Pasupuleti Sriramulu and Others Vs Revuri Nagaiah

Court: Andhra Pradesh High Court

Date of Decision: Oct. 10, 1961

Acts Referred: Negotiable Instruments Act, 1881 (NI) â€" Section 44, 7, 78

Citation: AIR 1962 AP 431

Hon'ble Judges: P. Chandra Reddy, C.J; Narasimham, J; Jaganmohan Reddy, J

Bench: Full Bench

Advocate: G. Balaparameswara Rao, for the Appellant; M. Krishna Rao, Amicus Curiae, for the Respondent

Judgement

P. Chandra Reddy, C. J.

1. The question to be dealt with by the Full Bench relates to the interpretation of section 13 of the Madras Agriculturists Relief Act (hereinafter to

be termed the Act).

2. The material facts of the case are these. The respondent filed S. C. No. 114 of 1957 on the tile of the Court of the Subordinate Judge, Eluru

against the petitioners for recovery of Rs. 1,118-40 Np. being the principal and interest due on a promissory note executed on the 20th of

September, 1954 by the 1st petitioner for Rs. 960/- carrying interest at 12 3/8 per cent compound interest per annum. Interest was however

claimed at 5 1/2 per cent per annum only as the petitioners were admittedly agriculturists. The petitioners while admitting the execution of the suit

promissory note, urged that it was made in renewal of an earlier promissory note dated 11-12-1951 in favour of the respondent''s wife for Rupees

1,000/- and that consequently the debt was to be scaled down with reference to the earlier promissory note.

3. The trial Court disallowed this plea following the Judgment in Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri , and decreed

the suit as prayed for. It is that judgment of the trial Court that is sought to be revised now.

4. It is contended by Sri Balaparameswara Rao, learned counsel for the petitioners, that the petitioners are entitled u/s 13 of the Act to have the

debt scaled down as from 11-12-1951 the date on which the debt was incurred, and that Mellacheruvu Pundarikakshudu Vs. Kuppa

Venkatakrishna Sastri , could not be held to be good law after the decision of the Full Bench in Sait Nainamul and Others Vs. Balabhadra Subba

Rao and Others . Reliance is also placed by the counsel for the petitioners on Punyavatamma v. Hari Venkata Satyanarayana, 1960 1 AWR 336,

rendered by a Bench of this Court to which one of us was a party and also on a decision of a Full Bench of this Court in Chebrolu

Nagabhushanam and Another Vs. Rachapudi Seetharamiah,

5. These arguments are sought to be answered for the respondent in this way. Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri is

in consonance with the language of section 13 of the Act and has found acceptance with a Full Bench of the Madras High Court in V.S.T. Sheik

Mansoor Theraganar and Another Vs. S.V.S. Sankarapandia Mudaliar, . The construction sought to be placed by the counsel for the petitioners

on section 13 of the Act would violate sections 7 and 78 of the Negotiable Instruments Act for which support is sought from Subba Narayana

Vathiar v. Ramaswami Aiyar, ILR 30 Mad 88 (FB) and Varadarajam Pillai, by guardian Malayaperumal Pillai Vs. Krishnamurthi Pillai, . The cases

called in aid by the petitioners are distinguishable and they do not touch the point under examination; as they relate to promissory notes executed in

favour of a different creditor.

6. Before we proceed to consider the relevant contentions, we will read section 13 of the 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 1/4 per cent per annum, simple interest, that is to say, one pie per rupee per

mensem 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.

7. Under the said proviso, the Government issued a notification dated 29th July, 1947, reducing the rate of 6 1/4 per cent per annum to 5 1/2 per

cent per annum simple interest.

8. The question that poses itself before us is whether section 13 of the Act permits a Court to go behind the promissory note sued on and whether

the principle or Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri is correct. The facts of that case are these: The appellant sued

for the recovery of Rs. 1,330/- from the respondent on the foot of a promissory note dated 14th August, 1948 for Rs. 1,050/- repayable with

Interest at 9 per cent per annum. The respondent, inter alia, pleaded that the promissory note was executed in renewal of a prior promissory note

dated 14th March, 1945 and the debt should be traced back to the first promissory note. This defence found favour with the Courts below and

they gave relief to the respondent on the basis of the promissory note of,1945.

