ANDHRA PRADESH HIGH COURT

State Bank of India

Vs.

Eluru (A.P)

Second Appeal No. 972 of 1984

(P.A. Choudary, J.)

16.10.1985

JUDGEMENT

P.A. Choudary, J.

1. The facts:- The plaintiff, the State Bank of India, Eluru Branch is the appellant. It appeals against a judgment of the learned District Judge, Eluru who in A.S.No. 151 of 1980 confirmed the judgment of the trial Court dismissing a suit filed by the Bank for recovery of a sum of money advanced by the Bank as loan to an agriculturist. The Bank sued its debtor, who is an agriculturist, in O.S.No. 176 of 1979 on the file of the district Munsif, Eluru for recovery of a sum of Rs. 8,260.20. That amount was made up of the principal and compounded interest due on the loan minus the part payments made by the defendant-agriculturist from time to time.

2. The principal sum the defendant borrowed from the plaintiff was only Rs. 7,200/- and that amount was secured by a mortgage. But that amount soared to be the suit amount even after the defendant had made part payments because of the stipulation of agreement providing for payment of compound interest. The loan agreement provided for the payment of 1+ of interest over and above the prevailing bank rate but subject to a condition of the debtor paying a minimum of 8+% per annum with quarterly rate on the borrowed amount. Thus the principal amount of loan earned every quarter interest which was added in that quarter to the principal amount. The principal amount thus got geometrically swollen up. In telugu this would be described as (Vernacular omitted). This method of charging interest known as the method of charging compound interest is always condemned. Lord Wright in *Riches v. West Minster Bank Ltd*[1]. refers to the saint-socialist scholar Prof. Tawney to say that money-lending was condemned by the medieval mind as usurious. In our country, charging of compound interest is particularly condemned in relation to the loans advanced to the agriculturists. Many reports of the famine and other commissions appointed to look into the causes for the economic misery of the Indian farmer found agricultural indebtedness as one of the principal causes for the economic misery of the farmer and asked for enacting a law prohibiting charging of compound interest. From time to time, the laws enacted by the Legislatures had made several attempts to prohibit levying of compound interest on the loans borrowed by the agriculturists and otherwise to relieve the farmers of their economic burden of debts. The

[1]1947 AC 390

A.P. Agriculturists Relief Act of 1938 otherwise known as the Rajaji Act is one of the outstanding modern instances of such enactments. So is the Usurious Loans Act of 1918 as amended by the Madras Act VIII of 1937. A Full Bench of this Court in *K. Purushottam v. K. Nageswara Rao*[2], agreeing with an earlier Full Bench judgment of Subbarao, C. J. (as he then was) in *Nainamul v. Subbarao*[3], held that the object of Section 13 of the above A.P. Agriculturists Relief Act, 1938 is to give effect to the statutory rate of interest, if necessary even by disregarding the contractual rate of interest. Mode of fixing allowable rate of interest is settled by Section 13 of Agriculturists Relief Act. Under Section 13 of the A.P. Agriculturists Relief Act, "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+% per annum. Simple interest, that is to say, one pie per rupee per mensum 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." However, the amount for the recovery of which the Bank had sued the defendant agriculturist in our present case was calculated on the basis of the contracted rate of compound interest. The defence of the agriculturist in the suit was twofold. He firstly objected to the mode of appropriation adopted by the Bank. But on this point, both the Courts below upheld the method of appropriation adopted by the bank and found against the defendant. As the defendant had never made any grievance of that finding of the trial Court either in the lower appellate Court or here in this Court, that objection of the defendant may be taken to have been waived. Only the second point of objection of the defendant survives for consideration. The defendant says that he was an agriculturist and that the contract between him and the Bank providing for charging of compound interest was contrary to the provisions of Section 13 of the above A.P. Agriculturists Relief Act of 1938, and also to the Usurious Loans Act 10 of 1918 as amended by the Madras Amendment Act VIII of 1937. The second objection of the defendant was upheld by the Courts below giving rise to this second appeal filed by the plaintiff bank.

The question : -

3. The only question that falls for consideration of this Court in this second appeal is whether the finding of the Courts below upon the surviving point of the controversy between the parties should be upheld.

Previous judgments of this Court : -

4. In one or two recent judgments of this Court for which I spoke similar questions of law were considered. In *Indian Bank v. Krishnamurthy*[4] a Division Bench held that the Indian Bank constituted by the mandate of Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act was not a Corporation constituted by a special Indian law and that Section 4(1)(e) of the A.P. Agriculturists Relief Act of 1938 to the extent it confers exemption from the applicability of the above A.P. Agriculturists Relief Act of 1938 on any Corporation formed in pursuance of an act of the Parliament of United Kingdom or any special Indian Law or Royal Charter or Letters Patent is void, and that consequently the provisions of the A.P. Agriculturists Relief Act would apply to all the loans advanced by the Banks to the farmers. In that

[2](1978) 2 APLJ 145

[3](1957) 2 Andh WR 53 (FB)

[4](1983) 1 Andh LT 357

judgment, it was also held as a separate point of law that the provisions of the abovesaid

Usurious Loans Act of 1918 as amended by the Madras Amendment Act of 1937(Act No. VIII of 1937) would apply to the loans advanced by these Banks to the agriculturists and would consequently render the Bank loan charging compound interest from a farmer a substantially unfair transaction without any special circumstances being shown justifying charging of such compound interest. In Indian Bank Adoni, In Re (1984) 1 Andh WR 127 the same view was reiterated with particular reference to the Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937 and the meaning of the special circumstances was further explained.

