FEDERAL HIGH COURT

Surendra Prasad Narain Singh

Vs

Sri Gajadhar Prasad

(Sulaiman, J.)

18.03.1940

JUDGMENT

Sulaiman, J.

1. It is submitted before us on behalf of the respondents that the new Bihar Money-lenders (Regulation of Transactions) Act (Act 7 of 1939), which has received the assent of the Governor-General, cannot be impugned on the ground of any repugnancy. But it is contended that this Court cannot, or at any rate should not, apply the new Act to this appeal. The appellant had invoked Section 11 of the old Moneylenders Act, but could not possibly rely on the new Act before the High Court as the judgment was pronounced on 3rd January 1939, and the certificate also granted on that date, while the new Act, which received the assent of the Governor-General on 15th April 1939 was not published in the Gazette till 1st May 1939. Although the certificate had been granted, the appellant made a supplementary application in the High Court for leave to appeal to the Federal Court, which had stated the grounds of objection, but this also was made before the last, mentioned date. The appellant did however rely on the new Section in his petition of appeal, dated 18th August 1939, lodged in the Federal Court, and therefore complied with Order 12, Rule 5, Federal Court Rules. In the circumstances the appellant cannot now be tied down to the grounds mentioned in his supplementary application to the High Court for obtaining the leave.

2. As regards the new Section 13, which the appellant can invoke in the first Court even if the Federal Court were not to interfere, it was pointed out in (1939) FCR 193 *Shyamakant Lal v. Rambhajan Singh*[1] that although this Court was not bound to take the new Act into account, it had certainly power to do so. The wordings of the new Section 7 are more imperative and prevent a Court in any appeal or revision also from passing a decree for an amount of interest in excess of that specified. Although this Court would not itself pass a decree in this case, nevertheless, it may remit the case to the High Court with a declaration as to the judgment and decree which are to be substituted for the judgment and decree appealed from ; and the judgment and decree of the High Court now to be passed shall have to be in strict conformity with the provisions of the new Section 7. It is therefore all the more necessary that this Court should not ignore the coming into force of the new provisions, which would bind the High Court when the decree comes to be passed. If this Court were to ignore the new Act altogether, the appellant would have no remedy left, as the High Court would not be able to give to the appellant the relief he is entitled to under that Section. Without any direction from this Court the High Court would

not be able to modify its own preliminary decree, which was passed when the old Act was in force, unless Section 7 were widely interpreted so as to apply to the final decree and also avoid its being at variance with the preliminary decree.

3. It is argued that the High Court had granted a certificate that the case involves a question of interpretation of the Government of India Act, bearing on the validity of the old Bihar Money-lenders Act; but as that Act has been repealed, no question of any such interpretation now remains for consideration; and so the appeal is no longer maintainable. But the certificate has not become void or inoperative owing to the Provincial legislation having been repealed and replaced by a new one. Nor can there be any question of getting it vacated. The appellant is still asserting the validity of the old Act, which governed the rights of the parties on the date when the High Court decided the appeal. When the certificate was duly granted his right to appeal to the Federal Court on that point undoubtedly accrued. Thereafter under Section 205(2) the only forum of appeal available to him was the Federal Court and his right to go to the Privy Council, with or without special leave, disappeared. Once the door of the Federal Court was opened to the appellant, it cannot be shut against him on the double ground that he can no longer rely on the certificate because the old law has been replaced by a new one, and he cannot rely on the new law because to avail himself of the new law he must get the certificate vacated, and then go to the Privy Council. If this Court is not prepared to consider the old Section, because it has been not only repealed, but replaced by a new Section then it must consider and apply the latter, unless it can dispose of the appeal on some other shorter ground. As a special case, the Federal Court has also power to grant leave for taking such a ground under Section 205(2), Government of India Act, and can also take account of the new Act suo motu. The High Court conceded, or at any rate assumed, that if the provisions of the old Section 11 had been applicable, the plaintiffs could not have got a decree for more than the principal amount because the total amount of the loan advanced had been about L 3700 only while the amount repaid by way of interest was L 4953. The plaintiff-respondent relies on the last words of Section 7, viz. no Court shall...pass a decree for an amount of interest...which... is greater than the amount of loan advanced, or if the loan is based on a document, the amount of the loan mentioned in, or evidenced by such document.