The matter was carried in Second Appeal to the High Court. Viswanatha Sastri, J. agreed with the conclusions of the Courts below and dismissed

the Second Appeal with costs. The learned Judge expressed the opinion that the suit contract could not be held to be supported by consideration

to the extent of the excess over the sum legally payable under the earlier document calculating interest at the rate provided by Act IV of 1938 and

that, on that principle, the plaintiff would n be entitled to recover anything more than what would be found due and properly payable under the

prior promissory note after applying the provisions of Madras Act IV of 1938. The learned Judge referred to section 44 of the Negotiable

Instruments Act in support of the proposition that where the consideration for a promissory note was partially absent or had subsequently failed in

part, the sum which the payee is entitled to receive from the executant is proportionately reduced.

9. In a Letters Patent Appeal filed against that Judgment, with the leave of the learned Judge, this was reversed by a Division Bench of this Court.

The learned Judges differed from Viswanatha Sastry, J., on these grounds: that section 13 did not in express terms provide for tracing back a debt

to its origin, that the word ''any'' instead of the definite article ''the'' qualifying the word ''debt'' became necessary as the word ''debt'' in the opening

line of the section was used in general terms without being limited to a debt incurred after the Act, that consequently ''any debt'' could only mean a

debt incurred after the commencement of the Act which was sought to be recovered in a Court, that section 13 did not provide for any statutory

discharge as section 8 (1) of the Act and that no question of automatic discharge of any interest would arise so as to support the contention of

failure of consideration in whole or in part for the renewed debt. The learned Judges followed Pulimati Krishnamurthi Vs. Boggavarapu Narayana

and Another, and cited with approval Sheku Sahib Vs. Venkatararamanayya, We may incidentally mention that the Full Bench of this Court in

Chebrolu Nagabhushanam and Another Vs. Rachapudi Seetharamiah, , did not accept the correctness of Sheku Sahib Vs. Venkatararamanayya,

10. With great respect, we are unable to share this view of the learned Judges and we feel that the opinion and the reasons adduced in support of

that conclusion could not prevail. That apart, it is difficult to reconcile the principle of this case with the ratio decidendi of Sait Nainamul and Others

Vs. Balabhadra Subba Rao and Others

11. The controversy in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others , was whether in the case of a debt incurred after the

Act came into force, payment made expressly towards interest at the contract rate and appropriated could be reopened and re-appropriated

towards interest payable under the provisions of section 13 of the Act. The Full Bench presided over by Chief Justice Subba Rao answered it in

the affirmative. It was pointed out by the Full Bench that the words ''all interest due'' in section 13 meant interest which the parties had contracted

to pay and was not confined to outstanding interest i.e., interest that was sought to be recovered in the proceedings in Court

12. The following observations of the Full Bench occurring at page 542 (of Andh LT) : (at p. 550 of AIR), are appropriate in this context:

The object of section 13 is to give relief to agriculturists in the matter of interest in respect of a debt incurred after the Act. If such a debt is sought

to be enforced, it is caught in that net of the scaling down process. At that stage, all the interest due on the date is reduced to the statutory level or

to put it differently whatever may be the contract rate of interest, it is replaced by the statutory rate. If the appropriations made earlier are not

reopened, the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage. Doubtless the Courts

are concerned with the expressed intention of the legislature The crucial words in section 13 are ''all interest due on any debt''. The word ''interest''

is qualified by two words ''all'' and ''due''. If interest outstanding alone is scaled down, the emphatic word ''all'' becomes otiose. If that was the

intention, the words ''interest outstanding'' would serve the purpose as well. The word ''all'' therefore cannot be ignored and must be given a

meaning. It indicates that the entire interest which a debt earned is scaled down.

The learned Judges remarked that the words ''all interest due'' could not be equated to ''all interest outstanding''. The raison d''etre of Mellacheruvu

Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri , is in conflict with this dictum. These observations clearly establish the principle that the

scaling down should be with reference to the original borrowing and not with reference to the debt which was sought to be recovered in Court as

opined in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others . It is also plain from the remarks of the Full Bench extracted above

that it is the interest that has accrued on a debt as incurred i.e., on the original indebtedness that should be scaled down and not on the basis of the

promissory note. Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others disapproved at the doctrine of Patnala Ramalakshmi and

Others Vs. Dowlatabad Gopalakrishnarao, which ruled that when payments were once made and appropriated towards interest at the contract

rate under a mistake of law, it could not be got back and reappropriated towards the principal and agreed with the principle underlying N.S.

Sreenivasa Rao Vs. G.M. Abdul Rahim Sahib, , a judgment of another Bench of the Madras High Court which dealt with a situation similar to

Patnala Ramalakshmi and Others Vs. Dowlatabad Gopalakrishnarao, . The Full Bench explained further the significance of the word ''due''. After

referring to the meaning of the word ''due'' in section 13 of the Act as given in Webster''s New International Dictionary, Wharton''s Law Lexicon

and Ramanatha Ayyar''s Law Lexicon, they adopted the meaning ''that which one contracts to pay or payable''.