5. These judgments of this Court are clear authority for the following propositions of law. The Courts should not enforce against an agriculturist any contractual rate of interest over and above what was provided for by or under Section 13 of the A.P. Agriculturists Relief Act (2). The Courts should not enforce an agreement providing for charging of compound interest against an agriculturist. (3) Under the provisions of the Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937 the Courts should treat a loan charging agriculturist to compound interest to be a substantially unfair transaction.
Effect of those previous judgments and the contention of the Bank : -

6. Judged by the ratio of the above mentioned judgments of this Court, the judgment of the lower Court in this case must be upheld and this appeal filed by the plaintiff-Bank should be dismissed. So much is not denied by the Bank even. But what is argued by the appellant-Bank in this second appeal is that the above judgments of this Court following which the lower Court rendered their judgments are themselves rendered inapplicable to the loan transaction between the plaintiff-Bank and the defendant-agriculturist by Section 21-A of the Banking Companies Regulation Act (Act No.1 of 1984). The contention of the Bank in substance is that the above Section 21-A of the Banking Companies Regulation Act has the effect of interdicting the application of the A.P. Agriculturists Relief Act of 1938 and the Usurious Loans Act of 1918 as amended by Madras Amendment Act VII of 1937 to the loans given by the Banks to the agriculturists.
The Banking Companies Regulation Act and its meaning : -

7. The Banking Companies Regulation Act No. 1 of 1984 had been enacted by the Parliament subsequent to the rendering of the above judgments by this Court. This Court had, therefore, no occasion to consider earlier either the constitutional validity or the scope and meaning of the abovesaid Section 21-A of the Banking Companies Regulation Act. The question whether the abovesaid Section 21-A of the Banking Companies Regulation Act has taken away the applicability of the A P. Agriculturists Relief Act of 1938 and the Usurious Loans Act of 1918 as amended by Madras Amendment Act VIII of 1937 now falls for consideration. Section 21-A of the Banking Companies Regulation Act reads thus :

> "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 company in respect of such transaction is excessive."

For the present, I will not consider the question of constitutional Validity of Section 21-A of the Banking Companies Regulation Act. I assume for the purpose of this part of the discussion that

Section 21-A of the Banking Companies Regulation Act is constitutionally valid. I only ask whether that section has taken away the efficacy and the applicability of the abovementioned judgments of this court which are based upon the abovementioned A.P. Agriculturists Relief Act of 1938 and the Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937. Section 21-A can interdict the above two Acts only if Section 21-A is found to cover the same field covered by the above two Acts. In other words, that question can be answered in favour of the appellant Bank only by holding that the field of operation of the abovesaid Section 21-A of the Banking Companies Regulation Act is conterminous with the areas of operation of the above two enactments. It must be admitted that Section 21-A where it operates, forbids all courts from reopening a transaction between a banking company and its debtor on the ground that rate of interest charged is excessive. But it would be noted that this prohibition enacted by Section 21-A is not general and universal and does not prevent the reopening of a loan transaction on grounds other than grounds of excessive interest. The prohibition is, therefore, applicable only to those select cases where the court finds interest rates charged by the Bank are excessive and that the transactions are required by the defendant to be reopened for that reason. However, the powers of courts to reopen a loan are not confined only to a single ground of excessive interest. There are other grounds which are many and varied and are still available to the courts. On the grounds that the rate of interest charged in a particular case is usurious, extortionate or penal or the transaction itself is unconscionable, or opposed to public policy, a court can still reopen a loan transaction. These grounds are not touched by Section 21-A at all. Of the various grounds available for the courts to reopen transactions, Section 21-A picks up only one ground of excessive interest and makes that ground unavailable. In other words, Section 21-A of the Banking Companies Regulation Act cannot be read as forbidding the courts from reopening a loan on any of those grounds excepting the ground of excessive interest. The ground of excessive interest which alone is made by Section 21-A unavailable to the courts to reopen the transaction does not bar the court jurisdiction to reopen the transaction on other equally efficacious grounds which are different in law from ground of excessive interest. The meaning of excessive interest rate :-

8. Before we ascertain the legal meaning of the words "interest being excessive" we may note that economic thought found justification for charging interest. Aristotle laid it down that all money was in its nature barren meaning thereby that money was not the source of wealth. This deep insight into the economic nature and origin of the wealth of nations greatly influenced the climate of the logical opinion and classical economic opinion both of which condemned the institution of interest as one reaping a harvest without sowing. Adam Smith who extolled as the source of wealth could not justify on economic grounds charging of interest. But the running of an industrial, commercial economy demanded a pre-eminent place to be accorded to the institution of interest. Echoing this need of the industrial society its spokesman Bentham said that "Interest as love and religion..... should be free" meaning thereby that law should allow full freedom for charging of market rates of interest. Law, however, has never wholly accepted these free market ideas in money-lending even in those days of laissez-faire. Law struck a via media between the classical and theological view on the one hand and the needs of the modern society on the other. Frank, the economist, who described interest as the compensation paid for the risk and uncertainty involved in lending money expressed that via media justification. Law basing itself upon this justification broadly defines interest as the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another (Sec. Vol. 32 H.L.E. 4th Ed. Para 106). This view impliedly justified charging of interest. But courts as courts

of equity and justice enjoy wide powers to hold that the interest charged in a particular case is excessive as the amount collected is interest in that case is disproportionately higher than what would be the true and rightful compensation payable for the use or retention of the borrowed money. Compounding interest is inherently bad : -

9. Compound interest as different from simple interest is regarded as inherently objectionable. Lord Cottenham said in *Ferguson v. Fyffe*[5]*,*

> "Generally a contract or provision for compound interest is not available in English Law, as was decided by Lord Eldon in Ex Parte Bavan (1803) 9 Ves. 223, except perhaps as to mercantile accounts current for mutual transactions."

F. K. Mann, the well known authority on 'Money' says, that as a general rule compound interest is condemned by most countries (Sec. Vol. 101 LQR 30 at page 43). In the same article, Mann observes:

> "In Roman law enatocism" was absolutely prohibited and under its influence the prohibition continued for many centuries on the continent. In France the Code Civil demands a special agreement and limits compound interest to yearly rests (Article 1154 of Code Civil) no restriction applies in case of current accounts or where in case of other monetary obligations no payment of a specific principal sum of (is) in issue (Article 1155). In Germany the payment of compound interest cannot be agreed in advance, but numerous exceptions apply, particularly in the case of banking institutions and current accounts (Article 248 of the Civil Code, Article 355 of the Commercial Code). In Switzerland (Article 314) the law is similar, and the same seems to apply to Scotland. In the United States of America the broad rule is that contracts to pay compound interest are void."

