322 of Maxwell on Interpretation of Statutes, 9th Edition, it is stated :
> "It has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act." The learned author administers a caution when he adds that the presumption is not of much weight as the same word may be used in different senses in the same statute and even in the same section.
> (ii) At page 324, it is observed :
> "As the same expression is as a general rule to be presumed to be used in the same sense throughout an Act, or a series of cognate Acts, a change of language, probably, suggests

the presumption of change of intention."

But the author again points out at page 326 :

> "But, just as the presumption that the same meaning is intended for the same expression in every part of an Act is, as we have seen, not of much weight, so the presumption of a change of intention from a change of language (of no great weight in the construction of any document) seems entitled to less weight in the construction of a statute than in any other case."
> (iii) In Craies on Statute Law at page 87, it is stated :
> "With regard to what is meant by the expression 'the plain meaning of the words of a statute', it is necessary on all occasions, to give the legislature credit for employing those words which will express its meaning more clearly than any other words; so that if in any particular instance it can be shown that there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature uses that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all and in that event it becomes necessary to try to discover what intention it did intend to convey."

18. The aforesaid rules of construction, as the authors themselves have pointed out, are not inflexible guides but yield to the context or give way when the intention is made clear otherwise. But, the results yielded by the application of each of the rules tested by the other may afford a satisfactory solution in this case.

19. Section 15 of the Act gives a conditional discharge of rent due to land-holders. The proviso to that section, which imposes the condition, reads :

> "Provided that where the person liable to pay rent does not, on or before the 30th of September 1939, pay up all arrears of rent accrued in respect of any holding for faslis 1346 and 1347, the arrears of rent for fasli 1345 and prior faslis which were outstanding in respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for faslis 1346 and 1347 which is paid up by the ryot or tenant bears to the rent DUE for those two faslis."

The word 'outstanding' in this proviso is used to indicate the actual rent still in arrears and the word "due" is used to mean the rent payable for the two faslis. The proportion is fixed having regard to the rent due and the rent paid in respect of the said two faslis. It may, therefore, be accepted that the legislature gives two definite connotations to the word "outstanding" and the word "due" one indicating actual arrears of rent and the other that which is payable under the contract. With the knowledge of the distinction between these two words, the Legislature uses the word "outstanding" in Section 8 (1) and the word "due" in Section 13 in the context of the scaling down of interest. It is, therefore, legitimate to presume that the legislature used the words "due" and "outstanding" in the same sense in which those words are used in Section 8. Further, the

word "outstanding" is more appropriate to convey the idea of the interest remaining to be paid than the word "due". When the Legislature, ignoring the appropriate word, introduced the word "due", which conveys the intention less clearly, it is reasonable to assume that it does not intend to convey the same meaning but a different one from what the word outstanding conveys. Section 13 does not give any indication that the Legislature by using the word "due" instead of the word "outstanding" intended to convey the same meaning. In the circumstances, applying the aforesaid rules of construction I hold that the word "due" means only the interest payable on the debt.

20. Why then did the Legislature make express provision in Section 9 for reopening the appropriations made whereas no such provision was made in Section 13 but left us to infer from the cryptic words used therein? The only answer I can find, though not satisfactory, is that the scaling down process under Section 9 is more complicated than that under Section 13 and, therefore, the provision was drafted with better detail.
While under Section 9, subject to the contract the rate of interest is fixed at 5 per cent. under Section 13 wider discretion is given to the Court in that it can scale down the interest to any amount not exceeding the prescribed limit. Section 9 affects past transactions and, after the insertion of the proviso by Section 5 of Act XXIII of 1948, a debt may have to be traced back to its origin. But, Section 13 affects future transactions entered into by the parties presumably with knowledge of the provisions of the Act. A single provision like Section 13, therefore was considered sufficient to give the limited relief prescribed thereunder. Be that as it may, the fact that in one provision the Legislature gives a detailed treatment to a subject is no ground for ignoring the express provisions of another section if the scheme of scaling down described in the former gives effect to the expressed intention of the Legislature in the latter.