4. They contend that the suit is based on chithas and therefore the Court cannot go behind the amount of the loan mentioned in and evidenced by the last ehitha. The Bihar Money-lenders Act contains several definitions. 'Principal' is defined in Section 2(h) as meaning in relation to a loan the amount actually lent to the debtor ; whereas under Section 2(d) 'interest' means rate of interest, including the return to be made over and above what was actually lent. Under Section 2(f) 'loan' means (1) an advance (a) whether of monoy, (b) or in kind, on interest made by a money-lender, (2) including a transaction on a bond bearing interest executed in respect of past liability, and (3) any transaction which, in substance, is a loan, with two exceptions which are not relevant here.

5. The explanation makes it clear that a bond bearing interest executed in respect of goods taken on credit constitutes a loan, but a supply of goods on credit is not a loan. Thus 'loan' is a wider word than the principal amount actually lent, as it may be an advance in cash or kind, or may be a transaction on a bond bearing interest executed in respect of past liability, or may be any transaction which is substantially a loan. Interest that accrues is not an advance of money, but can become a loan if liability to pay it is undertaken in a 'bond.'

6. As the same word 'loan' has been used In Section 7, it should bear the meaning given to it by its definition. But the definitions In Section 2 are themselves subject to the condition "unless there is anything repugnant in the subject or context." The term 'loan' although wider than the term 'principal' is obviously used at three places in the same Section 7, in contradistinction to 'interest' used therein. Indeed, the Section itself uses both the words 'loan' and 'interest' in two different senses. When the same Section talks of the amount of interest separately and aims at reducing it, it is reasonable to infer that loan would not necessarily include the interest on it. The Section applies to a suit brought in respect of "a loan advanced," and the interest to be decreed is not to exceed the amount of "the loan advanced" or if "the loan" is "based on a document," the amount 'mentioned in or evidenced by' it. The words in Section 7 are not the total amount of debt mentioned, but the 'amount of the loan advanced or based on a document.' Had the intention been to refer to the total amount, including principal and interest mentioned in any document, it would have been simpler to use some other word like claim or debt. Interest would be included in the loan only if its amount is entered in the document on which the loan is based.

7. Unfortunately the expression "if the loan is based on a document" used in Section 7, is rather unhappy and liable to create an ambiguity. Ordinarily, one speaks of a claim being based on a document and not a loan being based on it. The concluding words however make the meaning clear as they refer to the amount of loan (i) mentioned in or (ii) evidenced by such document. Presumably by the expression "the loan based on a document" is meant the loan which has a document for its title deed, on which the suit may have to be brought to recover it. The words in the old Section 11, after the word 'document,' which have been deleted now, were "on which the suit is based." Those words were likely to suggest that for the purposes of the total amount of the loan, the document which created a fresh cause of action for the suit was conclusive. That would have included accounts stated and adjustments (which give rise to a fresh cause of action), though probably not acknowledgments. Presumably it was to remove the possibility of such a construction that the Legislature has deleted those words. The addition of the words "or evidenced by it" does not alter the position in any way for the governing words that still remain are "if the loan is based on a document...the amount of the loan."

8. In the definition of 'loan' the first category, viz. "an advance, whether of money or in kind, on interest" obviously excludes interest. The respondents rely on the second category of transactions mentioned in the definition. But there too the words "bearing interest" suggest the distinction between loan and interest, in spite of the fact that the words "in respect of past liability" are wide enough to include liability for past debt, whether principal or interest. The transaction has to be on a "bond...executed in respect of past liability." The third category of "any transaction which, in substance, is a loan" may for instance possibly include a promise to pay unpaid purchase money or promise to pay a sum of money for some other good consideration, but not a mere acknowledgment of interest due, unless it also amounts to a renewal of a bond. In consequence of Section 2(f) the word 'document' used in Section 7 obviously means the 'bond' referred to in the definition of loan, as that is inseparably involved in the definition itself, so far as past liability for interest is concerned. The term 'bond' has not however been defined either in the Act or in the General Clauses Act. Two definitions of it are to be found in Indian Acts. Section 2(3), Limitation Act (Act 9 of 1908) defines 'bond' as including any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed as the case may be.