13. Thus, the Full Bench in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others , has firmly established the proposition that u/s 13,

the scaling down operation should be with reference to the first advance and that even appropriations of payment made towards interest should be

reopened and adjustments made towards the amount determined by calculating interest on the original principle at the statutory rate. This ruling has

considerably weakened the authority of Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri

14. Moreover, we are unable to agree with the reasons that impelled the learned Judges in Mellacheruvu Pundarikakshudu Vs. Kuppa

Venkatakrishna Sastri), to reach the conclusion that the suit contract should be the basis of the relief The circumstances that section 13 does not in

express terms provide for tracing back a debt to its origin does not in any way indicate that the relief should be confined to the interest earned on

the suit promissory note. Since the language of section 13 itself has that effect, a specific provision in that behalf was unnecessary. A debt can be

incurred only once and the renewal of a debt does not result in the incurring of the debt over again. The words of section 13 are of such wide

amplitude as to take in the original loan.

15. Nor are we convinced that the fact that section 13 does not provide for the wiping out or for automatic discharge of the debt would lead to the

result that the scaling down process should be restricted to the promissory note sued on. Since section 13 contemplated only a limited relief,

namely, the reduction of interest there can be no question of wiping out the interest as in the case of debts incurred before 1932. That being the

position, the omission to provide for the discharge of all interest has no material bearing on the construction of section 13.

16. The use of the word ''any'' instead of ''the'' does not in our considered opinion lead to the inference that section 13 operates only on the

promissory note sued on as suggested in that case. On the other hand, we think that the expression ''any debt'' is more comprehensive than ''debt''

and covers the original debt and is more appropriate than the definite article ''the'' to convey that idea. Thus, the use of the words ''any debt'' does

not in any way cut down the content of section 13. The learned Judges accepted as correct the dictum in Pulimati Krishnamurthi Vs. Boggavarapu

Narayana and Another, as contained in the following words:

The lower Court, in applying section 13 of the Act has apparently laboured under the misapprehension that section 13 was to be applied not to the

actual suit contract but to the previous debts which it superseded. There is nothing in section 13 which imports the explanation to section 8 and

allows the Court to go behind the contract. The defendant may of course raise contentions under the ordinary law such as failure of consideration

or a plea that the suit debt is nothing more than an acknowledgment of the antecedent debt which would justify the Court into going into the amount

due under the antecedent debt.

17. True it is that the concept underlying the explanation to section 8 cannot be imported in section 13. But the absence of a provision analogous to

it cannot limit the connotation of section 13. The scheme of section 8 necessitated such an explanation. The scaling down process contemplated by

section 8 was an intricate one and for that reason the relevant explanations had to be inserted. But to give effect to the legislative intent in regard to

post-Act debts which did not involve a complicated process, a simple device was adopted in section 13. The formula evolved by section 13 was

that the interest earned on the original principle should be computed at the rate mentioned therein and since this did not create any difficulties in

working it out the legislature obviously thought that it was unnecessary to add such explanations or provisos. The language employed in section 13

was sufficient to carry out the policy embodied in that section.

In this connection we may usefully turn to the observations in Sait Nainamul and Others Vs. Balabhadra Subba Rao and Others) occurring at page

544 (of Andh LT) : (at p. 552 of AIR):

But section 13 affects future transactions entered into by the parties presumably with knowledge of the provisions of the Act. A single provision

like section 13, therefore, was considered sufficient to give the limited relief prescribed thereunder. Be that as it may, the fact that in one provision

the Legislature gives a detailed treatment to a subject is no ground for ignoring the express provisions of another section, if the scheme of scaling

down described in the former gives effect to the expressed intention of the legislature in the latter.

18. Coming back to the rule stated in Pulimati Krishnamurthi Vs. Boggavarapu Narayana and Another, , as seen from the passage quoted above

and which met with approval in Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri , the plea of failure of consideration or that the

suit debt was nothing more than an acknowledgment of the antecedent debt could be entertained in a case falling u/s 13 only if the debt could be

traced back to its origin and not if the theory that the antecedent debt having been merged in the suit debt would not come into the picture, were to

prevail.

