

# ANDHRA PRADESH HIGH COURT

Chebrolu Nagabhushanam

Vs.

Racbapudi Seetharamiah

Civil Revn. Petns. Nos. 280 and 281 of 1956

(P. Chandra Reddy, C.J., Seshachalapati and Sanjeeva Row Nayudu, JJ.)

29.07.1960

## JUDGMENT

### **Chandra Reddy, C.J.**

1. The question to be answered by the Full Bench is whether Section 9 of the Madras Agriculturists Relief Act, IV of 1938 (hereinafter referred to as the Act) applies to a promissory note executed after the commencement of the Act in discharge of an anterior debt incurred after 1st October, 1932 and before the commencement of the Act.

2. The question involved in both the revision petitions is the same. The two suits giving rise to these revisions are based on promissory notes executed in the years 1950 and 1952 but the liability of the respondents in both the cases originated in the year 1937. Though the debts were liable to be scaled down after the Act came into operation, the suit promissory notes were executed for the full amounts i.e. for the principal and interest at the contract rate.

3. It was contended on behalf of the plaintiffs that they were entitled to a decree on the basis of the suit promissory notes and that it is Section 13 of the Act that applies and not Section 9. The defense was that the debts in question should be treated as renewals of earlier debts and that interest should be calculated at the rate provided under Section 9 of the Act from the date of commencement of the dealings. The trial court gave effect to the plea of the defendants and reduced the interest to 5 per cent, in the view that the debts have to be traced back to the same originally advanced, and that interest should be reduced to five per cent from the date of the first borrowing. The plaintiffs seek to revise those judgments and decrees.

4. Now, the problem to be solved is whether it is Section 9 of the Act that applies or Section 13. At this stages it is convenient to read Sections 9 and 13 :

"Section 9 : (1) Debts incurred on or after the 1st October, 1932, shall be scaled down in the manner mentioned hereunder namely :

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.

Provided that any part of the debt which is found to be a renewal of a prior debt (whether by the same or a different debtor, and whether in favour of the same or different creditor) shall be deemed to be a debt contracted on the date on which such prior debt was incurred and if such debt had been contracted prior to the 1st October, 1932, shall be dealt with under the provisions of Section 8.

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."

5. There is conflict of judicial opinion on the interpretation of these sections. In *Thiruvengadatha Aiyangar v. Sannappan Servai*<sup>1</sup>, a Division Bench of the Madras High Court consisting of Wadsworth, J., and Patanjali Sastri, J., (as he then was) ruled that Section 9 had no application to a debt incurred after 22nd March 1938, since all debts incurred after the commencement of the Act, whether they be in discharge of prior debts or not, would fall only under Section 13.

6. There are observations to the same effect by the same learned Judges in *Sarveswara Rao v. Venkata Subbaya and Sons*<sup>2</sup>, though that was not a case of the renewal of a debt after the coming into force of the Act. They remarked :

"The obvious intention of the legislature in enacting this proviso was merely to give a rule for the classification of debts into those to which Section 8 will apply and those to which Section 9 will apply. The latter class of debts has to be scaled down with reference to the actual contract modified to the extent indicated by the reduction of the rate of interest."

7. These decisions were followed by Subba Rao, J., (as he then was) in *Krishnayya v. Venkata Subbarayudu*<sup>3</sup>, It may be mentioned here that the judgment in A. S. No. 290 of 1944, was not noticed by Subba Rao, J. in this case.

8. Another single Judge of this Court followed ILR 1942 Mad. 57 : (AIR 1941 Madras 799 (2)), and 1952-1 Mad LJ 638 in *Ramamurty v. Narasiham*<sup>4</sup>, The learned Judge said that ILR (1942) Mad 57 : (AIR 1941 Madras 799 (2)) was not dissented from but had been applied in all the

<sup>1</sup> ILR 1942 Mad. 57 : (AIR 1941 Mad 799)

<sup>3</sup> 1952-1 Mad LJ 638 : (AIR 1952 Mad 831)

<sup>2</sup> 1943-1 Mad LJ 231 : (AIR 1943 Mad 344)

<sup>4</sup> 1955-1 Andh WR 43 : (AIR 1957 And Pra 476)

subsequent decisions of the Madras High Court. Obviously, the attention of the learned Judge was not drawn to the unreported decision of a subsequent Division Bench of the same court consisting of Patanjali Sastri and Shahabuddin, JJ. in A. S. No. 290 of 1944 (Mad) or the decisions that followed it. It was laid down in that first appeal that where a promissory note executed prior to the commencement of the Act was renewed subsequent to the Act for the full amount due under the earlier note without taking into account the statutory reduction of the liability thereunder, the debtor was entitled by reason of Section 44 of the Negotiable Instruments

Act, to plead that the subsequent promissory note sued on was not supported by consideration to the extent which was in excess of what was due on the basis of the Act, IV of 1938 and that the plaintiff in such a case could only recover so much as would be found due and properly payable under the previous promissory note after applying the provisions of the Act.