9. Section 2(5), Stamp Act (Act 2 of 1899) defines 'bond' as:

> (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
>
> (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
>
> (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

10. It will thus be seen that the essential common feature of these definitions is 'any instrument whereby a person obliges himself.' In England the word 'bond' is sometimes taken in a wider sense, but there too the instrument must ordinarily bind the obligor for the payment of a sum of money to the obligee. In Mozley and Whitley's Law Dictionary, Edn. 5, 1930, p. 42, it is stated to mean an instrument under seal, whereby a person binds himself to do or not to do certain things.

11. In Stroud's Judicial Dictionary, Edn. 2, p. 204, 'bond' is stated to mean "an obligation by deed." On the other hand, in Wharton's Law Lexicon, Edn. 14, p. 137, a 'bond' is stated to mean "a written acknowledgment or binding of a debt under seal," and at p. 308, 'deed' is defined as "a formal document on paper or parchment duly signed, sealed and delivered." The definitions in the two Indian Acts make it still clearer that the instrument itself must oblige the obligor to the obligee, that is to say the language of the instrument itself must expressly create the obligation. Although the word 'bond' has not been defined in the Money-lenders Act, it is fair to infer that the word has been used in it in the sense commonly understood in this country in view of the definitions in the Indian Acts, and not in the wider sense so as to include accounts stated, adjustments or acknowledgments. It therefore seems to me that an instrument cannot be a "bond" unless it contains an express obligation undertaken by the executants to pay or deliver goods. If the promise to pay is to be inferred by implication, then the document may amount to acknowledgment of liability or adjustment, or even account Stated, but would not be a bond, As pointed out by the High Court (p. 33 of the paper book), at the close of every mahajani year when accounts were adjusted an acknowledgment for the amount found due (including interest) was written out and signed by the debtors and a chitha for the next mahajani year opened with its top lines only written and signed by them.

12. For the last chitha (Exs. lz and lz (a)) dated 24th Asin 1336, corresponding to 12th October 1929, which only was within three years of the suit, there were the following words : "Wrote out chitha for 1336 Fs. It is correct. (Sd.) Surendra Narayan Singh. By my own pen." Two stamps of two annas each were affixed at this place. This particular endorsement did not contain any express promise to pay the amount nor any stipulation to pay interest. As noted by the High Court, below this writing the formal chitha was prepared by the plaintiff's servant in these words:

> Chitha for 1336 Fs. prepared in favour of Babu Gajdhar Prasad Baku .... interest payable at 1 per cent. per mensem...

13. Then followed the transactions for 1336 Fs. These included on the credit side the balance

brought over from 1335 Fs. as well as the interest that accrued during 1336 Fs., and on the debit side four small payments. Then a balance was struck up to 24th Asin 1336 Fa. amounting to Rupees 11,249-9-9. Below this, two stamps of two annas each were affixed and the following endorsement was made:

> Rupees eleven thousand two hundered forty-nine, annas nine and pies nine only is due to me up to 24th Asin, 1336, the end of the Mahajani year. (Sd) Surendra Narayan Singh. By my own pen.