19. We will now turn to V.S.T. Sheik Mansoor Theraganar and Another Vs. S.V.S. Sankarapandia Mudaliar,), which agreed with the principle

enunciated in Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri . The facts in the Full Bench were similar to those in Mellacheruvu

Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri). In that case, there were a series of borrowings at a high rate of interest. At the end of each

year of account, interest at the contract rate was debited against the borrower. There were periodical settlements of accounts at which the amounts

payable to the creditor were ascertained and an acknowledgment as to the correctness of the amount and a promise to pay it with future interest

were recorded. Promissory notes were taken for the amounts found due at each settlement and a suit was laid on the last of such settlement of

account. The debtor claimed relief that the entire account should be reopened and that he should not be made liable to pay interest in excess of 5

1/2 per cent per annum computed on the borrowings as commenced in 1934.

The learned Judges negatived this contention observing:

Where an old liability is merged or renewed by a fresh contract, the old debt is extinguished and could no longer be termed a debt unless the later

debt has under the law been allowed to be ignored and the transaction reopened. The legislature, when it intends that particular debts should be

traced back to their origin, provides for such reopening of debts specifically (vide sections 8 and 9).

They added:

The Act does not render the payment of or a contract to pay interest on a debt at a rate higher than prescribed for each of the various categories,

illegal. Nor is there any question of public policy involved when a higher rate of interest on a loan is agreed to by an agriculturist ..... There being

thus neither a prohibition against a stipulation for payment nor an automatic discharge of higher rates of interest agreed to be paid by an agriculturist

debtor, it cannot be said that when a creditor with the assent of his debtor added to the principal loan the interest accrued in terms of the contract

and the debtor entered into a fresh contract treating the consolidated amount as principal for the fresh loan, there would be anything illegal or even

a failure of consideration in regard to the new loan. Such a new loan would constitute a debt incurred on the date of renewal and if a suit is based

on that debt, the provisions of section 13 could be attracted to that debt and not to the earlier debt of which it was a renewal or substitution. Under

the ordinary law, where parties enter into a new contract in substitution of an earlier one, the later contract alone would govern the rights of the

parties. The Court would itself have no power to go behind that contract except in cases where the later contract fails for some reason known to

law or where a statute gives an express power to reopen the same.

20. We respectfully dissent from the proposition stated by the learned Judges. We have already answered the contention based on the absence of

an express provision for the reopening of debts and stated that the execution of a fresh promissory note would not constitute a debt incurred on the

date of the renewal.

21. We find it difficult to accede to the view that there is no question of public policy involved when a higher rate of interest on a loan is agreed to

by an agriculturist. The whole of the Debt Relief Act was based on the public policy of relieving agriculturist-debtors of oppressive rates of interest

by reopening transactions and tracing back the debt to its origin and section 13 embodies that policy. The scheme of affording such relief to

agriculturist-debtors runs through sections 8, 9 and 13. We cannot subscribe to the proposition that it is open to a creditor to enforce a contract

which stipulates a higher rate of interest than that envisaged in sections 8, 9 and: 13. It could be clearly gathered from the provisions of the Act that

the legislature with a view to give relief to agriculturists intended that the Act should override the several provisions of general law. It cannot be

postulated that this intendment is confined to sections 8 and 9 and is not evident in section 13. It may not be illegal for a creditor to charge a higher

rate of interest and for the debtor to pay it at the agreed rate. The creditor also cannot be required to refund the amount in excess of the statutory

rate that might have been received by him. But when the creditor seeks the aid of the Court for the recovery of his debt, it will be subject to the

scaling down process. Section 13 itself commences with the clause "in any proceeding for the recovery of a debt" thereby indicating that the

disability to recover a sum in excess of the interest provided by the section will attach itself to the creditor only when he starts proceedings for

enforcing his claim.

22. As pointed out by Govindarajachari, J., in Muthiah Jhevar v. Lakshmanan Pandithar, 1948 2 Mad LJ 500 : (AIR 1949 Mad 497), the

wording and the objection of section 13 clearly indicate that the legislature wanted to protect an agriculturist

"notwithstanding his own contract and that it could not have intended to make his right to the benefit contemplated by the Act liable either to be

defeated or materially curtailed by an act of the creditor to which the debtor is no consenting party".

In our opinion, the position would be the same even it the debtor is a consenting party.

23. In this context, we may usefully cite the analogy of the power of concerned Tribunals under the Rent Control Acts to fix a fair rent

notwithstanding a contract between the landlord and the tenant stipulating a higher rent. An agreement between the parties to pay a particular states

rent for a building does not stand in the way of a tribunal fixing a rent lower than that stipulated. It is now well-recognised that a stipulation to pay

higher rent having been rendered invalid by reason of the statute, It would be open to a tenant to successfully maintain that, in spite of his

agreement, he was entitled to have the fair rent fixed. In our judgment the consideration pointed out in V.S.T. Sheik Mansoor Theraganar and

Another Vs. S.V.S. Sankarapandia Mudaliar, are not quite relevant in the interpretation of section 13. We feel that if the limited interpretation

given to section Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri and also in V.S.T. Sheik Mansoor Theraganar and Another Vs.