9. Chief Justice Rajamannar relied upon the above ruling in *Mallikarjuna Rao v. Tripura Sundar*<sup>5</sup>, In both these cases, the renewals were made after the commencement of the Act in discharge of a debt contracted after the 1st October 1932.

10. We have now to consider which of the two views is correct. In our judgment, the law stated in A. S. No. 290 of 1944 (Mad), and followed by Chief Justice Rajamannar in 1953-2 Mad LJ 313 is correct as it seems to be more in accord with the language of Section 9(1) and the proviso.

11. In the first set of rulings, due regard was not had to the expression 'debt incurred' occurring in both Sections 9 and 13 of the Act. We feel that Section 13 can have application only to a borrowing made for the first time after the Act came into force and is not attracted to renewals of debts incurred prior to the commencement of the Act. It is difficult to regard renewal as incurring a debt within the purview of that section.

12. It has been pointed out by a Bench of this Court in *Punyavatamma v. Hari Venkata Satyanarayana*<sup>6</sup>, that a debt is incurred only when the borrowing is made, and it cannot be postulated that a debt is incurred each time a promissory note is renewed.

13. To the same effect are the remarks of another Bench of this Court in *Beekamchand Dhannalal, Firm v. Subbaraju*<sup>7</sup>, It is pertinent to note that the expression 'incurred' is employed in Sections 8, 9 and 13. The word 'incurred' in Section 9 can have reference only to a fresh loan because renewals of advances prior to 1st October 1932 fall within the ambit of Section 8. As such, the word would be meaningless if it is interpreted to include a renewal with reference to Section 9. The object of Section 8 also strengthens the view that the word is used as connoting only a new liability. In Bouvier's Law Dictionary the meaning given to that expression is 'to have liabilities cast upon one by act of parties or operation of law.' Therefore, the operation of Section 13 cannot be extended to debts contracted before the

<sup>5</sup>1953-2 Mad LJ 313

<sup>7</sup>1960-1 Andh WR 397

<sup>6</sup>1960-1 Andh WR 336

the Act. commencement of the Act but only to debts incurred after the commencement of

14. There is nothing in Section 9 to indicate that it should be restricted to renewals of debts falling under that section effected before the commencement of the Act. On the other hand, the proviso makes it clear that Section 9 is applicable to renewed promissory notes whether executed before or after the commencement of the Act. We are not convinced that it operates only in respect of debts falling within the ambit of Section 8. That section contains a provision in the shape of an Explanation which takes in all debts renewed or included in fresh documents and there is no reason why this proviso should have been inserted in Section 9 to cover debts incurred prior to 1st October, 1932. If the proviso is construed as applying only to borrowings made prior to 1st October, 1932, it is otiose for the reason that Section 8 itself contains adequate provision to deal with such cases.

15. The object of the legislature in enacting the last part of the proviso is not to limit the operation of the section to debts incurred before 1st October, 1932, but to require a court to trace the debt back to the original advances, where it is found that it was contracted prior to 1st October, 1932, and not to stop with scaling it down under Section 9. The proviso contains a machinery for scaling down a debt either under Section 8 or under Section 9 as the case may be depending upon whether the debt was contracted before 1st October, 1932 or thereafter.

16. In this connection, we may usefully extract the following passage from the judgment of a Bench of the Madras High Court consisting of Wadsworth and Patanjali Sastri, JJ. in *Chidambaram Aiyar v. Manekavasagam Pillai*<sup>8</sup>,

"There is nothing in the language of the proviso to suggest that it can be applied but once in the process of scaling down. The section makes provision for scaling down debts incurred on or after the 1st October, 1932 and directs that if any part of the debt sought to be scaled down is found to be a renewal of a prior debt, that part should be deemed to be a debt contracted on the earlier date and scaled down accordingly but in doing so, if it is itself a renewal in part or in whole of a still earlier debt, the proviso comes into operation again, for it is an integral part of the mode of scaling down prescribed under the section. We are of opinion that the object of the legislature in enacting this proviso is plainly to require the court to trace the debt back through various renewals to the principal sum or sums originally advanced and scale it down under Section 8 or Section 9 as the case may be."

17. It is true that the ruling was concerned only with a debt incurred in 1935 and decree obtained in 1937 and not with a case of renewal after the commencement of the Act. But the principle is stated in general terms and would apply with full vigour to a case of renewal after 22nd March 1938.

18. The above remarks lend support to the theory that the language of Section 9(1) is wide enough to include debts renewed after the commencement of the Act. In our

<sup>8</sup>1940-2 Mad LJ 232

view, the purpose of the section was to benefit a debtor whose dealings began after 1932 and this object will be defeated if a restricted interpretation is accepted. It is well settled that in interpreting the provisions of a beneficial legislation, courts should lean in favor of a construction which should further the object of such an enactment.

19. The foregoing discussion establishes that Section 9 should be applied to debts incurred after 1st October, 1932, despite their being renewed after the commencement of the Act, and that Section 13 cannot be extended to such cases.

(After the expression of the opinion of the Full Bench).

**Basi Reddy J.**

20. In view of the Full Bench decision, these Civil Revision petitions have to be dismissed. There

will be no costs in these petitions.  
Revision petitions dismissed.