ANDHRA PRADESH HIGH COURT

K.C. Venkateswarlu

Vs.

Syndicate Bank

Appeal No. 825 of 1977

(Jeevan Reddy and Kodandaramayya, JJ.)

23.09.1985

JUDGEMENT

Kodandaramayya, J.

1. This appeal was referred to a Division Bench by Madhava Reddy, J., (as he then was) on 17-4-1980 on the question whether the loan contracted by the appellant-defendant from the plaintiff bank - Syndicate Bank carrying an interest of 12+% p.a. and 21% p.a. in case of default by itself could be deemed to be excessive and usurious so as to attract the provisions of the Usurious Loans Act 10 of 1918.

2. The 1st defendant is the appellant. The appeal is filed against the judgment and decree in O.S.No. 25/76 on the file of Subordinate Judge's Court, Kavali granting a decree for a sum of Rs. 16,020.60 ps. at 6% p. a. from the date of decree. The appellant raised two contentions before the single Judge who referred the case to a Division Bench. The first contention is a sum of Rs. 10,000/- lying in fixed deposit in the plaintiff-bank should also have been adjusted towards the debt due and in any case the bank is bound to pay interest even for the period subsequent to the date of maturity of the deposit The contention was negatived by the learned Judge holding that in the absence of any specific agreement or instructions any fixed deposit amount cannot be adjusted towards the debt due. When admittedly there was no such agreement between the parties and no such instructions were given by the 1st defendant there is no merit in this contention and accordingly the said contention was rejected. The second contention raised before the learned Judge is that the interest at the rate of 21% p. a. claimed by the plaintiff-bank in the event of default in repayment of loan is illegal, penal, usurious and contrary to law and opposed to the public policy. On this question the learned judge noticed the judgment of Gangadhara Rao, J., in *Union Bank of India v. Dhanekula Koteswararao*[1], who held that in view of the Madras Amendment Act 8 of 1937 to the Usurious Loans Act of 1918, the Court shall presume that the transaction is substantially unfair if the interest is excessive. This amendment added new Explanation I to sub-section(1) of Section 3 of the Usurious Loans Act stating "If the interest is excessive, the Court shall presume that the transaction was substantially unfair; but such presumption may be rebutted by proof of special circumstances justifying the rate of interest". It also added a proviso to Clause (b) to sub-section (2) of Section 3 of the said Act which

states:Provided that in the case of loans to
[1](1979) 1 Andh WR 165
agriculturists, if compound interest is charged, the Court shall presume that the interest is excessive". As per Section 3 of the Usurious Loans Act, the Court is empowered to accord relief if the interest is found to be excessive and the transaction was substantially unfair. Sub-section (2) of the said section gave criteria to find out whether the interest is excessive and whether the transaction was substantially unfair. The Madras Amendment has reduced the rigour of the said provision by enacting the presumption and also conferring special privilege on agriculturists.

3. No doubt while judging the question whether the interest is excessive and the transaction is substantially unfair, the Courts have to consider the surrounding circumstances. The decided cases have held that compound interest of 18% and even 24% was reasonable rate of interest and not excessive. Vide *Ramalingam Chettiar v. Subramanya Chettiar*[2]*,*

4. However, the question now referred has become academic as the Banking Laws (Amendment) Act 1983 (I of 1984) inserted Section 21-A in the Banking Regulation Act 10 of 1949. The applicability of the said Act to the present debt is not disputed by the learned counsel for the appellant. It is no doubt true that one of us (Kodandaramayya, J.) held that the debts due to bank from agriculturists are not excluded from the purview of the Madras Agriculturists Relief Act 5 of 1938 by virtue of Section 21-A of the Banking Regulation Act. But it is admitted before us and also before the single Judge that the debtor in this case is not an agriculturist. Hence Section 21-A of the Banking Regulation Act governs the debt in question. It is necessary to refer to the said provision which is in the following terms :

> "S. 21-A. Rates of Interest charged by Banking companies not to be subject to scrutiny by Courts :-
> 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."

5. It is clear that the said provision makes the provisions of Usurious Loans Act inapplicable to any transaction between a banking company and its debtor. The Courts' power to reopen the transaction under the provisions of the Usurious Loans Act on the ground that the rate of interest charged is excessive is no longer available. It is not disputed that it affects the pending proceedings also though the Act came into force on 15-2-1984. Thus it is clear that the Usurious Loans Act is no longer applicable to any debt due to a Banking Company.

6. In view of this, no other question survives for our decision in this appeal and accordingly the appeal is dismissed. We make no order as to costs.
Appeal dismissed.
[2] AIR 1927 Mad 620