14. In the account prepared by the plaintiff's munib the rate of interest payable had certainly been noted; but in the endorsement signed by the debtor there was no express stipulation to pay such interest, although that also must be deemed to have been implied. The chithas form a series of entries in the plaintiff's account books. In order to make the last portion of Section 7, applicable against the defendant, the plaintiffs have to argue that the document referred to in the Section must here mean the chitha on the last page of the defendant's account in the plaintiff's account book. As there were cross entries in the plaintiff's accounts, and the payments made were entered on the debit side and deducted from the amounts on the credit side, and then a final balance struck, it is obvious that the entry at the bottom of the last chitha was not a mere acknowledgment of liability like the endorsement at the top, but that it was a record of an adjustment and an account stated: AIR 1934 PC 144. *Siqueira v. Noronha* [2]It therefore follows that there was, by necessary implication, a promise to pay the amount due with interest, although with the exception of the words "due by me" there were no other words which could convey an express promise to pay: AIR 1934 PC 147. *Bishun Chand v. Girdhari Lal*[3]

15. The point however is clear that in the year 1929, long before the Money-lenders Act was in contemplation, the intention of the parties was simply to adjust their accounts showing the balance brought over from the previous year, the interest that had accrued during the year and the reduction on account of the payments made in that year. The amount of the stamp duty paid, though not by itself conclusive, also furnishes some indication that it was not the intention of the parties to get a fresh bond executed with an express promise to pay the amount due. Under Article 15 of Schedule I, Stamp Act, the duty payable in respect of a bond is at the rate of L 2-8-0 per L 500 or part thereof for sums exceeding L 1000. The stamps of two annas each that were affixed to the chithas show that the parties contemplated the recording of an acknowledgment of liability after an adjustment of accounts, or of an account stated, and not the execution of any formal bond, with an express promise to pay, which would, have required a higher stamp duty.

16. The entries at the top and at the bottom were admittedly separated by a year's interval, and the middle entries were certainly not simultaneous with the first, and need not necessarily have coincided in time with the latter. The entries made by the plaintiff's munib in the chitha are in the third person and do not read like the recitals in a bond executed by the defendants. On the other hand, the endorsement at the top and the entry at the end are in the first person, which profess to have been made by the debtor himself. It is therefore impossible to treat the whole document as one bond. The transaction as evidenced by the last chitha does not really go any further than the account stated. The document itself ahows that the sum of L 11,249-9-9, was not the loan advanced, but was the principal sum plus interest that had accrued during the previous years, minus all payments that had been made during the past years. The last chitha itself separately specifies the amounts for one year. Of course, the mere mention of a figure in a document is not

always absolutely conclusive as it remains open to the executants to show that in reality the full consideration mentioned therein had not actually passed. Much less would the sum total noted in the chitha make it conclusive that the whole of it was the loan. The intention of the Provincial Legislature in enacting Section 7 read with Section 2(f), which draws a distinction between loan and interest, appears to be to accept the amount of the loan mentioned or evidenced by a document, if the loan is based on such a document and amounts to a transaction on a bond bearing interest and duly executed. But when a statement of account, not amounting to a bond, itself shows that the whole of the amount mentioned therein is not a loan, but part of it is professedly interest, that interest cannot be accepted conclusively as a part of the loan within the meaning of Section 7.

17. The question then simply resolves itself itself into this: Can the endorsement made by the defendant at the bottom of the last chitha be regarded as "a transaction on a bond bearing interest executed in respect of past liability"? It seems that such a construction would be contrary to the intention of the parties. The last chitha cannot, therefore, be treated as a bond within the scope of the definition of 'loan' in Section 2(f) Accordingly, the amount entered in the last chitha cannot be regarded as the minimum amount behind which the Court cannot go and which it must assume to be the loan. In this view the first portion of the Section comes into play and the Court is debarred from granting a decree for an interest in excess of the principal amount of the loan. As interest in excess of that amount has already been paid, the plaintiffs can have a decree for the principal amount advanced and no more.

18. The last point urged by the appellant is that the Court should reopen the transaction under Section 8 of the new Act. In the first place this point, which was covered by Section 12 of the old Act, does not appear to have been pressed before the High Court; and without a special leave of the Federal Court, as referred to in Section 205(2), Government of India Act, it cannot be raised in appeal. In the second place, the point really becomes wholly unnecessary if the plaintiffs are to get a decree for the principal amount only and not for any interest. I would accordingly allow the appeal and remit the case to the High Court with the declaration that the following decree be substituted for the one appealed from:

> The appeal be allowed, the decree of the trial Court modified and the plaintiff's suit decreed for the principal sum (about L 3700) only and his claim for past interest disallowed, with pendente lite interest at six per cent. per annum and future interest on the consolidated amount at the same rate.

