

**Madras Debtors Protection Act, 1934**

**07 of 1935**

**[20 March 1935]**

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PREAMBLE

An Act for the protection of certain classes of debtors in the Presidency of Madras.

WHEREAS it is "expedient to make provision for the protection of certain classes of debtors in the Presidency of Madras, and for that purpose to regulate the keeping of accounts by certain classes of creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:--

1. For Statement of Objects and Reasons, see Fort St. George Gazette, Part IV, dated 30th August 1932, pages 127-128; proceedings in Council, see Proceedings of the Madras Legislative Council, Volume LXII, dated 3rd August 1932, pages 209-210; for Report of the Select Committee see Fort St. George Gazette, Part IV, dated 16th January 1934, pages 122-27; for proceedings in Council, see Proceedings of the Madras Legislative Council, Volume LXXII, dated 1st August 1934, pages 45-93 and dated 3rd August

1934, PP. 235-263 and Volume LXXIII, dated 24th October 1934, pages 276-289.

This Act was extended to the merged State of Pudukkottai by section 3 of, and the First Schedule to, the Madras Merged States (Laws) Act, 1949 (Madras Act XXXV of 1949).

## **1. Short title, extent and commencement :-**

(1) This Act may be called the Madras Debtors Protection Act, 1934.

(2) It extends to the whole of the Presidency of Madras.

(3) It shall come into force on such <sup>\*</sup>date as the <sup>1</sup>[State Government] may, by notification in the <sup>2</sup>[Official Gazette], appoint.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950,

2. These words were substituted for the words "Fort St. George Gazette" by the Adaptation Order of 1937.

\*. Came into force on the 15th January 1936.

## **2. Definitions :-**

In this Act, unless there is anything repugnant in the subject or context,

(1) "bank" means a company carrying on the business of banking and--

(a) registered under any of the enactments relating to companies for the time being in force <sup>1</sup>[in, <sup>2</sup>(India) or] in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, <sup>3</sup>[ . . . . ] or

(b) incorporated by an Act of Parliament <sup>4</sup>[of the United Kingdom] or by Royal Charter or Letters Patent or by any <sup>5</sup>[Central Act];

(2) "company" means a company--

(a) registered, under any of the enactments relating to companies for the time being in force 1[in <sup>2</sup>(India) or] in the United Kingdom or in any of the British Dominions, or any of the Colonies or Dependencies of the United Kingdom, <sup>3</sup>[ . . . ] or

(b) incorporated by an Act of Parliament <sup>4</sup>[of the United Kingdom] or by Royal Charter or Letters Patent or by any <sup>5</sup>[Central Act];  
<sup>6</sup>[...]

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932);

(4) "Court" includes a court acting in the exercise of insolvency jurisdiction;

(5) "creditor" means a person, <sup>7</sup>[including a pawnbroker] who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritances assignment or otherwise of the person who advanced the loan;

(6) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or on account of cost, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan;

(7) "loan" means an advance of money or in kind at interest, being

for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, and includes any transaction which the Court finds in substance to amount to such an advance but does not include--

(i) a deposit of money or other property in a Government Post Office Savings Bank, or in a bank, in a company or with a co-operative society;

(ii) an advance made by a bank, a company or a co-operative society;

(iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority;

(iv) an advance made by any person bona fide carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business;

(v) an advance made by a landlord to his tenant, by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture;

(vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881), other than a promissory note;

**8**[(8) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

(9) "pawner" means a person delivering an article for pawn to a pawnbroker;]

**8**[(10)] "prescribed" means prescribed by rules made under this Act; and

**8**[(11)] "principal" means in relation to a loan the amount actually lent to the debtor.

1. These words were inserted by the Adaptation (Amendment) Order of 1950.

2. The word "India" was substituted for the words "any State" by section 4 of, and the Third Schedule to, the Madras Repealing and Amending Act, 1957 (Madras Act XXV of 1957).

3. The words "or in British India, or in any State in India" were omitted by the Adaptation (Amendment) Order of 1950.

4. These words were inserted by the Adaptation (Amendment) Order of 1950.

5. These words were substituted for the words "Act of the Indian Legislature" by *ibid*.

6. The words and figures "and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" were omitted by section 23(1) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), re-enacted permanently with specified modifications by section 3 of, and the Second Schedule to, the Madras Re-enacting and Repealing (No. 1) Act, 1948 (Madras Act VII of 1948).

7. Under section 23 (2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943) in any area to which the provisions of that Act have been applied by a notification this clause shall, after the expiry of three months from the date of such application and so long as such notification remains in force have effect subject to the modification that the words "including a pawnbroker" shall be omitted.

8. Under section 23(2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification this section shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modifications that clauses (8) and (9) shall be omitted and clauses (10) and (11) renumbered as clauses (8) and (9).

