ANDHRA PRADESH HIGH COURT

Indian Bank

Vs.

M. Krishna Murthy

Second Appeal No. 528 of 1978

P.A. Choudary and P. Kodandaramayya, JJ.

01.04.1983

JUDGMENT

P.A. Choudary, J.

1. This second appeal has been posted before this Division Bench on an order of reference made by Chennakesav Reddi, J. doubting the correctness of a Judgment of Gangadhara Rao J. reported in *Union Bank of India v. Koteswara Rao*[1]*)* which held, that a debt due to the Union Bank by an agriculturist, cannot be scaled down under Section 13 of the Madras Agriculturists' Debt Relief Act (Madras Act No. IV of 1938) hereinafter referred to as 'the Madras Act.'

2. The facts in this second appeal are few and are also simple. But the questions of law that call far our response are fairly, complicated and vastly important both to the agricultural community and the Banking Community.

3. The two defendants are agriculturists. For the purpose of carrying on their agricultural operations, they borrowed on 12-6-1973 from the Indian Bank, Allamuru Branch on a promissory note a sum of Rs. 2,100/-. The defendants undertook to pay the Indian Bank interest at the rate of 3 1/2% per annum over and above the official rate of interest fixed by the Reserve Bank of India, with quarterly rests, but subject to a condition that the minimum rate of interest payable by them should not be less than 10 1/2% per annum in any event. The official rate fixed by the Reserve Bank of India, however remained fairly high and within a period of three years, the liability of the defendants-agriculturists had jumped to Rs. 3093-65. No wonder, the defendants could not keep their promise to repay the amounts borrowed from the Indian Bank. The plaintiff-bank has, therefore, sued the defendants on the foot of the promissory note executed by the defendants for recovery of the principal amount together with interest calculated at 3 1/2% per annum over and above the Reserve Bank rate with quarterly rests.

4. In Maine's famous dictum that history of civilized societies is its history from status to contract, retained its validity today the defendants probably could not have afforded to plead anything substantial in extenuation of their failure to repay the debt as undertaken by them. But law, acting in refutation of the false assumption of equality of bargaining

[1](1979) 1 APLJ (HC) 87
power of the contracting parties, seeks to relieve the agriculturists from the burdens of their debts. In the year 1938, the Madras Provincial Legislature has, therefore, enacted the Madras Agriculturists Debt Relief Act Section 13 of that Act reads thus :-

> "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 5 +% 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."

The defendants claim that they are entitled to the protection of Section 13 of the Madras Act and that the plaintiff-bank can recover from them only such amount found due under the above promissory note calculated at the rate of 5 +% per annum interest while the plaintiff-bank denies the applicability of the above Section 13 of the Madras Act.

5. It is not in dispute and in fact the plaintiff-Bank does not deny that the defendants are agriculturists and that if Section 13 of the above Act applies to this transaction between the parties, the interest on the loan advanced by the bank to the defendants should be calculated at 5 +% per annum only. But what is pleaded by the plaintiff-bank is that it is a bank "formed in pursuance of a special Indian Law", within the meaning of Section 4(e) of the Madras Act and that therefore, no debt due to such a bank can be scaled down at all as directed by Section 13 of the Madras Act. For support of this contention, the plaintiff-bank relies exclusively upon Section 4 (e) of the above Madras Act and claims that the debt due to it from the defendants is outside the purview of Section 13 of the above Madras Act. Section 4 (e) of the Madras Act reads thus :-

> "Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads :-
> (a) to (d) ....
> (e) any liability in respect of any sum due to any co-operative society, including a land, mortgage bank registered under the Madras Co-operative Societies Act, 1932 "or any debt due to any Corporation formed in pursuance of an Act of Parliament" (of the United Kingdom) or of any special. Indian Law or Royal Charter or Letters patent."

