

# NAGPUR HIGH COURT

Sitaram Shrawan Koshti

Vs

Bajya Parnya Bhoi

Civil Revn. No. 171 of 1940

(Vivian Bose, J.)

20.11.1940

## ORDER

**Vivian Bose, J.**

1. The first question which arises in this revision is whether the lower Court was right in re-opening the transaction on which the suit is founded. The suit is based on a promissory note dated 20th December 1936, which in turn is based on a bond of 28th June 1933. If the transaction can be re-opened then the further question arises whether a repayment of L 55 has been proved. The lower Court has evidently reopened the transaction although it has not stated why. In my opinion the learned Judge had a right, and indeed was bound to do so, under the Usurious Loans Act as amended locally. Section 3 states that "where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe, etc." That means clearly that the Court has power to act suo motu even though the plea is not raised by way of defense. The interest which according to the statement of the plaintiff was payable and which was in fact charged on the bond was 2 per cent, compound and is also the interest on the promissory note in suit. That is excessive within the meaning of Section 3(2), Usurious Loans Act, and entitles the Court to review the transaction.

2. That brings me to the next point, viz., whether the repayment pleaded of L 55 has been proved. No evidence has been taken in the case, and the lower Court has proceeded upon the pleadings. The plaintiff stated that he did not remember whether any payment had been made towards the previous bond, also that the amount stated in the promissory note was reached by calculating interest on the sum due on the bond at 2 per cent, compound. The lower Court made a calculation, and it is only possible to reach the sum named in the promissory note if credit is given for the repayment of L 55 which has been pleaded. In the circumstances the lower Court was justified in acting on that admission, especially when it is borne in mind that the plaintiff did not specifically deny the payment pleaded. The lower Court has also disallowed interest under

the Money-lenders Act. There is no proof that the plaintiff is a "money-lender". The definition of "moneylender" given in the Act is "a person who, in the regular course of business, advances a loan." There is no proof here that the loan was advanced in the regular course of business. The word "regular" shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money-lending is shown to the Court it is impossible to state that that constitutes a regular course of business. It is an act of business, but not necessarily an act done in the regular course of business. Consequently, the lower Court was wrong in applying this Act.

3. It was argued that the burden is, on the plaintiff to prove that he is not a moneylender. That however is incorrect. The Act only applies to money-lenders and therefore before it can be applied it must be shown by the person seeking to apply it and seeking to take advantage of its provisions that the plaintiff is a money-lender. Interest will therefore have to be allowed. As however the transaction was rightly re-opened this Court is left with a discretion as to the amount of interest which should be allowed. The Money-lenders Act indicates that 18 per cent, simple is a fair rate of interest on an unsecured loan. Interest will consequently be calculated at that rate upto the date of suit, and allowance will be given for the repayment of L 55. The other repayment of L 21 which was pleaded has already been rejected. The next question is whether the lower Court was right in applying the Reduction of Interest Act. The original loan was advanced long before the Act came into force, and consequently no question of vested interests arises. In fact, if anybody has vested interests which has been affected it is the plaintiff because on the date when he lent his money there was no thought in any one's mind that his interest would be arbitrarily reduced by the Legislature. The Act was however in force when the suit was in progress but was repealed before the lower Court gave its judgment. The Act contains a prohibition. It prevents persons from recovering more than a certain rate of interest between certain dates specified in the Act. If the prohibition is withdrawn it is clear that the original rights of the parties revive, and the Courts cannot enforce the prohibition which is withdrawn. Consequently before a Court can act under the provisions of the Act, that is to say, before it can enforce the prohibition contained therein the Act must be in force. It was not in force at the date of the judgment of the lower Court and consequently the lower Court was wrong in resorting to its provisions. The learned counsel for the defendant argues that as the plaintiff only claimed 6 per cent, in the point that is all he is entitled to. That is correct. Six per cent, is claimed on the assumption that the transaction would not be re-opened. The claim in the plaint is for L 58-13-0. According to the decision here it comes to only L 38-8-0. The decree will accordingly be modified. Costs here and in the lower Court will be proportionate to success and failure. From date of suit to the date of this decree I allow interest at 4 per cent per annum simple.