### **3. Duty of creditor to maintain accounts and to give receipts**

:-

(1) Every creditor shall--

(a) regularly record and maintain or cause to be recorded and maintained, an account showing for each debtor separately--

(i) the date of the loan, the amount of the principal of the loan, and the rate per cent per annum of interest charged on the loan; and

(ii) the amount of every payment received by the creditor in respect of the loan, and the date of such payment;

(b) give to the debtor or his agent, a receipt for every sum paid by him, duly signed and if necessary, stamped at the time of such payment; and

(c) on requisition in writing made by the debtor, furnish to the debtor or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest and charge such sum as the <sup>1</sup>[State Government] may prescribe as fee therefor.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act I of 1872), a copy of the account referred to in clause (a) of sub-section (1) certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(3) A person to whom a statement of account has been furnished under clause (c) of sub-section (1) and who fails to object to the correctness of the account shall not by such failure alone be

deemed to have admitted the correctness of such account.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

**4. Additional account to be maintained by pawnbroker :-**

**1**[ (1) Every pawnbroker shall regularly record and maintain an account in which, in addition to the particulars referred to in clause (a) of sub-section (1) of section 3, he shall record or cause to be recorded--

(a) a full and detailed description of the article or of each of the articles taken in pawn,

(b) the time agreed upon for the redemption of the pawn, and

(c) the name of the pawner and, where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A copy of the entries in such account shall be delivered by the pawnbroker to the pawner at the time of the pawn on tender of such sum as the **2**[State Government] may prescribe as the charge therefor.]

1. Under section 23(2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification, the provisions of this Act shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that section 4, shall be omitted, and that in section 5 after the word and figure section 3 the word and shall be inserted and the words, brackets and figures "and in the copy of the entries to be delivered under sub-section (2) of section 4" shall be omitted.

2. The words "Provincial Government" were substituted for the

words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for the word "Provincial" by the Adaptation Order of 1950.

## **5. Figures in accounts and receipts to be in Arabic numerals**

:-

In the receipt to be given under clause (b) of subsection (1) of section 3, <sup>1</sup>[ ] in the statement of account to be furnished under clause (c) of that sub-section, <sup>2</sup>[and in the copy of the entries to be delivered under subsection (2) of section 4] the figures shall, be entered only in Arabic numerals.

1. This word was inserted by section 23(2) (iv) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), re-enacted permanently with specified modifications by section 3 of, and the second Schedule to, the Madras Re-enacting and Repealing (No. 1) Act, 1948 (Madras Act VII of 1948).

2. Under section 23 (2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification, the provisions of this Act shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that section 4 shall be omitted, and that in section 5 after the word and figure section 3 the word and shall be inserted and the words, brackets and figures "and in the copy of the entries to be delivered under sub-section (2) of section 4" shall be omitted.

## **6. Penalty for noncompliance with sections 3 and 4 :-**

(1) In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (a) of sub-section (1) of section 3, <sup>1</sup>[or by sub-section (1) of section 4] he shall not be allowed his costs.

(2) If a creditor fails to give to the debtor or his agent a receipt as required by clause (b) of sub-section (1) of section 3 or to furnish, on a requisition made under clause (c) of that sub-section, a statement of account as required therein within one month after such requisition has been made <sup>1</sup>[or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4] he shall not be entitled to any interest for the period



of the default.

1. Section 23(2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943) provides that in the circumstances set out in footnote, section 6 shall have effect subject to the modification that in sub-section (1) the words, brackets and figures "or by sub-section (1) of section 4" shall be omitted and in sub-section (2), the words, brackets and figures "or if a pawnbroker fails to deliver to the pawner a copy of the entries as required by subsection (2) of section 4" shall be omitted.

#### **6A. Presumption in the case of certain loans :-**

**1**[ (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors Protection (Amendment) Act, 1935 (Madras Act IV of 1936), it is found that the interest charged exceeds in the case of a secured loan, nine per cent per annum simple interest and in the case of an unsecured loan, fifteen per cent per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918 (Central Act X of 1918), that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Explanation.--In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of nine per cent per annum or fifteen per cent per annum, as the case may be, the Court shall draw the presumption referred to in this sub-section until the contrary is proved.

(2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the Court under sections 3 and 4 of the Usurious Loans Act, 1918 (Central Act X of 1918), in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent per annum simple interest or fifteen per cent per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties

thereto, substantially unfair.]

1. Section 6-A was inserted by section 2 of the Madras Debtors Protection (Amendment) Act, 1935 (Madras Act IV of 1936).

## **7. Savings :-**

Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

## **8. Rules :-**

(1) The <sup>1</sup>[State Government] may make rules not inconsistent with this Act for the purpose of carrying out all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power the <sup>1</sup>[State Government] may make rules prescribing--

(a) the sum which may be charged as fee for a statement of account, furnished under clause (c) of sub-section (1) of section 32,

(b) the manner in which a copy of the account shall be certified for the purpose of sub-section (2) of section 3 <sup>3</sup>[and]

<sup>3</sup>[(c) the sum which may be charged for a copy of the entries in a pawn-brokers account, to be delivered by the pawn-broker to the pawner under sub-section (2) of section 4].

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. Under section 23(2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943)) in any area to which the provisions of that Act have been applied by a notification the provisions of section 8 shall, after the expiry of three months from the date of

such application and so long as such notification remains in force, have effect subject to the modification that in sub-section (2) the word "and" shall be inserted at the end of clause (a) and omitted from the end of clause (b), and clause (c) shall be omitted.

3. Under section 23(2) of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943), in any area to which the provisions of that Act have been applied by the notification the provisions of section 8 shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that in sub-section (2), the word and shall be inserted at the end of clause (a) and omitted from the end of clause (b), and clause (c) shall be omitted.

## **9. [Omitted] :-**

**1[ \* \* \* \* ]**

1. Under section 23 (2) aforesaid in the above circumstances the provisions of this Act shall have effect subject to the modification that the following section be added after section 8, namely:--

"9Nothing contained in this Act shall be deemed to apply to pawnbrokers, that is to say, to persons who carry on the business of taking goods and chattels in pawn for a loan."