
**Aravala Chinapapinaidu and Others Vs Imperial Bank of India,
Vizianagaram and Others**

A.A.O. No. 440 of 1949

Court: Madras High Court

Date of Decision: April 17, 1953

Acts Referred:

Reserve Bank of India Act, 1934 " Section 2#Tamil Nadu Agriculturists Relief Act, 1938 " Section 10(2), 4

Citation: AIR 1954 Mad 273

Hon'ble Judges: Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench: Division Bench

Advocate: Y. Venkatasubramaniam, for the Appellant; C. Duraiswami, for King and Patridge and C.V. Dikshitulu, for the Respondent

Final Decision: Dismissed

Judgement

Govinda Menon, J.

The appellants before us were the defendants-judgment debtors in O. S. No. 55 of 1931 on the file of the Sub Court

of Berhampore. On a number of bills for discount as well as demand promissory notes executed by some of the defendants in favour of others and

which were discounted with the Imperial Bank of India, O. S. No. 55 of 1931 was brought for the recovery of a sum of Rs. 11089-12-0 with

interest and costs, etc., against sixteen defendants. The monies due to the bank under these bills and promissory notes were secured by means of a

mortgage bond dated 9-1-1931 and hence the plaintiff i. e., the Bank, brought the suit for recovery of the amount by sale of the mortgaged

property. The preliminary decree dated 24-9-1932 was confirmed by a final decree dated 24-11-1936 and thereafter the decreeholder Bank

assigned the decree in favour of the second counter petitioner in the court below whose estate is now being managed by respondents 4 and 5 as

receivers appointed by court. I. A. No. 190 of 1945 was filed by the present appellants u/s 19, Madras Agriculturists Relief Act, for scaling down

the debt due on the ground that they are agriculturists entitled to relief under the provisions of the Act. It is not disputed that the petitioners

appellants are agriculturists entitled to the benefits of the Act but the question that was argued and decided in favour of the contesting respondents

by the court below was that since the decreeholder was a scheduled bank as defined by Section 2(e), Reserve Bank of India Act, 1934, and the

interest payable in respect of the liability was not more than 9 per cent per annum, the debt in favour of the Bank is exempted and as such the

decree could not be scaled down. Therefore the lower court dismissed the application. Hence this appeal.

2. Before us the appellant's learned advocate raised three points, each one of which, according to him, if decided in their favour, would be

sufficient for the purpose of disposing of the appeal in their favour. It is firstly contended that the negotiable instruments which formed the basis of

the claim by the Imperial Bank of India were not executed in favour of the Bank as such but were transactions between the defendants "inter se"

and thereafter endorsed over, or discounted with, the Bank and therefore it cannot be said that the original liability is one in favour of a scheduled

Bank as contemplated by Section 10 (2) (iii), Madras Agriculturists Relief Act. Secondly it is contended that the interest payable under the

transactions in question would be more than nine per cent per annum with the result that the exemption conferred by Section 10 (2) (iii) is rendered

inapplicable. Thirdly it is contended that since the decreeholder Bank has assigned the decree in favour of the second respondent in the court

below, who was attempting to execute the decree, and since the assignment in his favour was without recourse whatever, there was no more

interest for the Bank in these transactions and hence there was no liability in respect of any sum due to the bank.

3. The first argument does not seem to have been put forward or pressed in the court below but despite that fact we allowed the appellants

counsel to raise it. There does not seem to be any substance in this argument for if we look at the mortgage deed Ex. P. 1 dated 9-1-1931, on

whch the suit was brought, it is evident that the Bank is the mortgagee and some of the respondents were the mortgagors. Even if the bills of

discount and the demand promissory notes were not directly executed in favour of the Bank, still, by the execution of Ex. P. 1, there was a liability

created in favour of the Bank under that mortgage which would bring the transaction within the exemption contained in Section 10 (2) (iii), Madras

Agriculturists Relief Act. At the time of the execution of Ex. P. 1, the mortgagors were debtors to the Bank in a sum of money for securing which

Ex. P. 1 was entered into and that would be sufficient to attract the operation of the sub-section. But It is contended that the liability contemplated

in the subsection is the initial liability which in the case of the demand promissory notes and the bills of discount was not in favour of the bank at all

but "Inter se" between the defendants and the transactions should be viewed in that light. Though the Bank is only a transferee of the rights under

those documents, it cannot be said that there is a liability in favour of the bank.

