

THE INDIAN LAW REPORTS, LUCKNOW SERIES.

FULL BENCH.

Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

SARJU PERSAD (DEFENDANT-APPELLANT) v. GAURI SHANKAR (PLAINTIFF) AND ANOTHER (DEFENDANT) (RESPONDENTS).*

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Usurious Loans Act (X of 1918) as amended by Act XXVIII of 1926, section 3—Interest, excessive—Court's power to relieve debtors when interest excessive—Transferee of mortgagor, whether a debtor within section 3—Transferee's right to be relieved.

Held, that the powers of a court in a suit to which the Usurious Loans Act (X of 1918), as amended by Act XXVIII of 1926 applies, are, amongst others, to reopen the transaction, take account between the parties and relieve the debtor of all liability in respect of any excessive interest.

Held further, that the word "debtor" means a person who is liable to pay money and the word "creditor" means a person who has the right to receive the money, and that the transferee of a mortgagor, who has purchased the right to redeem, is a "debtor" within the meaning of section 3 of that Act.

The court can relieve the transferee of a debtor, but it will be a matter for the court to consider whether it shall relieve such a transferee. The decision will depend upon

*Second Civil Appeal No. 88 of 1928, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Gonda, dated the 17th of January, 1928, modifying the decree of Pandit Girja Shankar Misra, Munsif of Tarab Gunj, at Gonda, dated the 28th of September, 1927, decreeing the plaintiff's suit.

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the circumstances of the particular case. It may well be that if the court is of opinion that the transferee has accepted the transfer with his eyes open or that he is a pure speculator the court, while having the power to relieve him, may refuse to relieve him.

Manual and another v. Newbold (1), *Kuddi Lal v. Aisha Jehan Begam* (2), *Thakur Bahsh Singh v. Jagdat* (3), *Nasiruddin v. Ahmad Husain* (4), and *Rani Kishore v. Baij Nath* (5), referred to.

The case was originally heard by a Bench of two Judges, who by their order, dated the 30th of July, 1928, referred a question of law to a Full Bench for decision. Their order of reference is as follows:—

MISRA and NANAVUTTY, JJ.:—This second appeal arises out of a redemption suit. One Matadin was owner of a shop No. 821/1 situate in Bazar Colonelganj, district Gonda. He mortgaged it with possession to Sarju Persad defendant-appellant on the 27th of February, 1916, for a sum of Rs. 400. On the 1st of April, 1918, Matadin borrowed a further sum of Rs. 234 from the same mortgagee Sarju Persad and executed in his favour a deed of further charge in respect of the same property. The interest agreed upon to be paid under this deed was Rs. 2 per cent. per mensem compoundable with monthly rests. On the 2nd of February, 1919, he again borrowed from the same mortgagee a sum of Rs. 120 at the same rate of interest and executed in his favour another deed of further charge in respect of the amount borrowed. On the 21st of March, 1926, Matadin sold his equity of redemption to Gauri Shankar plaintiff-respondent for a sum of Rs. 1,000. Gauri Shankar deposited in court the sum of

(1) (1906) A. C. 461.

(2) (1927) I.L.R., 2 Luck., 564;

4 O.W.N., 411.

(3) (1928) 5 O. W. N., 525.

(4) (1927) 25 A. L. J., 20.

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Rs. 400, the mortgage money under the first deed under section 83 of the Transfer of Property Act, but the appellant Sarju Persad refused to accept the tender. Gauri Shankar, the transferee, who is now the principal respondent before us, instituted a suit for redemption of the shop in dispute.

The defendant-appellant set up his two deeds of further charge and claimed a sum of Rs. 2,798-0-6 under them, besides the sum of Rs. 400 due to him under the original deed of mortgage. He also claimed a large sum on account of repairs.

The learned Munsif of Tarabganj at Gonda who tried the suit came to the conclusion that the plaintiff-respondent was bound to pay the entire amount of money due under the two deeds of further charge as claimed by the defendant-appellant. He held that although the rate was a high one, being compoundable with monthly rests, yet there was no proof that it had been obtained by undue influence to prove which there was no evidence on the record. He therefore held the plaintiff-appellant bound by the terms of the deed and allowed the appellant the full amount of interest as claimed by him. As to repairs he allowed the defendant mortgagee a small sum on that account every year. In result he passed a decree for redemption in favour of the plaintiff-respondent on condition of his paying the entire money due under the two deeds of further charge as principal *plus* interest as stipulated in those deeds.