Reverting Back to excessive interest :-

10. In deciding whether rate of interest is excessive or not, courts will have regard to the particular facts of a case before them. Such an enquiry will be conducted by the courts primarily on the basis of the security given by the debtor for the repayment of the loan and the solvency of the debtor and the market rate of interest prevailing. Normally where security offered by the debtor is good and adequate as it is in a case of mortgage of property the courts will hold charging of compound interest to be excessive. Rate of interest, which may not be excessive on an unsecured loan may, therefore, be found to be excessive by the courts where there is good security. See *Kruse v. Seeley*[6] Even rates of simple interest may be found to be excessive in particular cases. Thus the question of excess rate of interest charged in a case normally turns out to be essentially a question of fact which the courts can decide only by attending to the proved facts in each individual case. (See *Carringtons Ltd. v. Smith*[7]*,* Those

[5](1841) 8C1 and F. 121 [6](1924) 1 Ch. 136 [7](1906) 1 KB 79

facts like any other facts should be proved to the satisfaction of the courts in each individual case. These are all cases which are not basically different from those cases which come before the courts for decision on the defence plea that a particular contract is voidable on the ground that it

is unconscionable or harsh or opposed to public policy.
The Scope of Section 21-A : -

11. Section 21-A strikes against one of those pleas of the defendant. Section 21-A of the Banking Companies Regulation Act takes away that particular power of the court to reopen the transaction on the ground of excessive rates of interest. Section 21-A belongs to that genera of legislation which deals with a dispute between two parties before the court which is called upon to settle a dispute on the peculiar facts of that case and on the defendant's plea that the transaction cannot be enforced because it is harsh etc. In those classes of cases courts enjoy wt's plea that the transaction cannot be enforced because it is harsh etc. In those classes of cases courts enjoy wide discretion though judicial in applying their powers to the varying facts. What Section 21-A of the Banking Companies Regulation Act does is to cut into the width of its powers of reopening enjoyed by the courts and to prevent the courts from holding investigation into the relevant facts necessary to find out whether there is or not excessive interest charged. In other words the effect of Section 21-A is to render the defences that might be set up by the defendants on the ground that the rate of interest charged is excessive unavailable to him. In each individual case of that nature, the court applying Section 21-A of the Banking Companies Regulation Act will refuse to entertain such defences and consequently refuses to go into the question of the nature of security accepted, the risk involved in lending and the prevailing market rate etc. The courts which would have normally decided the questions relating to rates of interest will now refuse by reason of Section 21-A of the Banking Companies Regulation Act to decide that issue. Section 21A of the Banking Companies Regulation Act is, therefore, applicable only to individual cases. Its purpose is to forbid the courts from making an individual investigation and to forbid the courts entertaining a particular defence of the defendant. The legal effect of Section 21-A of the Banking Companies Regulation Act is nothing more and nothing less and is nothing else, than to prevent the courts from investigating into one type of defence that might be set up by the defendants and which would require a composite inquiry into that question.
Sec. 21-A compared with Agriculturists' Relief Act :-

12. Now, the question is, is the purpose of the A.P. Agriculturists Relief Act of 1938 the same as that of Section 21-A of the Banking Companies Regulation Act of 1938. It appears to me that it is not. On the other hand, the legal effect of the A.P. Agriculturists Relief Act is totally different from the legal effect of Section 21-A of the Banking Companies Regulation Act.The questions tried and the issues decided under the A.P. Agriculturists Relief Act are not the same as those under Section 21-A of the Banking Companies Regulation Act.The A. P. Agriculturists Relief Act is more like the Frazier and Lemke Act of the famous American New Deal Administration or the rule in Roman Law prohibiting 'Anatocism' or the American Rule that contracts to pay compound interest are void. This type of cases do not depend much upon the individual features and merits of the cases for the grant of relief. Agriculturists Debt Relief Legislation is a class legislation enacted for the benefits of farmers as a class. It applies to all farmers who belong to that class. The rule against excessive interest now excluded by Section 21-A depends for its application on individual facts and features, that can vary from case to case. The statement of objects and reasons of the Agriculturists Relief Bill shows that the purpose of the A.P. Agriculturists Relief Act is to rehabilitate the agriculture. Treating agriculture as a basic industry of this province and holding that on its prosperity depends the prosperity of all other sections of the people in the province, the A. P. Agriculturists Relief Act seeks to relieve the agriculturists of their burden of debts by wiping out existing debts in some cases and fixing ceilings on future