Ex. P. 5, plaint in O. S. No. 55 of 1931, shows that there was no intention when the bills or the promissory notes were executed that anyone else

but the Bank was to advance the money. From the schedule attached to the plaint it is seen that defendants 6, 8 and 10 executed Bills of discount

and demand promissory notes in favour of the first defendant on various dates, which were immediately on the same day cashed, discounted or

endorsed over in favour of the bank. Similarly we find defendants 1, 8 and 10 defendants 1, 5 and 8 and defendants 1, 5 and 10 executing bills of

discount or demand promissory notes in favour of the fifth defendant in two cases, the tenth defendant in one case and the 8th defendant in one

case respectively, who also immediately cashed the documents with the bank. It is nobody's case that any of the defendants in whose favour some

of the other defendants have executed the negotiable instruments ever paid any sum of money to the executants at all. If that had been the case, the

liability originated in favour of some of the defendants and probably it might be difficult to say that the original liability was in favour of the bank.

In the absence of any evidence whatever that for any of the transactions any consideration proceeded from the persons in whose favour they were

entered into, we have to hold that the liability arose only when the instruments were negotiated with the bank. It is clear from these documents that

what was intended was to borrow monies from the bank but since the bank would not lend monies to a single individual the device was that of

creating a principal debtor, and a surety. It was with that object that the negotiable instruments were executed in favour of some of the defendants

by the others and were negotiated with the bank. It seems to us therefore that this contention is without force.

4. The next argument put forward is that the rate of interest exceeds 9 per cent and this is sought to be established by showing that at the time the

bills and promissory notes were negotiated with the bank an amount representing interest for three months and three days was deducted in

advance and the balance alone was paid on negotiation Therefore, on a calculation of the interest paid on the sum actually paid over by the bank,

the rate would exceed 9 per cent per annum. The Bank denies this allegation and there is nothing to show that any interest was deducted in

advance. Exs. D. 1 and D. 2 are the certified extracts of the bank's books and they show that only 8 per cent was charged for the debts due. Ex.

P. 5 shows that the amount sued on, Rs. 11089-12-0, is made up of Rs. 10500 the principal sum of the negotiable instruments and Rs. 589-12-0

the interest due. If interest on each of the principal amounts on these negotiable instruments is calculated it is clear that in no case more than 8 per

cent is charged on any of them. No doubt P. W. 1 deposed that interest for three months and three days was deducted in advance but excepting

his bare statement, there is no documentary evidence which would justify that assertion. We find it impossible to believe that a banking institution of

the reputation and reliability of the Imperial Bank of India would have deducted interest in advance as is done in many instances by usurious money

lenders and if the appellants want to rely on such a state of affairs they should certainly have taken steps to let in much better and more cogent

evidence than the oral testimony of P. W. 1 to substantiate such an allegation. The second argument of the learned counsel also has to be rejected,

5. The third contention is sought to be supported by some decisions of this court. But on a close examination of the various authorities cited before

us we feel that there is no substance in that contention as well. Section 10 (2) (iii), Madras Agriculturists Relief Act, contemplates a liability in

respect of a sum due to a scheduled bank bearing interest in respect of that liability at not more than, 9 per cent per annum in which case the

transaction in question is excluded from the operation of the Act. What is urged is that since the Bank was divested itself of all rights in the decree

by assigning it in favour of the second respondent in the court below, at the time when the application for scaling down was filed, there was no

liability in existence due to the bank bearing interest at not more than 9 per cent per annum. The liability was in respect of a sum due to the second,

respondent in the court below and not to the Bank. In such circumstances we are asked to say that the exemption contemplated cannot be availed

of so far as the transaction is concerned and the decree has to be scaled down in the ordinary way. What is the point of time at which this liability

has to be considered? Is it when the original transaction took place or at the time of the filing of the application?