The plaintiff-respondent then took the matter in appeal to the Court of the Subordinate Judge, Gonda, who, by virtue of his judgement, dated the 17th of January, 1928, modified the decree of the learned Munsif. He held that under the provisions of the Usurious Loans Act (X of 1918) the court was

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at liberty to reopen the transaction covered by the two deeds of further charge, since they were executed after the passing of the said Act, and to relieve the plaintiff of liability in respect of the payment of interest as provided for in the two deeds of further charge which he held to be excessive. He allowed defendant-appellant interest only at the rate of Rs. 2 per cent. per mensem simple. To this extent he modified the decree of the first court. In other respects it was confirmed.

The defendant mortgagee Sarju Persad has now appealed to this Court and two points were urged by the learned Counsel who appeared on his behalf. They were:—*firstly*, that the provisions of the Usurious Loans Act, 1918, did not apply to the present case; and *secondly*, even if they be considered to apply the plaintiff-respondent who was a transferee from the original mortgagor could not avail himself of the provisions of the said Act, they being only available to the debtor personally and to none else.

One further point namely that relating to interest has become the subject of decision by virtue of the cross-objections filed by the plaintiff-respondent before us. We may state at the very outset that there is no substance in the cross-objections. The rate of interest which the learned Subordinate Judge has awarded is a rate which he says is usually prevalent in the district of Gonda and we are not, therefore, inclined to interfere with his discretion in the matter. If the rate of interest as provided for in the two deeds of further charge has to be reduced we think the rate awarded by the learned Subordinate Judge was a fair and a reasonable rate and we therefore maintain it. The cross-objections are, therefore, dismissed with costs.

As to the appeal of the defendant mortgagee we might state that the first ground taken by the learned Counsel for the appellant is of no substance. The two deeds of further charge are dated the 1st of April, 1918, and the 2nd of February, 1919, respectively and were therefore executed after the 22nd of March, 1918, when the Usurious Loans Act, 1918, was passed. The provisions of the said Act were, therefore, applicable to the said two deeds. It was then argued that the Act applied to those suits where a mortgagee claimed recovery of a loan and not to the suits in which a mortgagee claimed a certain amount before the mortgagor could be allowed redemption. The objection was based on a misapprehension. The learned Counsel did not notice that the provisions of the Usurious Loans Act, 1918, had been amended by Act XXVIII of 1926 which added a sub-clause (c) to section 2, clause 3. In clause 3 originally there were only two sub-clauses, namely, clauses (a) and (b) both of which referred to suits brought by the creditor either for the recovery of his loan or for the enforcement of any security or agreement taken by him. This created some difficulty and it was ruled by the Bombay High Court in a case reported in *Chuni Lal v. Christopher* (1) that under the provisions of section 2, clause 3, as they then stood, the Usurious Loans Act could not be applied to a suit which was merely for redemption. To meet this difficulty the legislature passed Act XXVIII of 1926 amending section 2, clause 3 by adding a sub-clause (c) to it providing for the extension of the provisions of the Act to redemption suits also. It is therefore clear that the provisions of the Usurious Loans Act fully apply to the present case, the case being one for redemption as contemplated by section 2, clause 3, sub-clause (c).

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The first objection, therefore, taken by the learned Counsel for the appellant fails.

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As the second objection we may state that the matter is one which has given us some difficulty in coming to a decision regarding it. It is provided in section 3 of the Act that in any suit to which this Act applies where the court has reason to believe that the interest is excessive. It may reopen the transaction, take an account between the parties and relieve *the debtor* of all liability in respect of the excessive interest, if any. The argument advanced by the learned Counsel for the appellant was to the effect that the relief given by the Act in cases where the interest stipulated was found to be excessive could be given only to the debtor and not to the transferee from the debtor. The argument was that the Act authorized courts in India which were also the courts of equity to exercise their equitable jurisdiction in cases where the interest stipulated was found to be excessive, but this equitable jurisdiction could be exercised only in favour of the debtor and not to his transferees. There is no doubt that on the wordings of the Act as they stand provision has only been made for the relief of the debtor and that no provision has been made for relieving a transferee from him.