6. On these contentions, the major question of law that falls for our consideration in this case is, whether Section 4 (e) of the Madras Act would be applicable to the debt due from the defendants to the plaintiff-bank. The question of the extent of applicability of Section 4 (e) of the Madras Act should be answered on the basis of the meaning it bears in the Act. But its meaning is to be gathered not merely from the words in which it is couched, but also from the context in which the section occurs and from the overall purpose of the Madras Act. The above Section 4 (e) is a non-obstante provision and therefore to the extent that provision applies to the facts in this case, it could clearly override Section 13 of the Madras Act on which the defendants rely upon for defeating the claims of the plaintiff-bank. But in considering the rival contentions of the parties, we must be aware that Section 4 (e) of the above Madras Act enacts an exception to the general purpose of the above Madras Act and even runs directly counter to the central objective which the Madras Act seeks to achieve which is to relieve the agriculturists of their age-old burdens of

rural indebtedness. It should not be forgotten that the burden of a debt owing to a bank falling under Section 4 (e) of the Madras Act can be no less burdensome to the agriculturist than any other debt he owes to any other creditor. Before applying such a section to any debt due by an agriculturist to a bank, we must therefore carefully scrutinize the language used by the legislature in Section 4 (e) of the Madras Act and examine its provisions with a view to find out to what extent that language permits the Courts granting of exemption now claimed by the plaintiff-bank in this case from the operation of the Madras Act. An analysis of the language used by the legislature in Section 4(e) of the Madras Act to the extent that it is applicable to our case shows that the claim of the plaintiff-bank (Indian Bank now the Union Bank) for exemption from the operation of Section 13 of the Madras Act can be upheld only if three conditions are fulfilled by the plaintiff-bank. Those conditions are : (a) the plaintiff-bank should be a Corporation; (b) the debt should be due to the plaintiff-banks; and (c) the plaintiff-bank should have been formed 'in pursuance of an act of British Parliament or in pursuance of any special Indian Law or Royal Charter or Letters Patent'. That the plaintiff-bank satisfies easily the first two conditions enumerated above admits no serious doubt. The plaintiff-bank is constituted in the place of the Indian Bank. That act of creation endowed the plaintiff-bank with an undying legal personality possessed of legal rights and liabilities. This creation of a legal person called by the name "The Indian Bank", is ordained by Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, (hereinafter called 'the Union Act') which is enacted by our Parliament. Section 3 (1)) of the said Union Act reads thus :-

> "Establishment of Corresponding New Banks and Business thereof :-
> (1) On the commencement of this Act there shall be constituted such corresponding new banks as are specified in the first Schedule."

(emphasis is ours).

It is by reason of this Parliamentary mandate that the plaintiff-bank has been constituted and endowed with legal personality. It is this legal person that lent the money to the defendants. Thus, it is clear that the plaintiff-bank is a Corporation and is entitled to recover the suit debt from the defendants which was advanced by it in the year 1973. Thus the above first two conditions should be held to have been fully fulfilled. But what is not so easy to decide is the question whether the plaintiff-bank can be said to have satisfied the requirements of the third condition. What does the third condition mean? For promoting clarity of our discussion, we may sub-divide the requirements of the third condition into two parts, the first part relating to formation of the Bank and the second part relating to the meaning of special Indian Law. According to the first part of this sub-division of the third condition, the Indian Bank should have been formed in pursuance of a law or a legal instrument'. According to the second part of this sub-division of the third condition, the above law or legal instrument in pursuance of which the bank is formed should have been either an "Act of British Parliament or a special Indian Law or a Royal Charter or Letters Patent." Now the question is, whether the plaintiff-bank can be said to have been formed in pursuance of a law. That depends upon the meaning which should be ascribed to the words "formed in pursuance of." The phrase "in pursuance of", has been judicially noticed. Those words are given in a judgment of a Canadian Court, the following meaning :-

> "The phrase "in pursuance of" is much more restrictive than the phrase "by reason of." The one imports a notion of obligation of duty to do a thing; the other suggests merely the

> power or authority to do it. The one is mandatory, the other is permissive." (Dobush V. Greater Winnipeg Water District (1945) 2 WWR 371 per Dysart J. at page 374). (See Words and Phrases Legally Defined Vol. 3 page 251 2nd Edn.)"