6. The respondents' counsel feebly attempted to show that the debt in question is outside the pale of the operation of the Madras Agriculturists

Relief Act because of the provision of Section 4(e) of the Act which is to the effect that nothing in the Act shall affect the debts and liabilities of an

agriculturist if the debts or liabilities are due to a corporation, formed in pursuance of an Act of Parliament or of any special Indian Law, or Royal

Charter, or Letters Patent. We are asked to say that the Imperial Bank is a corporation formed as a result of a special Indian Law and any debt to

the Imperial Bank would therefore be exempt from the stringent provisions of this Act.

Here again the question resolves itself to this, as to whether the debt is due to the Bank. If we are satisfied that the debt in question arose out of a

liability in respect of a sum due to the Bank, and, the point of time at which the applicability of the Act has to be considered is the moment when

the liability originated, then there will be no necessity for invoking the aid of Section 4(e) of the Act at all, because the exemption provided u/s

10(2)(iii) of the Act clearly applies to the case. It seems to us that the words ""Special Indian Law"" are not intended to apply to Banks like the one

in question which come within the meaning of a scheduled bank as defined by Section 2(e), Reserve Bank of India Act, 1934. If the argument of

the learned counsel for the respondents is to be accepted, then all the banks incorporated under the Indian Companies Act, or the recent Banking

Companies Act, as well as the Imperial Bank, would be as a result of a special Indian Law, and the two provisions, viz., Section 4(e) and Section

10(2) (iii) of Madras Act 4 of 1938 would overlap each other. We therefore do not think that the wholesale exemption claimed by invoking

Section 4(e) of the Act can be applied in favour of the respondents in this case.

7. The learned advocate for the appellants drew our attention to two decisions, viz., -- S. Subramania Aiyar Vs. The India Equitable Insurance

Company Limited, , which was followed in -- Mahabala Holla and Another Vs. The Canara Banking Corporation, Udipi, Limited, by agent, K.

Vittal Bhandary and Others, , to the effect that the crucial point of time at which the applicability of the Act has to be considered is the moment

when an application for scaling down the debt is made by the judgment-debtor. In the earlier of these cases Wads-worth J. held that where a debt

due to a public company carries interest at not more than 9 per cent, such debt is excluded from the operation of Sections 8 and 9 of the Act, even

if the debt was the result of an earlier liability which it renewed and which bore a higher rate of interest than 9 per cent, so as to exclude it from the

operation of Section 10 (2) (iii) of the Act, The following substance at page 106 is relied upon:

The liability excluded from the purview of operations u/s 8 or Section 9 of the Act is the present liability under which the debtor is "at the time of

his application indebted". If that liability is due to a company and carried interest at not more than 9 per cent, it is clearly excluded from the

operation of Sections 8 and 9 and therefore these sections cannot be called in aid to substitute for this liability an earlier liability which bore a higher

rate of interest.

In the later case Wadsworth and Patanjali Sastri JJ. relied upon the earlier case and held that in deciding the question whether the liability to a

scheduled bank is one bearing interest at not more than 9 per cent, per annum, the court has to look to the actual liability sought to be scaled down

& cannot take into consideration any pre-existing liability. Where there is a debt due to a scheduled bank carrying interest at 9 per cent, or less,

which itself is a renewal of a pre-existing debt carrying interest at more than 9 per cent, the Bank will be entitled to the protection of Section 10 (2)

(iii) of the Act. In both these cases what fell for decision was the rate of interest on the debt and not how the debt itself originated. Here we have

held already that the rate of interest is not more than 9 per cent, per annum but the question that has to be considered is whether at the inception

the debt was one due to the Bank or to someone else to whom the exemption would not apply. We do not think that the observations in these

cases, though on the surface they may appear to apply to the present case, can really be of any assistance to the appellants.