Yaradachariar, J.

19. This is an appeal by defendant 1 against a decree for money passed by the Courts below against the appellant and his undivided coparceners. Amongst the contentions urged on the defendants' behalf, before the High Court at Patna, there was one based upon Section 11, Bihar Money-lenders Act 1938, which limited the amount of interest which a money-lender was entitled to claim. The High Court rejected this contention, in the view that it had taken in prior cases, that Section 11, Bihar Act of 1938 was void, on the ground of repugnancy to existing Indian legislation. This appeal has been preferred to this Court, on a certificate, granted under Section 205, Constitution Act, to the effect that the case involved a substantial question of law as to the interpretation of that Act. Before us, the appellant's learned Counsel relied upon the

decision of this Court in case No. 6 of 1939 *Jagdish Jha v. Aman Khan Reported in*[4] and contended that, apart from the question of the validity of Section 11, Bihar Act 3 of 1938, the debtors were in any event entitled to claim the benefit of Section 7, Bihar Money-lenders (Regulation of Transactions) Act, 1939 (7 of 1939), which had been passed after the decision of this case in the High Court and had in substance reproduced the provisions of Section 11 of the Act of 1938 with retrospective effect. As the earlier case before this Court had been heard ex parte, the learned Counsel for the respondent desired, and was permitted, to urge certain contentions against the view taken in that case as to the right of a debtor in similar circumstances to claim the benefit of the new Act. A question was also raised as to the extent of the benefit which the defendants would be entitled to on the true construction of Section 7 of the new Act.

20. The objection to the right of the appellant to claim the benefit of the new Act in the proceedings before this Court was raised not only in this appeal, but in three other cases which were heard in course of January and February this year. With a view to facilitate a full argument of this objection, we agreed to defer pronouncing our judgment till all the four appeals had been heard. Some aspects of this objection have been dealt with in the judgment in case No. 13 of 1939 *Subhanand Chowdhary v. Apurba Krishna Reported in*[5] and in my learned brother's judgments in this case and in case No. 10 of 1939. *Jaigobind Singh v. Lachmi Narain Ram Reported in* [6]infra It was also urged in some of the cases that as the contention based on the new Act had not been mentioned as a ground in the proceedings taken in the High Court, even after the new Act came into force, the appellant ought not to be permitted to raise it here. This argument ignores the provision of Section 205, Constitution Act. The certificate was granted by the High Court when the Act of 1938 was in force and there was no necessity or occasion to raise before the High Court in subsequent proceedings the contention based on the new Act. Once the appeal is before this Court, it is open to this Court to grant leave to the appellant to raise particular grounds of appeal. It must also be observed that the contention based on the new Act is not really a ground of appeal against the decision of the High Court, because the new Act was not in existence at the time of that decision. As explained in the judgment in (1939) 1 PCR 193, *Shyamakant Lal v. Rambhajan Singh* [7]it is this Court that takes cognizance of the new Act, with a view to do justice between the parties, as the new Act has been made retrospective. It was suggested in one or two cases that the validity even of Section 7 of the new Act was open to challenge, but the objection was not pressed.

21. The contention of the learned Counsel for the respondents as to the effect of the application of Section 7 to the case was based on the nature of the dealings between the parties and of the accounts maintained by the creditor in respect of the same. The transactions between the parties, so far as they are relevant to the present case, began, in September 1911, with a purchase of immovable property by one Iswardhari Singh, the undivided uncle of the appellant, from the plaintiff's predecessor-in-title. Out of the sale price of L 2900, L 1900 was paid in eash and for the balance of L 1000 an account was opened in the plaintiff's books, (Ex. I series). Two days later, there was an advance of L 115; and there were a lew advances during fasli 1319. In fasli 1320, a sum of L 2000 due under two hundis drawn by Iswardhari Singh in favour of the same creditor was brought into the same account. In fasli 1320 the account was signed not only by Iswardhari Singh, but also by two of his undivided younger brothers, one of whom was the father of defendant 2. From this date, the interest payable on the account was, by agreement between the parties, increased from fourteen annas to one rupee per cent. per monsem. The accounts continued up to 12th October 1929, that is, the end of the Mahajani year corresponding to fasli