7. It is clear from the above extracted part of the Canadian judgment that the phrase "in pursuance of" refers to a subsequent action taken by an intermediary under the Parliamentary law. The above meaning given by the Canadian Court to the phrase "in pursuance of" cannot apply to a Corporation that came into existence without the necessity of any such intermediary subsequent action. In Mitra's 'Legal and Commercial Dictionary' (Eastern Law House Publication), the words pursuance of' were given the meaning 'under or under the authority of'. This meaning given by the legal Dictionary accords with the meaning given by the above Canadian case to the same words. The words 'in pursuance of' refer to the action taken under the law and not by the law itself. It therefore appears to us that the phrase 'formed in pursuance of' in Section 4 (e) of the Madras Act signifies a process of formation of a Corporation trader the law and not by the law itself. It is well-known that the word 'under' is contrasted in law with the word, 'by' and bears in law a different and distinct meaning from its antonym the word 'by'. For example, Section 113 of the Government of India Act, 1935 speaks of "A Company incorporated.... . . by or under the law of the United Kingdom." Similarly, Article 102 (e) of our Constitution speaks of a Member of Parliament incurring disqualification by or under any law made by Parliament.

8. In *Indramani v. W.R. Natu*[1], the Supreme Court examined this situation and, explained this contrast between these two words in the following words :-

> "The meaning of the words, "under the Act" is well known, "By" an Act would mean by a provision directly enacted in the Statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would in that context signify what is not directly to be found, in the Statute itself but is conferred or imposed by virtue of powers enabling this to be done. The distinction is thus between what is directly done by the enactment and what is done indirectly by rulemaking authorities which are vested with powers in that behalf by the Act."

9. Thus understood, the words "in pursuance of", can be said, to have been used appropriately by the legislature only to signify the activity of formation of a Corporation, carried on by an intermediary third party acting under a law as different from an activity of formation carried on by that law itself. In one case, the Corporation is formed by a subsequent act of an intermediary and in another by law itself. Applying the above distinction drawn by the Supreme Court and other Courts, it should be held that the plaintiff-bank constituted by the mandate of Section 3 of the above Act itself and not by any subsequent intermediary act of any other authority is not a Corporation formed in pursuance of any law. It is significant to note that Section 3 of the Union Act designates no such intermediary authority with any duty to constitute the plaintiff-bank. No Registrar

[1] AIR 1963 SC 274 (281)

of Companies is given the power to incorporate the plaintiff-bank. The formation of the plaintiff-bank is made to depend upon no volition of parties nor upon any subsequent Act. The plaintiff-

bank's creation is directly due to Section 3 of the Union Act itself. It is thus clear that the Indian Bank is constituted by the Law enacted by the Parliament itself. It is not constituted under any such law nor by any subsequent intermediary action under a Parliamentary law. In view of this conclusion, we do not find it possible to hold that the plaintiff-bank has been formed in pursuance of the above Union Act. In our opinion, the plaintiff-bank is formed by the Union Act itself and not under the Union Act.

10. Thus the first part of the third condition, in our view, is not satisfied by the plaintiff-bank. This conclusion of ours is enough for holding that Section 4(e) of the Madras Act does not apply to the plaintiff-bank and that the debt due to the plaintiff-bank from the defendants cannot be refused to be scaled down on the basis of Section 4 (e) of the Madras Act.