rates of interest in all cases and forbidding charging of compound interest altogether. Its object cannot be said to be to grant relief to individual farmers on the basis of excessive rate of interest found charged in each individual loan transactions. The relief under the A. P. Agriculturists Relief Act cannot be refused even by accepting rates of interest, to be not excessive. The policy of the A.P. Agriculturists Relief Act is to grant debt relief to all the farmers as a class with respect to their loan transactions irrespective of the varying rates of interest charged in individual cases and the nature of security accepted in those cases. For this purpose Section 13 of the A.P. Agriculturists Relief Act prevents the courts for granting decrees for the collection of interest rates over and above what is fixed by or permitted by Section 13 of the A. P. Agriculturists Relief Act. In effect, though not by expression the A. P. Agriculturists Relief Act renders charging of interest over and above what is fixed by Section 13 of the A. P. Agriculturists Relief Act of 1938 unlawful without any reference to other relevant factors which should go into a decision that a particular rate of interest is or is not excessive. Thus the A. P. Agriculturists Relief Act of 1938 has nothing to do with the individual merits or demerits of a particular case. In fact, it is conceivable for a court of law to find that 15% of simple interest charged to an agriculturist in a particular case is not excessive, but even in such a case the court would be without liberty to grant a decree for the suit amount because the courts under Section 13 of the A. P. Agriculturists Relief Act cannot pass a decree for 15% interest. Because passing of a decree for 15% interest would be contrary to the above Section 13 of the A.P. Agriculturists Relief Act of 1938 and not because the court finds it an excessive rate of interest the courts refuse to grant a decree at 15%. In other words, the grounds for granting of relief to a farmer under the provisions of the A.P. Agriculturists Relief Act are general statutory prohibition which are qualitatively different from the ground of excess interest which is mentioned in Section 21-A of the Banking Companies Regulation Act. In implementing Section 13 of the A. P. Agriculturists Relief Act, it is not at all the concern of the courts to find out whether the rate of interest is excessive or not. Such an enquiry will be wholly outside the scope of the Agriculturists Act. On the proof of the fact that the rate of interest was not simple interest or that the rate of interest was more than what the Legislature had prescribed under Section 13 of the A.P. Agriculturists Relief Act, 1938 and that the debtor was an agriculturist, the court acting under Section 13 of the A.P. Agriculturists Relief Act is bound to grant relief to the farmers. The court enforcing the provisions of A.P. Agriculturists Relief Act will not inquire into the nature of security offered or the prevailing rate of interest or the solvency of the debtor, etc. without which the question of excess rate of interest cannot be determined. It must, therefore, be held that the area of operation of Section 21-A of the Banking Companies Regulation Act is far different and removed from the area of operation of the A.P. Agriculturists Relief Act of 1938 and that particularly Section 13 of that Act which was enacted to relieve the agriculturists as a class of their burden of paying interest over and above what is fixed by or under Section 13 is not in any way, constricted or countermanded by the obligation of the courts flowing from Section 21-A of the Banking Companies Regulation Act. Enacted for the purpose of forbidding the courts from considering and accepting the defence of excessive interest in suits filed by the Bank for the collection of their loans and dealing with the individual cases, Section 21-A of the Banking Companies Regulation Act is not conterminous in its operation with the above two State Acts. The A.P. Agriculturists Relief Act of 1938 deals with a general classes of the society. The grounds of relief permitted and prohibited to the courts by the two Acts are different. The method of enquiry contemplated to be adopted by the courts is different. The purpose, operation and the effect of Section 21-A of the Banking Companies Regulation Act is not even remotely connected with the purpose, operation and the effect of the A.P. Agriculturists Relief Act of 1938. It, therefore, follows that even after the enactment of

Section 21A of the Banking Companies Regulation Act by the Parliament, the courts are bound to give effect to the above mentioned judgments of this court which are based on the interpreted scope, meaning and applicability of the A.P. Agriculturists Relief Act of 1938.
The "Debtor" in Section 21-A is not an agriculturist:-

13. Further as a matter of construction, it is not easy for me to hold that by the use of the generic word 'debtor' Section 21-A of the Banking Companies Regulation Act intends to refer to the agriculturists. Agriculturists constitute a special and particular economic segment of the society found to be in dire need of statutory relief from their agricultural indebtedness. Only a small fraction of Bank loans are advanced to agriculturists. They are largely given to industrialists, consumers and even to speculators. The A. P. Agriculturists Relief Act, 1938 is a special law enacted to relieve the State Economy of a particular ailment found by the elected representatives to be afflicting it. That Act is therefore made applicable only to agriculturists. By the time Section 21-A of the Banking Companies Regulation Act has come to be enacted, the law is that the Agriculturists Relief Act covers the Bank loans advanced to agriculturists. Parliament which must have been aware of the applicability of the A. P. Agriculturists Act to the Bank loans did not specifically refer to the Bank loans advanced to the agriculturists and deny the farmers relief to which they are found by the State Legislature to be in need of. One would expect the Parliament to use specific language to that effect if that were the intention of the Parliament. Section 21-A does not use any such specific language. In the absence of any such language in Section 21-A of the Banking Companies Regulation Act, I find it difficult to hold that the general language of Section 21-A is enough to cover the Bank loans advanced to the agriculturists also.
Section 21-A and the Usurious Loans Act: -

14. It must be admitted that on first looks Section 21-A of the Banking Companies Regulation Act bears some similarity to the provisions of the Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937. But these first appearances are more deceptive than real. Both the Usurious Loans Act as well as Section 21-A are, no doubt, applicable to individual cases and that courts, before relieving the debtors of their burden of debt under these Acts, must exercise their jurisdiction and find out in each individual case whether the assailed transaction to be usurious. But beyond that point, the two Acts in their application part company with one another. Under the provisions of the Usurious Loans Act of 1918 as amended by the Madras Amendment Act No. VIII of 1937 the ground for the grant of relief is different from the ground denying relief under the provisions of Section 21-A of the Banking Companies Regulation Act. We have already seen that Section 21-A of the Banking Companies Regulation Act forbids the reopening of transactions only on the ground of excessive interest rates. But after the Madras Amending Act No. VIII of 1937, that ground of excessive interest no longer remains relevant for the application of the Usurious Loans Act of 1918. Before the amendment, under Section 3 of the Usurious Loans Act of 1918 the court's power to reopen a transaction is based upon its reasonable belief that the interest charged was excessive and that the transaction was substantially unfair. But now the Madras Amendment Act VIII of 1937 has amended Section 3 of the Usurious Loans Act of 1918 to say that the court can reopen the transaction where the courts have reason to believe that the transaction was substantially unfair. Thus the ground of charging excessive interest was deleted by the Madras Amendment Act and is no longer relevant for reopening the transactions. To that amendment, Explanation I was added.

"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."