Our attention was invited to a line of cases in which the origin of the debt enabled itself to be exempt from the liability but later on the person in

whose favour the debt was contracted, transferred, or assigned it over to someone else to whom the exemption would not apply. In such cases it

has been held that what the court has to find out to deciding whether the exemption would apply or not is the genesis of the debt and not the

subsequent shape into which it has been transformed, or the subsequent owner to whom the debt has passed. Section 10 (2) (ii) of the Act

exempts from the operation of Sections 8 and 9 any liability for which a charge is created u/s 55, Clause 4, Sub-clause (b), T. P. Act, that is,

where the debt in question has imprinted upon it a vendor's lien on property transferred.

In -- M. Varadaraja Perumal Pillai and Another Vs. Palanimuthu Goundan, , this court had to consider a case of that kind. The debtor in question

had purchased certain lands from a vendor and as consideration he executed a promissory note which after renewal was assigned by the vendor to

the plaintiff decreeholder who after getting a decree on the promissory note was confronted with an application by the Judgment debtor to scale

down the decree under the provisions of the Madras Agriculturists Relief Act. It was held that since the liability of the judgment debtor to the

vendor was in respect of a charge created by the operation of Section 55(iv)(b), T. P. Act, such a liability would not be affected by the same being

assigned to a third party and therefore even if at the time of the application the debt was in fact due to a person who could not be said to have a

vendor's lien, still the exemption contained in Section 10 (2) (ii), Madras Agriculturists Relief Act, would apply. This decision is authority for the

position that in determining whether a debt is exempted under the safeguarding provisions of the Act, the point of time is when the debt was

incurred and not any subsequent period when the application for scaling down was made. At page. 135 the learned Judges observe as follows:

But the essential category into which the liability falls is not, in our opinion, affected by the assignment of this liability to a third party and we

consider it is one which falls into the category referred to in Section 10 (2) (ii) of this Act.

8. Clause (g) of Section 4 exempts from the operation of the Act any liability in respect of maintenance whether under a decree of court or

otherwise and if the maintenance holder assigns away the right under the maintenance decree to a third party, even then the debtor who is bound to

pay the maintenance cannot invoke Sections 8 and 9 of the Act to scale down such a liability. See -- Kondapalli Sudarsana Rao Vs. Putta

Dalayya, . The learned Judge at page 489 held that ""an assignee of a maintenance deed was not affected by Sections 8 and 9 and the judgment

debtor could not apply for the debt to be scaled down."" The principle underlying this decision is that the original liability, its nature, and the person

to whom it is due have all to be looked into in ascertaining whether the clauses of the Act giving exemption would apply. If it is held that by a

transfer the debt loses the privileged position which it occupies, then it is very easy to circumvent the provisions of the Act by mere transfer.

Similarly under Clause (h) of Section 4 a debt due to a woman on 1-10-1937 who on that date did not own any other property provided the

principal amount of the debt did not exceed Rs. 3000 is exempted from the operation of the Act. See -- Bondalapati Kanyakaparameswaramma

Vs. Kolli Butchi Kotayya and Another, .

Likewise in applying Clause (d) of Section 4 regarding a debt contracted on the security of a house property alone in a municipality, cantonment,

or panchayat, which was a union before 26-8-1930, it has been held in -- A.R.M.T.T. Muthukaruppan Chettiar Vs. S.P.L. Subbiah Chettiar and

Another, , that if the debt was originally contracted on the security of house property alone in a municipality, the fact that subsequent to the coming

into operation of the Act another agricultural property was added as security, would not take away the exemption granted in favour of the creditor

by Section 4 (d) of the Act. That the material date on which the exemption u/s 4 (d) has to be considered is the date on which the security was

created and not a subsequent date is clear from certain observations contained in -- Guruperla Subbarayulu Setti and Others Vs. Thota

Venkataramanamma and Others, .

9. In view of these authorities we are of opinion that the learned Subordinate Judge has approached the question from the proper perspective

though this aspect has not been put forward before him. The genesis of the debt being the liability due to the imperial Bank, the fact that the decree

has been subsequently transferred to favour of the second respondent in the court below would not take away from the debt the exemption which

has already accrued in his favour by reason of Section 10 (2) (iii) of the Act. The appeal is, therefore, dismissed with costs.