1336. Though the only subsequent advance by the creditor seems to be a sum of L 5 paid in cash in fasli 1334, the receipt side of the accounts shows several items of payments from time to time. The way that the account books were maintained has been described in the judgment of the High Court as well as in the judgment just delivered by my learned brother. The result of the account was that though the total amount of the loan, including the unpaid balance of the purchase money, was only about L 3700 and an amount of about L 4953 had been paid by way of interest, the acknowledgment on 12th October 1929 showed that a sum of L 11,249-9-9 was then due from the defendants to the creditor : vide entry marked Ex.1(z)(a). It may be mentioned in passing that it was stated before us by the learned Counsel for the respondent that in the chitha for fasli 1336, not merely the heading but the whole of the page was in the handwriting of defendant 1. In the view that we take of the case, nothing turns upon this circumstance.

22. On the facts above stated, it was contended on behalf of the appellant that as the creditor had already received towards interest an amount exceeding the principal, the plaintiff was not, in view of Section 7, Bihar Act, 7 of 1939, entitled to any further sum for interest up to the date of the institution of his suit and that the amount now payable by the defendants should be calculated on the footing that a sum of only L 3700, i.e. the principal amount, was due at the date of the institution of the suit. In the plaint, the sum due from the defendants had been calculated on the basis that L 11,249-9-9 was due on 12th October 1929; adding a claim for compound interest at 12 per cent. per annum with annual rests, the plaint, which was filed on 20th August 1932, claimed L 15,713-4-6 with further interest. Section 7, Bihar Act 7 of 1939, provides that in respect of interest payable up to the date of the institution of the suit, the Court shall not pass a decree for an amount which together with any amount already realized as interest ... is greater than the amount of loan advanced or, if the loan is based on a document, the amount of loan mentioned in or evidenced by such document.

23. With reference to the concluding words of the Section above set out, it was argued on behalf of the respondent that, in the present case, the chitha entry, Ex. I (z) (a), dated 12th October 1929 which has been signed by defendant 1 should be regarded as "the document on which the loan is based" and that the plaintiff was accordingly entitled to treat the sum of Rupees 11,249-9-9 there shown as "the amount of loan" within the meaning of Section 7 of the Act. If that contention were accepted, the appellant would not of course be entitled to any relief in this appeal, because the interest claimed between 12th October 1929 and the date of the institution of the suit did not exceed the amount mentioned in the document. It was in this connexion urged that the chitha entry Ex. I(z) (a) should be held to amount to an "account stated" between the parties and as such to furnish a separate cause of action for the recovery of the money there shown as due. In support of this contention the learned Counsel for the respondents relied on the decisions of the Judicial Committee in (1934) AC 332 *Siqueira v. Noronha* [8]and 56 All 376 *Bishun Chand v. Girdhari Lal (1934) 21 AIR PC 147* and on certain observations of the Lahore High Court in AIR 1925 Lab 75. *Narain Das v. Miran Bukhat*[9]

24. The authorities cited on behalf of the respondents themselves recognize the distinction between cases in which a statement of account signed by the debtor may be intended to be only an admission of the correctness of the account or a mere acknowledgment of a debt and cases in which it may be an "account stated" in the real sense. (See also the antithesis recognized in Order 20, Rule 8 of the English Supreme Court Rules.) Whether a particular statement of account falls in the one category or in the other is a question to be determined with reference to the