15. To the above, a proviso was added to the effect that in the case of loans to agriculturists if compound interest is charged, the court shall presume that the interest is excessive. It would be noted that even the above amendments do not make the power of reopening turn upon excessive rate of interest. The power of reopening a loan transaction can be exercised under the amended Usuruious Loans Act only on the ground that the transaction between the parties is substantially unfair. It is true that in reaching that conclusion, the Amending Act directs the court to presume that in all cases where compound interest is charged to farmers, interest is excessive and that, therefore, the transaction was substantially unfair between the parties unless special circumstances justifying the charging of compound interest were shown to exist. That direction merely adds a rebuttable presumption made by the statute in holding that the transaction is substantially unfair. But it does not alter the grounds contained in the enacting clauses of the amended Usurious Loans Act for the court to avoid a transaction on the ground that the rate of interest is excessive. The statute thought that conceivably there can be cases of excessive interest without the transaction being substantially unfair. That must have been the reason why the unamended Usurious Loans Act of 1918 mentions both the grounds as available for reopening a transaction. Now, of the two grounds, the Amending Act retains only the ground of substantially unfair transaction. In my opinion, there would be no justification for mixing up both the grounds. The two grounds should be kept separate. As Section 21-A of the Banking Companies Regulation Act deals only with the ground of excessive interest and did not deal with the ground of substantially unfair transaction with which alone the Usurious Loans Act as amended dealt with the applicability of Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937 cannot be taken to have been overridden by Section 21-A of the Banking Companies Regulation Act. To that extent, I am of the opinion that the law laid down by the above mentioned Krishnamurthy's case (AIR 1983 Andhra Pradesh 347) and as elaborated by Indian Bank, Adoni, In Re (1984) 1 Andh Pra WR 127 still governs the transactions of debts incurred by the Agriculturists on their loans from the Banks. For that reason, I hold that Section 21-A of the Banking Companies Regulation Act cannot be construed as overriding the operation of the Usurious Loans Act of 1918 as amended by the Madras Amendment Act VIII of 1937 in their application to farmers. Considering the scope of Section 21-A of the Banking Companies Regulation Act from that angle, I came to the conclusion that Section 21-A would not interdict the applicability of even the Usurious Loans Act of 1918 as amended by the Madras Amendment Act No. VIII of 1937 and that according to the interpretation placed by this court by the above mentioned decisions on the Usurious Loans Act of 1918 as amended by the Madras Amendment Act No. VIII of 1937 still applies to the loan transactions entered by the Banks with the farmers. Federal Distribution of Legislative Powers :-

16. So long, we have not touched upon the question of constitutional validity of Section 21A of the Banking Companies Regulation Act. Section 21-A is a parliamentary law. Such a law can be constitutionally valid only so long it is a law within the ambit of the legislative capacity of the Parliament and so long it did not violate the constitutional injunctions contained in the chapter on fundamental rights. So far, I have assumed that Section 21-A of the parliamentary law is constitutionally valid in both respects and could therefore override the operation of the A. P. Agriculturists' Relief Act of 1938 and Usurious Loans Act of 1918 with its Madras amendment.

We will now have to test that assumption and see whether Section 21-A of the Banking Companies Regulation Act enacted by the Parliament can, while carrying the meaning which the appellant Bank attributes to it as forbidding the courts not to scale down the debts owed by the agriculturists to the Banks on the ground of excessive interest, be regarded as *ultra vires* of the legislative powers of the Parliament. Fundamental rights apart, Section 21. A can be upheld only if that section is found to be a law with respect to one of the items in List I of the seventh schedule.

17. Under our constitutional system of distribution of Legislative powers between the Union on the one hand and the States on the other, about 97 matters are listed in the Union list, also called list I, with respect to which laws can be made only by the Parliament. This legislative power of the Parliament is exclusive and paramount to the legislative power given by the Constitution to the States with respect to some 66 matters listed in the State List also called List II. Thus, notwithstanding the fact that the legislative power of the State is called 'exclusive' and extends to those 66 matters, in case of any conflict or collision between a law made by the Parliament with respect to any one or more of items enumerated in List I and any State law made with respect to any one or more of those 66 matters above mentioned, the parliamentary law will be treated as paramount. Thus any finding that Section 21-A is a law with respect to a Union matter automatically established the supremacy of that law and overrides the operation of the State law. In deciding the federal question of distribution of legislative powers one cannot forget this crucial fact.

18. Now in examining whether Section 21-A of the Banking Companies Regulation Act is a law made with respect to any one of the matters which are listed in the Union List, we need notice only items 43, 45 and 46 of the Union List. As Section 21-A does not deal even remotely with the incorporation or winding up of any banking corporation, constitutional justification of Section 21-A on the basis that it was a law made with respect to Item 43 of the Union List can neither be offered nor accepted. The above observation would apply with equal force to what I have to say on the inapplicability of Item 46 of the Union list, which authorizes the Union Parliament to make law with respect to Bills of exchange or promissory note or any other negotiable instruments. Section 21-A cannot be argued, with any degree of plausibility, to be a law with respect to any of the matters in the above item 46 of the Union List. These items 43 and 46 of the Union list do not fall for further consideration. The argument that Section 21A may be regarded as a law with respect to Item 45 of the Union list cannot, in my opinion, be so summarily dismissed. Item 45 of the Union List mentions the subject matter of banking. Now the question is whether Section 21-A the subject matter of which is denial of relief of agricultural indebtedness can be said to be a law with respect to Banking. "Banking" connotes the carrying on of an activity. In its strict and primary sense, that activity of Banking covers only receiving of moneys on current or deposit account and payment of cheques paid in by a customer. Without doubt it can be asserted that neither money lending in general nor denial of grant of relief of agricultural indebtedness in particular which is the substance of Section 21-A will come within the scope of the basic meaning of the word "Banking" in Item 45 of the Union list. (See Vol. 2 H.L.E. 4th Edn. and also the judgment of the court of appeal in *United Dominions Trust v. Kirkwood*[8]). If that were all, Section 21-A would not be characterised as a law with respect to the item of Banking in Union List. But the courts have attributed to the word 'Banking' an extended meaning which goes far beyond its primary meaning. Interpreting the head 15 of the enumerated classes of the exclusive federal subjects in the British North America Act, the Privy Council laid

down in *Attorney General for Alberta v. Attorney General for Canada*[9] that the word "Banking" in that entry carried an extended meaning including grant of credit by Banks to its customers. It was on that basis the Privy Council in that case struck down "The Alberta Bill of Rights Act" as *ultra vires* of the powers of the province of Alberta to enact. There is a similar legislative entry in Section 51(xiii) of the Australian Constitution. The word 'Banking' in the Australian Constitution had also received similar meaning in its extended sense. These cases can be taken as authority for holding that the extended meaning of the word Banking is accepted by courts. But the question still remains whether under our Constitution the Union Legislative entry of Banking in Item 45 can be so expansively interpreted as it was done in Canada and Australia. This question is crucial for any discussion because Section 21-A of the Banking Companies Regulation Act can be upheld as a law with respect to the Union Subject only if such a wide meaning is given to the word 'Banking".