11. We note that it is not impossible to urge the contrary point that the use of the words "Royal Charter and Letters Patent", in Section 4(e) of the Madras Act should be taken to indicate that the bank is intended to be formed by the law itself. But this possible argument is not conclusive of the matter. Such an argument becomes conclusive only when a corporation cannot be created under a Royal Charter or Letters Patent. But on an examination of the matter we find that constitution of a Bank under Royal Charter or under Letters Patent is not legally impossible. In other words, the constitution of a Bank under a Royal Charter or under Letters Patent is as much legally possible as the constitution of a bank by a Royal, Charter or by Letters Patent. There is no legal impossibility in either of the two. So long as such a course of action is legally possible, we should not, considering the exceptional nature of Section 4(e) of the Madras Act, interpret that section in any way that defeats the beneficial purpose of the Act.

12. But what appears to be even more difficult for us to say is that the plaintiff-bank has been formed in pursuance of "any special Indian Law", within the meaning of Section 4(e) of the Madras Act. The Madras General Clauses Act does not define the words any special Indian Law. Those words were used in an Act enacted by the Madras Provincial Legislature during the British rule of this country. A careful reading of Section 4(e) of the above Act, would show that the words "any special Indian Law" could not have been intended to refer to any law made by any legislature of our country. A statute enacted by one of our nation's legislatures could not have been referred to with any degree of propriety or appropriateness as a special Indian Law. In speaking of any special Indian Law, Section 4(e) of the Madras Act, in our opinion, is referring not to a law made by any Indian Legislature but only to a law made by the British Imperial Parliament as a piece of special legislation applicable to India. Section 4 (e) of the Madras Act, in our view, while speaking of any special Indian Law is only speaking of a special Indian Law made by the British Parliament as different from any Act enacted by the British Parliament that might have application to India also in common with the rest of the British colonies. We must remember that the British Parliament was once legally competent to make laws for its farflung overseas possessions over which the sun had never set although, fortunately today, that sun never even rises on them. The famous Statute of Westminster as well as Section 6(4) of the Indian Independence Act demonstrate this legal competence of the British Parliament. If we examine the meaning of the words. Special Indian Law in the above context, it would be clear that those words refer only to a Statute of the British Parliament. It is a matter of significance that those words, "any special Indian Law", are preceded by the words" an Act of Parliament of the United Kingdom" and are followed by the words "Royal Charter or Letters Patent." Clearly the preceding words and the following words refer to the laws made by the British Parliament or to

the legal prerogative instruments of the crown. On the collection of such words in which we find the phrase "the special Indian Law, to occur in the Statute, we are inclined to hold that those words also refer to a special Indian Law made by the British Parliament and not to any special law made by our legislature. It is true that no decided case can be cited as an authority for this position. But we find that the few decided cases of our Courts on this point are unfortunately not of much help to us, because those cases merely examined the distinction between General Law and Special Law. Those cases, in our opinion, failed to consider the significance of the word "Indian" in the phrase 'special Indian Law'. Those cases did not ask the question why an Indian Legislature should call its own law an Indian Law. We are of the opinion that by special Indian Law, the Madras Act is referring to the British enactments passed to protect and promote the British interests in this country. It may be mentioned that White man's burden in ruling this country mainly consisted in protecting the British economic interests. That was then the major concern of the law in India. The purport of Section 4 (e) of the Madras Act is to protect those interests. 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. It may be noted that these provisions contained in Section 4 (e) of the Madras Act, are not made to give effect to any reciprocal international treaty obligations. They are onesided and are made to ensure the economic exploitation of this country by the British finance capital. The continuance of such a law on our Statute Book even after our Independence, would be clearly offensive to the status of our Sovereign Democratic Republic, for that reason, parts of Section 4 (e) of the Madras Act referring to a Corporation formed in pursuance of an Act of British Parliament or Royal Charter or Letters Patent should be held to be unconstitutional. (See *State of Madras v. Menon*[2]*,).* In Menon's case (supra) the Supreme Court observed that the grouping of India with overseas British possessions is "repugnant to the conception of a Sovereign, Democratic Republic." On the same reasoning, we hold that the granting of exemption to any corporation formed by the British Law is repugnant to the conception of our Sovereign, Democratic Republic. We are of the opinion that the last part of Section 4 (e) of the Madras 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" is also offensive to Article 14 of the Constitution and accordingly were hold the last part of Section 4 (e) to be void. This invidious discrimination in favour of the British Corporations is inherently vicious and offends the equality clause of Article 14 of our Constitution. It follows that the attempts of the plaintiffbank to invoke Section 4 (e) of the Madras Act to defeat the claim of the defendants for the protection of Section 13 should fail.