21. The argument that Sections 8 and 9 deal with a debt whereas Section 13 provides only for the scaling down of interest has no hearing on the question raised. Whatever may be stated in the application of the damdupat principle embodied in Section 8, both Sections 9 and 13 provide only for the scaling down of interest. Under both the sections, the principal is payable with the scaled down interest, though the balance of the amount paid towards interest over and above the scaled down interest goes in discharge or partial discharge of the principal.

22. The substratum of the judgment in 1944-2 Mad LJ 285 , is removed by the decision of the Privy Council in *Shiba Prasad Singh v. Srish Chandra Nandi*[4]*,* The learned Judges in 1944-2 Mad LJ 285 , held that the payments having been made and appropriated towards interest at the contract rate under a mistake of law cannot be got back and re-appropriated towards the principal. But, the Privy Council did not approve of the said principle and indeed gave a new orientation to the doctrine embodied in Section 72 of the Contract Act. The owner of Jharia estate granted a mining lease of part of that estate to the predecessor of the 1st respondent therein. The 1st respondent paid to the appellant, who succeeded to the Jharia estate, royalties at a higher rate on a wrong interpretation of the terms of the lease. But, subsequently realising his mistake, he discontinued to pay royalties till such time the excess paid was exceeded by the arrears and thereafter continued to pay the reduced rate. The owner of the estate filed the suit for recovery of the amounts at a higher rate. The question raised before the Privy Council was whether the defendant, that is, the lessee was entitled to set-off against royalty the amount of his earlier over payments. It was contended that the lessee would not be entitled to a set-off as the excess payment were made under a mistake of law. The Privy Council in respecting this

contention made the following observations at page 926 (of ILR Pat) :

> "If a mistake of law has led to the formation of a contract, Section 21 enacts that that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that that money was paid under mistake of law; it was paid because it was due under a valid contract, and if it had not been paid payment could have been enforced. Payment by mistake in Section 72 must refer to a payment which was not legally due and which could not have been enforced; the 'mistake' is thinking that the money paid was due when in fact it was not due :

There is nothing inconsistent in enacting on the one hand that if parties enter into a contract under mistake in law that contract must stand and is enforceable, but, on the other hand, that if one party acting under mistake of law pays to another party money which is not due by contract or otherwise, that money must be repaid." They further proceed to state at page 927 (of ILR Pat) :

> "Once it is established that the payment in question was not due, it appears to their Lordships to be irrelevant to consider whether or not there was a contract between the parties under which some other sum was due."

23. On the aforesaid interpretation of Section 72, the Privy Council allowed the lessee to set-off the excess amounts paid by him over and above the royalties due under the contract towards the subsequent installments. This decision lays down three

[4] ILR 28 Pat 913 : (AIR 1949 PC 297)

propositions : (i) payment, which was not legally due and which could not have been enforced, could be recovered, (ii) excess payments could be set-off against subsequent installments, and (iii) the party, who made the excess payments, need not necessarily file a suit for recovery of the amounts but could, in defense to a suit filed by the other party, set-off the same towards subsequent installments.

The principle laid down in this decision, if applied to the present case, helps to solve the problem raised. The promissory note executed by the respondents agreeing to pay higher rate of interest than that provided for under Section 13 was valid. There is nothing in the Act prohibiting parties, after the Act came into force, from entering into a contract of debt stipulating higher rate of interest.

But, under the provisions of Section 13, a creditor cannot recover interest at a rate higher than that prescribed thereunder. If a debtor pays interest at a higher rate than that which he is bound to pay under Section 13, he pays it by mistake within the meaning of Section 72 and, therefore, he is entitled to recover it back or to set-off the excess payments against the subsequent interest.

24. The judgment of the Division Bench of the Madras High Court in *Lakshman Prasad and Sons v. Achuthan Nair*[5], does not lay down a different proposition. There, the parties entered into a contract for the purchase of a motor car at a particular price above the maximum price fixed by the Government under the Control order. Both the parties thought that the price agreed upon was the control rate though in fact the control rate was less than the contract rate. The learned Judges held that the vendee was not entitled to recover the difference between the contract price and the

control price. They so held because there was no mistake about the price payable and actually paid for what was paid was that payable under the contract.