19. As was said in his Modern Constitutions quoting Bolingbroke, "Constitution is an assemblage of laws, institutions and customs..... that comppsed the general system according to which the community has agreed to be governed". Our Constitution has set up institutions which are appropriate for a welfare State under a socialist Republic. We have agreed to be governed by a system of federal polity. The legislative powers which have been given under that polity either to the Parliament or to the States are more in the nature of duties imposed upon the representative institutions to enact laws for the purpose of alleviating the miseries of the people and meeting their needs. Under that system of laws and Government, the Authority to legislate upon money lending and money lenders in general and grant of relief of agricultural indebtedness in particular is made by the Constitution as the exclusive prerogative and power and concern and responsibility of the States. To that extent, the Constitution has deliberately denied power to the Parliament to make laws with respect to the subject of relief of agricultural indebtedness. According to that system of distribution of legislative powers Section 21-A cannot be upheld to be a law with respect to a federal subject. The fact that the word Banking received a wider meaning under certain constitutional systems such as Canada or Australia cannot detract from the fact that under our Constitution relief of agricultural indebtedness is not treated

[8](1966) 1 All England Reporter 968

[9]1947 AC 503

as a part of federal powers of Banking. It can be said with certainty, so far as our
Constitution is concerned, that the legislative subject of agricultural indebtedness is always treated as separate and distinct from Banking and is allotted to the exclusive jurisdiction of the regional governments while the subject of Banking is always allotted to the Union. The unimpeachable evidence of our Constitutional history and the relevant constitutional texts furnish convincing support for this view. Both under the 1935 Act as well as under the present Constitution, Banking is treated as a federal subject to be legislated upon by the Parliament alone. Under the 1935 Act, there was no specific item of relief of agricultural indebtedness. Under the 1935 Act there was only money-lending and money lenders as a part of item 27 of the Provincial List. Under the Draft Constitution, while retaining the item of money-lending and money lenders as a State but an independent subject of legislation it is proposed that a separate and distinct legislative item namely "Relief of Agricultural indebtedness" should be added to the exclusive State list in item 34. According to that draft proposal, item 34 read as 'Money-lending and Moneylenders, relief of agricultural indebtedness". By means of that proposal of the draft Constitution and particularly by addition of the words relief of agricultural indebtedness the State

jurisdiction to make exclusive laws on the subject of agricultural indebtedness was largely enlarged and was given a vastly enhanced status. The idea of the amendment was to preclude the possibility of any argument being advanced to the effect that the exclusive State subject of agricultural indebtedness could be effected or touched upon by the exercise of federal power within its domain. No one in the constituent Assembly had ever opposed this draft scheme of item 34 granting relief of agricultural indebtedness or making the States solely responsible for that. The need for wiping out agricultural indebtedness is universally accepted. The only amendment proposed by Prof. Shibbanlal Saxena sought to transfer this draft item 34 from the exclusive state list to the concurrent list so that both the Union Parliament and the State Legislatures can be held responsible and accountable for wiping out of agricultural indebtedness. That amendment of Proof. Saxena was based on the availability of superior resources with the centre. If we thought that the task of granting relief of agricultural indebtedness is so gigantic and urgent that its tackling would require the conjoint efforts of both the national legislatures and the regional legislatures. Prof. Saxena, moving his amendment on 2nd September, 1949 said :

an important amendment, I would like the House to realise the magnitude of the problem. We all want to wipe out rural indebtedness. Sir, in this connection I would like to read an extract from the people's plan for economic development of India, which runs as follows: - The other problem that will have to be tackled along with this problem of the outmoded land tenure system, will be the problem of rural indebtedness. The total rural indebtedness was estimated by the Central Banking Inquiry Committee, in the year 1928, at about 900 crores of rupees. Subsequent estimates have however, put the figure at a much higher level. The estimate according to the report of the Agricultural Credit Department of the Reserve Bank of India in the year 1937 is about 1800 crores of rupees. It is not possible that this might have reduced to any significant extent since the year 1937, nor can the so-called agricultural boom at present be said to have produced very substantial reductions. The money-lender in the country dominates more in that strata of the agricultural population which is relatively worse off. This he boom can hardly be said to have benefited that strata. On the other hand, the debt represents accumulations of decades. The debt legislation in the various provinces has not, admittedly, been able to touch even the fringe of the problem. We feel it necessary, therefore, that the debt should be compulsorily scaled down and then taken over by the State. Experiments made in this direction in the Province of Madras, for example, serve as a useful pointer. Under the working of the Madras Agriculturists Relief Act of 1938 debts were scaled down by about 47 per cent and the provisions of the Act can, by no logic, be characterised as drastic. In the Punjab, under the operation of the Debt Conciliation Boards, debts amounting to 40 lakhs were settled for about 14 lakhs. It should, therefore, be possible and must be considered as necessary to scale down the present debts to about 25 per cent, before they are taken over by the State. Assuming the present indebtedness to amount to about Rs. 1,000/- crores the debt to be taken over by the State will come to about Rs. 250/- crores.