13. We find, that the present question whether the words. "Special Indian Law," will, at all apply to a law made by our Parliament was neither raised nor considered in any of the reported cases brought to our notice. In *Bank of Bapatla Ltd. v. Manyam Bibi*[3] Subba

[2] AIR 1954 SC517

[3](1954) 2 Mad LJ 215 (Andh Pra)

Rao, C.J. held that the Bank of Bapatla was not Corporation formed in pursuance of a Special Act. But that was on the basis that the Bapatla Bank was formed under a general law as different from a special law. The learned Judge observed, that :-

> "It appears to me that the words, "formed in pursuance of any Special Indian Law" are

intended to take in companies constituted by an act such as a University, Corporation Port Trust and similar other institutions formed under Special Acts. A company formed by a private arrangement and registered under the Companies Act is not a Company formed under a Special Act ....."

The above words underlined by us, clearly bring out the point that focus of the judgment of the learned Chief Justice was is on the dichotomy between General Act and Special Act and not between the British law and our Acts. Earlier Horwill J. ruled rather summarily in *Rukminamma v. Venkatrama Das*[4], that a registered society formed under the Societies Registration Act was a Corporation and a debt due to it cannot be scaled down. But his judgment also did not address itself to the present question. A judgment of the Madras Division Bench in *Chinna Papinaidu v. Imperial Bank of India*[5], while holding that the Imperial Bank of India falls both under Section 4 (3) and Section 10 of the Madras Act, refused to give exemption to the Imperial Bank under Section 4 (e) by holding that a debt due to the Imperial Bank by an agriculturist should be scaled down according to Section 10 of the Madras Act. That case also did not consider the present controversy. But it is interesting to note that the Division Bench in the above Imperial Bank case denied the Bank's claim far exemption from the provisions of the Act, on the ground that the Imperial Bank was a Scheduled Bank, falling under Section 10 of the Madras Act. This judgment clearly shows the difficulty in accepting the literal interpretation of Section 4(e) of the Act. As the Imperial Bank case shows, a bank falling under Section 4(e) may also be a bank falling under Section 10 of Madras Act. Under Section 4 (e) of the Madras Act such a bank would be totally exempt from the operation of the provisions of the Act. But under Section 10 of the Madras Act, the maximum rate of interest which a Scheduled Bank can charge alone is fixed. In other words, in the above Imperial Bank case Section 4 (e) is treated as subordinate to Section 10 of the Madras Act. In other words, the decision of the Imperial Bank of India (supra) did not accept the literal interpretation of Section 4 (e) of the Madras Act and gave effect only to the underlying purposes of the Act. The above Judgment of the Madras High Court was no doubt dissented from by a judgment of our High Court in *K. Swami Rao v. K.S.V. Samajan*[6], However, neither the Full Bench of our High Court nor the judgment in the Madras Imperial Bank case (supra), considered the significance of the word 'Indian'. They merely went upon the distinction between a General Law and a Special Law.