circumstances of each case. An examination of the chithas, Ex. 1 series, in the present case leads me to think that the signed entry at the end of each year followed by a corresponding entry at the commencement of the next year could only have been intended to serve as an admission by the debtors of the correctness of the account which was maintained by the creditor. Except on this hypothesis, there was little significance in going through this process every year. In this view, the last entry, Ex. I (z)(a) dated 12th October 1929 could have no greater significance than the corresponding entries in the chithas of the earlier years. It has not been suggested or shown that at the time when that entry was made, it was intended to be anything like a final closing of the accounts between the parties, so as to put the debtors' liability on a new basis. So far as one can see, it was merely an accident that the accounts stopped with fasli 1336, probably because the creditor died about the end of 1929 or early in 1930 and his estate soon became the subject-matter of litigation (Probate Case 24 of 1930). The legal significance of a set of accounts closely resembling Ex. 1 series in the present case was considered by Jenkins C.J. and Woodroffe J. in 39 Cal 789 *Galstaun v. Hutchison*[10] and the learned Judges held that the signed entries in the bahi ohithas would not oven amount to an "acknowledgment of a debt" within the meaning of Article 1, Stamp Act, 1899. It is not necessary for us to go so far ; but the observations of Woodroffe J. in that case may be usefully referred to in this connexion. It may also be mentioned, for what it is worth, that the Courts below relied on the signed entries in the accounts only as "acknowledgments" sufficient to save the bar of limitation: vide the discussion of issues 2 and 5. If Ex. I (z) (a) had been regarded as an "account stated" in the true sense, no question of limitation would have arisen at all, as the suit was instituted within three years of Ex. I (z) (a): vide Article 64, Limitation Act.

25. Even if it should be assumed that Ex. I (z) (a) represents an "account stated" between the parties, that does not seem to me to be decisive of the question under Section 7, of the Bihar Act, 7 of 1939. The respondents can press into service the concluding words of the Section only if it can be said that Ex. I (z) (a) is "the document on which the loan is based." This expression is, to say the least, not very happy, but interpreting it in the light of the definition of "loan" in Section 2(f) and of the scheme of the Act, it is not very difficult to gather the meaning intended. In attempting to include in the definition of "loan," documents executed in respect of a past liability (as distinguished from a contemporaneous advance), the Legislature used the expression "transaction on a bond ... executed in respect of a past liability." Here again the expression "transaction on a bond" is perhaps open to criticism and I am not sure if the word "bond" in this context was intended to be limited to a formal deed or to documents of the kind specified in the definition of "bond" in the Stamp Act. But I am unable to believe that mere debit entries or balance entries in accounts (even though signed by the debtor) could have been intended to be comprised in the expression "transaction on a bond." It seems to me at least necessary that the document relied on should have been intended to embody the contract between the parties and should ex facie show a promise or undertaking to pay before it can be spoken of as a "bond." The Indian law has clearly emphasized the distinction between a promise to pay and a mere statement or acknowledgment of liability : see the antithesis in Article 1, Stamp Act, and the way that an IOU is dealt with in the illustrations to Section 4, Negotiable Instruments Act. The deoision in AIR 1925 Lah 75 *Narain Das v. Miran Bukhat*[11] seems to me to have gone too far in holding that book entries of balances signed by the defendants would amount to a "bond" within the meaning of Article 67, Limitation Act. The definition of "bond" in Section 2(3) of that Act, clearly implies that the document must be one "whereby a person obliges himself to pay money to another." I am unable to concur in the view that the mention of interest being payable at a particular rate and the

possible implication therefrom of a promise to pay the principal would suffice to bring the account entry within the category of "bond": cf. observations of the Judicial Committee in 17 Lah 557 *Mahomed Akbar Khan v. Attar Singh (1936) 23 AIR PC 171 at p. 568* (SUPRA) where dealing with the definition of a "promissory note" their Lordships stress the distinction between an ordinary undertaking to pay and one which has only to be inferred or implied. Reading the words "if the loan is based on a document" in Section 7, Bihar Act, in the sense above indicated, it cannot be held that the entry I (z) (a) in this case is a "document on which the loan is based," because it merely says "L 11,249-9-9 is due by me up to 24th Asin 1336."