The compensation to be paid to the rent-receiver as well as to the usurers will thus amount to Rs. 1985 crores. This should be paid in the form of self-liquidating bonds issued by the State. These should be for a period of 40 years at the rate of interest of 3 per cent and should be compulsorily retained by the State to its possession. The annual payments to be made by the State for these bonds will come to about Rs. 60 crores. On the carrying out of these initial measures will depend the success of the planned economy for raising the productivity of agriculture in the interests of the cultivators. Unless the status quo is changed in this manner there can be no hope of improving the standard of living of the vast bulk of our peasantry, and therefore, no hope of building up an industrial structure in the country on sound, stable and secure foundations. We are

aware of the difficulties in the way of carrying out the above measures, but we are unable to see any alternative to them whatsoever". It is thus obvious that if we really want to remove agricultural indebtedness, the problems cannot be solved merely by action taken by individual States. Only a comprehensive plan and its bold execution with the fullest co-operation of the Union Government with the Government of the States can solve these problems. It is therefore that I have suggested that this entry should be transferred to list III. Sir, I have tabled my amendment only with this purpose in view. I feel and I am quite convinced that we cannot change the face of our country and we cannot realise the 'India' of our dreams unless we adopt a comprehensive plan and have powers to co-ordinate the activities of the centre and the provinces. I therefore commend my amendment for the earnest consideration of the House.

(See Constituent Assembly of India Debates Volume page 900)

20. It is common knowledge of Indian Economic History that the burden of the whiteman (which is not the same as whiteman's burden) in this country was borne principally by our agriculturists who produce the primary goods. The colonial exploitation of our country was carried on by the British mainly at their cost and expense. Several official reports including those submitted by famine commissions and unofficial publications of reputed economists bear eloquent testimony to those economic facts. One of the major pledges of the Indian National Movement is to eradicate this economic State of helplessness of the Indian agriculturists. But none had ever more forcibly described this economic tragedy of the Indian farmer than Mahatma Gandhi who in his famous statement made to an Indian Criminal court trying him for sedition. The Mahatma said:

> "No sophistry, no jugglery in figures can explain away evidence that the skeletons in many villages present to a naked eye. I have no doubt whatsoever that both England and the town-dwellers of India will have to answer, if there is a God above, for this crime against humanity, which is perhaps unequalled in human history."

21. The Constituent Assembly rejected Prof. Saxena's amendment to transfer the item 34 to the concurrent list. The rejection of Prof. Saxena's amendment to transfer the item of relief of agricultural indebtedness to the concurrent list is a clear proof of the fact that in the view of the Constitution, the power, the responsibility and accountability for solving the problem of agricultural indebtedness should not be shared by the States with the Parliament and that it should exclusively belong to the States alone. This exclusion of the subject of relief of agricultural indebtedness from the jurisdiction of Parliament must be taken to have been based upon the principle that the grant of relief of agricultural indebtedness calls for different approaches at State level. To uphold the authority of the Parliament to legislate upon the subject of grant or denial of relief of agricultural indebtedness on the ground that the word "Banking" would include grant of credit also would amount to destroying the above federal scheme of distribution of legislative powers carefully drawn by our Constitution. The responsibility of the States to alleviate the misery of agriculturists would be whittled down and would almost be wiped out. So long as the State laws are allowed to be overridden by the paramount Union laws made on Banking, no State legislation enacted for the purpose of granting relief of agricultural indebtedness can either be effective or complete. It would be illogical to hold that the same Constitution which deliberately made the States responsible and accountable to relieve agricultural indebtedness has denied them the exercise of the necessary and plenary powers to

legislate upon that subject of relief of agricultural indebtedness arising out of the bank loans. The Constitution could not have intended for providing for a scheme of maimed, moth-eaten and truncated relief of agricultural indebtedness. With the rapid changes in the methods of agricultural operations, carrying on agriculture is becoming more and dependent upon the use of costly machinery and costlier chemical inputs and pesticides and less and less on the direct support of the mother earth and monsoon. These changes, coupled with the drastic reductions in extents of individual agricultural holdings brought about by social legislation drive the agriculturists to lean more and more on the support of the bank loans for carrying on his occupation. These considerations induce me to hold that denial of relief of agricultural indebtedness to the farmers by the Parliament would be beyond the legislative competence of the Parliament.

22. These constitutional entries intended for achieving a great social object cannot be read as if they are contained in the last will and testament of the Constitution-makers. The correct constitutional perspective is sure to elude the grasp of best of minds which, though strong in concept, are weak in vision and slow in capturing the historical truths. Our history is full of evidence of the British colonial exploitation of this country which necessitated taking of measures for providing relief of agricultural indebtedness. Examining the matter from that angle, I am led to the conclusion that the legislative subject of grant of credit to the agriculturists is treated by the Constitution to be an exclusive State subject with which the Union has no concern.

23. The Schemes of the Canadian Constitution and the Australian Constitution are not at all identical without constitutional scheme. No famine, no pestilence, no disease did hit the Canadian farmer or Australian farmer with the same force or frequency as they hit the Indian farmers nor did they hit them with on such a gigantic scale. The absence of the item of relief of agricultural indebtedness being mentioned as a separate and distinct item of regional jurisdiction, in those Constitutions is understandable. In the absence of such a separate enumeration in those conditions the need to subtract from the general meaning of the word "Banking" in the federal list the specific meaning of the word's "Relief of agricultural indebtedness" was never felt. The above mentioned Canadian and Australian decisions cannot, therefore, in my opinion, be applied to the solution of our constitutional problems. Although Maitland condemned unorthodox law and orthodox history, a constitutional lawyer cannot but be contemporaneous. The list derived from one page of the history of our national movement about which our Constitution makes a specific mention in Article 51-A might illumine more brightly the meaning, the purpose, the scope and the scheme of our Constitution than the entire case law of the Canadian and Australian Constitutions. Constitutional law is neither metaphysics for the constitutional scholars to dispute learnedly about nor is it revelation for the constitutional priests to gloss and annotate. Constitutional law deals with the live problems of the nation.