S.V.S. Sankarapandia Mudaliar, is accepted, it would defeat the object of the legislature. It must be remembered that the whole of the statute was

intended to benefit agriculturists and an interpretation which furthers that object should be adopted. We have to place such a construction as would

advance the remedy contemplated by the Act. Even if the terms of a section fall short of the objective of the legislature, it is permissible to ascribe

an extended meaning to them, provided these words are fairly susceptible of that meaning - (Maxwell''s Interpretation of Statutes, 10th Edition

page 68).

24. In 1960 1 AWR 336, it was held that a debtor, who made a payment in excess of that due by him as per the provisions of section 15 could

have it reopened and re-appropriated towards the principal though plaintiff was only a transferee of the original promissory note. It was remarked

there that a debt was incurred only when a borrowing was made and not each time a promissory note was renewed.

25. Another Division Bench of this Court ruled in Dandu Sarraju v. Seshayya, 1961 1 AWR 363, that section 13 would operate with reference to

the original borrowing despite the fact that this was included in a fresh document by the original debtor along with others. Here also, it was stated

that the words ''the debt incurred'' were synonymous with the first borrowing and could not include renewal of a debt.

26. These two cases are sought to be distinguished on the ground that, in the first of them, there was no fresh document and in the second the

creditor and one of the debtors were the same. We do not think that this distinction could be of any avail to the respondent. Section 13 is

unconcerned with the question whether the creditor or debtor is the same. Emphasis is laid on the words ''the debt''. What matters is the identity of

the debt, it is not of much significance that a promissory note for the debt was taken in the name of the same creditor or in the name of a different

person or that the promissory note was executed by the same debtor or not. The inclusion of a debt in a fresh document in favour of another

person does not make it any the less a debt incurred within the range of Sec. 13 of the Act. That being so, the principle enunciated in 1960 1

AWR 336 and 1961-1 Andh WR 363, would govern a case of a different creditor.

27. The decisions rendered under sections 8 and 9 of the Act and called in aid by the respondent have no parallel in the context of the enquiry

relating to section 13. Therefore, we need not pause to discuss those cases.

28. There remains the argument that a wide interpretation of section 13 would be repugnant to sections 7 and 78 of the Negotiable Instruments

Act. Section 7 of the Act over-rides the provisions of general law or contract only with reference to debts in existence at the commencement of the

Act, which fall u/s 8 and is not extended to section 13 and consequently section 13 should be so construed as not to conflict with Secs. 7 and 78

of the Negotiable Instruments Act. We are not impressed with this contention. The fields of operation of sections 7 and 78 of the Negotiable

Instruments Act and section 13 of the Act are distinct and so no question of inconsistency arises in interpreting the latter provision. The view that

the debt has to be traced back to its origin does not in any way violate the rule contained in sections 7 and 78. That would not have the effect of

destroying any of the provisions of the Negotiable Instruments Act.

The questions that are germane to those provisions of the Negotiable Instruments Act do not arise u/s 13 of the Act. This does not in any way

affect the rights of the holder of the promissory note. Under the Act the Court is not called upon to decide as to whether a suit could be maintained

by the holder of a promissory note for the reason that he is merely a benamidar for the beneficiary. In the exercise of the jurisdiction u/s 13 of the

Act, the Court is required to determine the amount due by a debtor by applying the process of scaling down irrespective of who the person is that

is entitled to the amount sought to be recovered. Under that section, which is couched in mandatory language, the Court is bound to effect

reduction of interest in the manner indicated in that section.

29. For all these reasons, we disagree with the ratio decidendi of Mellacheruvu Pundarikakshudu Vs. Kuppa Venkatakrishna Sastri and approve

of 1960 1 AWR 336 and 19611 AWR 363. Our answer to the question that poses itself before us is that for the purpose of section 13, the debt

should be traced back to its origin irrespective of whether it is renewed or included in a fresh document In favour of the same creditor or a different

person or whether the debtor is the same or not.

30. Since in this case the trial Court decreed the suit overruling the defence of the petitioners and without deciding that issue, it is remitted to the

trial Court for a decision on that question. There will be no order as to costs.

31. We are thankful to Sri M. Krishna Rao for giving us assistance as amicus curiae, the respondent being unrepresented.