25. Govinda Menon and Ramaswami JJ., to 1956-2 Mad LJ 189 , dealing with an identical situation observed at p. 191 (of Mad LJ) :

> "Where a statute provides and regulates payments in a particular manner, and to a particular extent a person paying amounts in excess of that should be considered not to have done it willingly or voluntarily and with the object of making a present, but he must be deemed to have acted in ignorance of the law and therefore should be entitled to get back the amount."

It is, therefore, clear that the excess amounts were paid by the respondents under a mistake and, therefore, they would be entitled to get them re-adjusted towards subsequent interests.

26. Even so, it is contended that the appropriation itself is a contract entered into between the parties in ignorance of law, and, therefore, the amount paid thereunder cannot be recovered. I cannot hold that the appropriation was a separate contract supported by consideration or that the excess amounts were paid under a contract of appropriation. The amount was paid under a mistake of law in the interpretation of the provisions of Section 13.

27. A Full Bench of the Madras High Court in ILR 1951 Mad 645 , held that, under

[5]1956-1 Mad LJ 78 : AIR 1955 Mad 662

the Madras Agriculturists' relief Act, a creditor is not entitled to retain payments made after 1st October, 1937 towards interest in excess of the interest payable under the provisions of the Act without adjusting them towards the principal. The question there arose in regard to a debt governed by Sections 9 and 12 of the Act. Section 9 in terms does not say that the amounts paid in excess of the entire amount due could be appropriated towards the principal. Nor does Section 12 give any such indication. Notwithstanding that fact, the Full Bench was able to hold that the amounts paid in excess of the interest due should be appropriated towards the principal. I do not see any reason why, if that could be done without an express provision, on the same parity of reasoning the excess amount should not be set-off against subsequent interest.

28. There is then the decision of a single Judge of the Madras High Court, Govindarajachari J., in *Muthiah Thevar v. Lakshmanan Pandithar*[6]*,* which throws considerable light on the question raised in this case. The question there was whether amounts paid by a debtor, though unappropriated at the time when they were made but appropriated by the creditor on the date of the plaint towards interest due under the contract, could be reopened and re-appropriated under Section 13 of the Act. In holding that the appropriation could be re-opened, Govindarajachari J., observes at page 503 (of Mad LJ) , as follows :

> "It is true that Sections 7, 8 and 9 of the Act deal with one subject, namely, debts incurred by agriculturists before 22nd March 1938, on which date the Act came into operation, while Section 13 statedly deals with debts incurred by an agriculturist after the commencement of the Act. It cannot however, be forgotten that all the provisions were meant for the relief of agriculturists and that the Legislature was in giving relief to

agriculturists over-riding several provisions of the general law

....

While a departure from the law of the country is not to be easily inferred it is, in my opinion, sufficiently clear from the wording as well as the object of Section 13 that the Legislature clearly intended to protect an agriculturist notwithstanding his own contract, and that it could not have intended to make his right to the benefit contemplated by the Act liable either to be defeated or materially curtailed by an act of the creditor to which the debtor is not consenting party."

The learned Judge distinguished the decision in 1944-2 Mad LJ 285 , on the ground that the debtor there consented to waive the benefits of the Act. In my view, the principle enunciated by the learned Judge would apply not only to unilateral appropriations made by a creditor but also to payments made by a debtor under a mistake.

29. For the aforesaid reasons, I answer the question in the affirmative.

Manohar Pershad, J.

[6]1948-2 Mad LJ 500

30. I agree.

Mohd. Ahmed Ansari, J.

31. I have had the advantage of reading the judgment by his Lordship the Chief Justice in the case. I agree with the reasons for answering in the affirmative the question referred to the Full Bench. I further concur that the answer to the question should be in the affirmative.

(FINAL JUDGMENT OF DIVISION BENCH)

Subba Rao, C.J.and Srinivasachari, J.

32. The Full Bench held that, in the case of a debt incurred after the Act came into force, a payment made expressly towards interest at the contract rate can be reopened and re-appropriated towards the interest payable under the provisions of Section 13 of the Act. On that basis, it is agreed that the appellant would be entitled to the following decree.

33. A decree will be made in favour of the appellant for a sum of Rs. 4190-14-4 with interest on Rs. 3375/- at five and half per cent. per annum from the date of the decree of the lower court till date of payment. As the parties have succeeded and failed in part, they will bear their costs here and in the courts below.
Order accordingly.