24. The interpretation that might be appropriate to a statute cannot be appropriate for the interpretation of a dynamic document like the Constitution. Prof. Powell said commenting on the decisions of the American Supreme Court on commerce, clause, "The court has drawn its lines where it has drawn them because it has thought it wise to draw them there. The wisdom of its wisdom depends upon a judgment about practical matters and not upon a knowledge of the Constitution". Section 36 H.LR. at P. 914 where Powell was quoted by Prof. Frankfurter. I am therefore of the opinion that Section 21-A of the Banking Companies Regulation Act cannot be considered as a law with respect to the item of "Banking" in the Union List.

25. I cannot even consider that Section 21-A can be upheld by the application of the talismanic doctrine of pith and substance. The piths and marrow of Section 21-A is denial of relief of agricultural indebtedness. It is a direct invasion of Item 30 of the State List. To such a situation the doctrine of pith and substance can have no application. For that reason I hold that doctrine of pith and substance cannot be applied to the present discussion.

26. The right rule, in my opinion, which should be applied for the interpretation of the federal power of banking is the one laid down by the Privy Council in *John Deeri Plow v. Wharton*[10], and *Great West Saddlery v. King*[11] preventing federal law from sterilizing or destroying the capacities and powers of the State Legislatures to grant relief of agricultural indebtedness. In that view, I am in most respectful agreement of the judgment of the Full Bench of the Madras High Court in *Nagaratnam v. Seshayya*[12],

27. Our Supreme Court in *Fatechand v. State of Maharashtra*[13], categorically declared that money lending and debt liquidation are within the State's legislative competence. It said :

> "Entry 30 in List II is "Money-lending and money-lenders, Relief of Agricultural indebtedness". If common sense and common English are components of constitutional construction, relief against loans by scaling down, discharging,

[10]1915 AC 330 [12] AIR 1939 Mad 361
[11](1921) 2 AC 91 [13] AIR 1977 SC 1825 at P. 1844

> reducing interest on principal and staying the realisation of debts will, among other things, fall squarely within the topic. The whole gamut of money-lending and debt-liquidation is thus within the State's legislative competence."

28. In *Pathumma v. State of Kerala*[14], our Supreme Court had reiterated the above view of the item No. 30 of List II.

29. Considering the fact that grant of debt relief has always been treated in our country as a legislative subject to be passed upon by the regional Government alone and that the words "Relief of agricultural indebtedness" were specially added by our Constitution to enable the State Legislature to alleviate the suffering of the farmers from their agricultural indebtedness and that the Constituent Assembly had deliberately rejected an amendment moved seeking to transfer this item to the concurrent list, I hold that Section 21-A of the Banking Companies Regulation Act which forbids the courts from reopening the bank loans on the ground of excessive interest is not a law enacted by the Parliament with respect to the item of Banking. In that view I consider it not necessary to discuss the doctrine of reading down.

30. I am also of the opinion that Section 21-A is not consistent with the constitutional mandate of Article 14. I am of the opinion that it will not be constitutionally open for our Parliament working in a democratic socialist Republic like ours to compel the judicial organs of the State to supply unfailingly in all cases public force to collect interest on the loans advanced by money-lenders to their debtors by completely disregarding the questions relating to the harsh or unconscionable nature of the loan transaction or the excessive or extortionate rate of interest charged. This limitation would apply in particular to monopoly State institutions like the Banks. Such a law

takes away some of the age-old defenses open to a debtor to show that legal action instituted by creditor for the enforcement of his loan transaction should fail on the ground that the interest charged is usurious or excessive. It appears to me that supplying public force by the Courts for enforcing all private agreements is permissible only on the condition that the transactions sought to be enforced are basically just. Otherwise economic might will be turned with the support of State authority into jurisprudential right. In a constitutional democracy, the State cannot be turned into an executive committee for the managements of the rapacious interests of the rich. An unjust transaction is often enough an unlawful transaction. Law requiring courts to enforce harsh, unequal or unconscionable bargains providing for payment of compound interest or usurious rates of interest by depriving the debtors their right to set up traditional defenses which are recognized as available to them directly offends the mandate of Article 14 of the Constitution. Such a law would violently discriminate against the hapless borrowers. Law cannot, in its majestic abstraction, forget the social realities that those who are compelled to sleep under the bridges cannot be treated as equal to those who can live in palaces and that it is always necessary for our law to adopt a realistic policy of protective discrimination of the weak, the helpless and the hapless for realizing the egalitarian goals of our constitutional directives and fundamental rights. Section 21-A of the Banking Companies Regulation Act does not merely wink at inequality. By withdrawing legal defenses traditionally available to the debtors from the arena of court litigation Section 21-A actively enforces inequality. The fact that ours is the world's longest Constitution with express powers of judicial review

[14] AIR 1978 SC 771

conferred on the superior courts has heightened the responsibility of the courts for social, political and economic transformation of our society. Clearly the elaboration of the details in our Constitution shows that the courts are intended to be active vehicles of social transformation in several areas. It is for this purpose the Constitution directly confers the powers of judicial review on our superior courts. In my humble opinion, Parliament cannot derogate from this constitutional grant given to the superior courts by compelling them to enforce even unjust claims. The power to do justice is an inalienable and inseparable insignia of our constitutional courts.

31. It appears to me that a law totally banning all the courts including the constitutional courts from granting relief to all debtors under all circumstances by disregarding the nature of the loan transactions would no more be acceptable to our Constitution than a similar law would do to Portia's sense of justice. In this very case the debt is secured by a mortgage and yet carries a stipulation for payment of compound interest. But the transaction cannot be reopened if Section 21-A of the Banking Companies Regulation Act is valid and applicable. I consider such a provision of law to be nakedly arbitrary and partisan and offensive to the sense of equity and equality of Article 14 of the Constitution.

32. For the above reason, I dismiss this second appeal. But in the circumstances, I make no order as to costs.

Appeal dismissed.