14. Our learned brother Gangadhara Rao, J. in *Union Bank of India v. D. Koteswara Rao*[7], had held that the Union Bank was constituted by the above Union Law. In doing so, the learned Judge had relied upon *Narender v. Central Bank of India*[8], *Sukhdev Singh v. Bhagatram* [9]; *L.I.C. of India v. K. Ramabrahmam*[10]. In *Narender v. Central Bank of India* (supra) a Division Bench of this Court held that the

[4](1940) 2 Mad LJ 554 : (AIR 1940) Mad 949)
[5] AIR 1954 Madras 273
[8](1978) 2 Andh LT 48
[9] AIR 1975 SC 1331
[6] AIR 1968 And Pra 147
[7]1979-1 APLJ (HC) 87
[10] AIR 1977 SC 1704

Central Bank of India was created by a Statute. In *Sukhdev Singh v. Bhagatram* (supra), the Supreme Court ruled that the Oil and Natural Gas Commission was a statutory Corporation created by law itself. In *L.I.C. of India v. Ramabrahmam* (supra) the Supreme Court ruled that the L.I.C. of India, was a similar Statutory Corporation. However, in none of these cases, the question whether the words 'Special Indian Law,' would apply to a law made by one of our Legislatures was considered. Gangadhara Rao, J. before whom this question was never raised

held that the Union Bank was formed in pursuance of a Special Indian Law and that therefore the Union Bank would enjoy the protection of Section 4 (e) of the Madras Act.

15. For the reasons mentioned above, we are unable to agree with the conclusion of Gangadhara Rao J. although we agree with him that these Banks were constituted by a law. In our view, the words 'special Indian Law' occurring in Section 4(e) of the Madras Act, have no application to a law made by any of our legislatures. As we have held that the special Indian Law refers only to a law made by the British Parliament, we hold that these banks, like the Union Bank and the Indian Bank, do not fall under Section 4(e) of the Madras Act and therefore do not enjoy any immunity from the provisions of the Madras Act. We accordingly hold that the plaintiff-bank can recover the interest from the defendants only at the rates permitted under Section 13 of the Madras Act.

16. We are also of the opinion that the interest which has been stipulated as payable by the defendants in this case with quarterly rests is inherently vicious and is hit by the Usurious Loans Act as amended by the Tamil Nadu Act No. 8 of 1937 which is applicable to our State. The Usurious Loans Act authorises the Court to relieve an agriculturists from the load of his debt liability arising out of any transaction providing for payment of excessive interest if the court has reason to believe that the transaction, as between the parties, was substantially unfair. But the Tamil Nadu amendment directed the courts to hold that where compound interest is charged such an interest is excessive. Thus the effect of the Tamil Nadu amendment is to mandate the courts to presume that in cases of loans to agriculturists, the charging of compound interest by itself is excessive and substantially unfair. As noted above, the interest which is chargeable in this case is calculated, with quarterly rests. That makes the interest a compound interest as different from a simple interest. Such a charging of interest amounts to charging interest on interest which is the essence of a compound interest as different from simple interest. Under the Tamil Nadu amendment of the Usurious Loans Act, we have to relieve an agriculturist from the burden of paying such a compound interest. But it is open for the bank to prove the existence of special circumstances in justification of charging such a compound interest. But no such circumstances have been shown to be existing. The mere fact that the Reserve Bank of India had authorized, or permitted to the collection of such compound interest or that the Bank which is charging such a compound interest is a Nationalised Bank, would not, in our opinion, be a sufficient justification to permit the banks to collect compound interest from an agriculturist.

17. We have seen the contrary view taken by the Madras High Court in *Indian Bank v. Gurukal*[11]. But that judgment, in our view fails to give effect to the above-noted Tamil Nadu amendment and in particular to Explanation No. 1. In this view, we are not able to agree with the decision of the Madras High Court in *Indian Bank Tiruvannamalai v. V.A Gurukal* (supra).

18. We accordingly direct a decree to be passed in favour of the plaintiff-bank calculating interest payable to it by the defendants-agriculturists at the rate of 5 +% simple interest per annum only. Subject to the above, the Second Appeal is dismissed but without costs.

Appeal dismissed.

[11] AIR 1982 Mad 296