26. The learned Counsel for the respondents based an argument on the difference between the words employed at the end of Section 7 of the Act of 1939 and the words occurring in the corresponding provision (Section 11) of the Act of 1938; it is not easy to follow that argument. The earlier Act fixed the limit at the amount of loan mentioned in "the document on which the suit is based" while the Act of 1939 speaks of the amount of loan "mentioned in or evidenced by such document." The use of the expression "such document" is of course an improvement, as this portion of the Section is introduced by the words "if the loan is based on a document." But it is not easy to state what distinction the Legislature had in mind when, in the later Act, it referred to two alternatives, by the words "mentioned in" and "evidenced by" respectively. In AIR 1940 Pat 65(SUPRA), *Singheshwar Singh v. Medni Prasad Singh (1940) 27 AIR Pat 65* the learned Judges of the High Court have endeavoured to state a possible explanation, in the light of what was mentioned to them by the Advocate-General of Bihar. I do not find it necessary to express any opinion on that statement, because, in either alternative, the amount to be taken note of is the amount of loan and the word "loan" must be understood in the light of the definition clause already referred to. It must also be borne in mind that in both the Acts this portion of the Section is introduced by the same opening words "if the loan is based on a document."

27. Even if it were possible to regard the accounts in this case as the document on which the loan is based, it does not seem to me possible or reasonable to confine our attention, as the learned Counsel for the respondents invited us to do, to the particular entry marked Ex. I (z) (a). The account books must be taken as a whole and as the entries therein clearly show what itemn represent principal and what items interest, the Court must arrive at the "amount of the loan" by excluding the items that represent only interest. The scheme of the Bihar Money-lenders Act emphasizes the distinction between liability in respect of the principal and liability in respect of the interest and whether a party relies on the words "mentioned in" or on the words "evidenced by" at the end of Section 7 of the Act of 1939, the "amount of loan" must be determined with reference to the whole document and not by confining attention to a particular entry.

28. I am for the above reasons unable to accede to the respondents' contention that the sum of L 11,249-9-9 shown in Ex. I(z) (a) should be taken as the starting point for the determination of the extent of the defendants' liability even under Section 7 of the Bihar Act, 7 of 1939. The plaintiff will only be entitled to claim up to the date of the plaint the sum of L 3700 or such other sum as the parties may agree or the High Court may on the accounts find to represent the principal amount due. On this sum the plaintiffs will be entitled to simple interest at 6 per cent. per annum from the date of the plaint to the date of the decree to be passed by the High Court. From that date the aggregate amount due for principal and interest will carry interest at 6 per cent. per annum.

29. The decrees of the High Court and of the trial Court are set aside except in so far as they relate to costs. The High Court will pass a revised decree in the light of the foregoing directions. The defendants will remain liable for the costs awarded against them by the decree of the trial Court and the original decree of the High Court. There will be no order as to the costs of this appeal.

Gwyer, C.J.

30. I concur, and only desire to add a few words. Section 7 of the Act of 1939 is no doubt extremely obscure and ill-drawn but if the Advocate-General's contention were correct, I should find it difficult to understand why, in an Act plainly intended for the relief of debtors, money-lenders should have been presented with so simple a method of circumventing it. I should for this reason be unwilling to accept his contention, unless the language of the Act left me no alternative. In my opinion that is not so. I agree that it is impossible to regard the record of transactions which was kept by the parties in the present case as a document on which a loan can be said to have been based or which evidences a loan; and I think that the words in Section 2 of the Act, "transaction on a bond bearing interest executed in respect of past liability," ought, in any case, having regard to the manifest intention of the Act, to be strictly construed. I agree with the order proposed to be made.

Cases Referred.

1(1939) 26 AIR PC 74 at pp. 216-217
2(1934) 21 AIR PC 144
3(1934) 21 AIR PC 147
4(1940) 27 AIR PC 3
5(1940) 27 AIRF C 7
6(1940) 27 AIRFC 20
7(1939) 26 AIR PC 74
8(1934) 21 AIR PC 144
9(1925) 12 AIR Lah 75
10(1912) 39 Cal 789
11(1925) 12 AIR Lah 75