Reliance was placed in this connection on three cases decided by the Punjab Chief Court and a case decided by the Allahabad High Court. The three cases decided by the Punjab Chief Court are to be found reported in *Aziz Khan v. Duni Chand* (1); *Nathu Ram v. Shadi Ram* (2) and *Chiranji Lal v. Dost Mohammad* (3).

(1) (1913) 20 I. C. 5 812.

(2) (1919) 49 I. C., 946.

(3) (1924) 79 I. C., 995.

In *Aziz Khan v. Duni Chand* (1) it was decided by Mr. Justice AGNEW and Mr. Justice SHADI LAL that it was doubtful whether the plaintiffs who were not the original mortgagors, but merely speculators, who had bought on the chance of getting redemption on easy terms could be permitted to set up, as their vendor might have done, a plea regarding the reduction of interest. In *Nathu Ram v. Shadi Ram* (2) a similar view was expressed. In *Chiranji Lal v. Dost Mohammad* (3) it was held that a donee from the mortgagor's widow was not entitled to the equities which existed in favour of the mortgagor and reliance was placed upon 20 I. C., 812. in support of this view.

The case decided by the Allahabad High Court and relied upon by the learned Counsel for the appellant is the case reported in *Ram Samujh v. Sheoraj Tiwari* (4). In that case it was ruled that in a suit for redemption brought by the vendees, of the mortgaged property the plaintiffs could not raise the point that the term of the mortgage was excessive.

On behalf of the plaintiff-respondent reference was made to several rulings decided by the late Court of the Judicial Commissioner of Oudh some of which we may mention here. They are 17 O. C., 313; 23 O. C., 108; 26 O. C., 209 and 9 O. L. J., 294. We however, find that in almost all these cases either the original mortgagor or his heir was party to the suit and that no such plea was ever raised and decided in those cases. In our opinion those cases are of no assistance to us in deciding the point under consideration.

We may, however, note that in a recent ruling of the Allahabad High Court reported in *Baij Nath Pnadan v. The Estate of E. C. Dennet* (5) it was

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(2) (1919) 49 J. C., 946.

(3) (1924) 79 I. C., 995.

(4) (1922) 20 A. L. J., 607.

(5) (1925) I. L. R., 47 All., 745.

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held that as regards the application to any given transaction of the provisions of the Usurious Loans Act is made no difference whether the person who claimed the benefit of the Act was a principal debtor or merely a surety. There were, however, no reasons given in the judgement for this opinion beyond a statement to the effect that the wordings of section 2(3) (b) were wide enough to cover the case of a surety also.

In this state of authorities we are, therefore, of opinion that the matter has not been definitely decided one way or the other by any High Court in British India. The matter is one of great importance and one that is likely to arise frequently. We have, therefore, thought it proper to refer to the Full Bench the following question for decision :—

“Whether under section 3(b) (i) a court, where it has reason to believe that the interest is excessive, can relieve the transferee of a debtor of all liability in respect of the excessive interest.”

Mr. K. P. Misra, for the appellant.

Messrs. Haider Husain, A. C. Mukerji and Mirza Mohammad Beg, for the respondents.

STUART, C.J. :—This is a reference to a Full Bench made under the provisions of section 14, local Act IV of 1925. The question which the Full Bench is desired to answer is :—

“Whether under section 3(b) (i) a court, where it has reason to believe that the interest is excessive, can relieve the transferee of a debtor of all liability in respect of the excessive interest?”

In order to understand the nature of the answer, which I propose to give to this question, it will be better to state how the question arose. This was a suit for redemption of a mortgage brought by a transferee—a person who had purchased the right to redeem from the original mortgagor. In this suit he asked to be relieved from making the payment provided by the terms of the transaction pleading the privileges afforded by the Usurious Loans Act (X of 1918), as amended by Act XXVIII of 1926. The first point which I have to consider is whether this is a suit to which the Act applies. There can be no doubt as to the fact that this is a suit to which this Act applies, for the recent amendment in Act XXVIII of 1926 has clearly stated that a suit for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act, is a suit to which the Act applies. I have next to consider what are the powers of a court in a suit to which the Act applies. The powers of a court in a suit to which the Act applies are amongst others to reopen the transaction, take account between the parties and relieve the debtor of all liability in respect of any excessive interest. Is such a transferee a debtor? I understand the word "debtor" to mean a person who is liable to pay money in such a suit, as I understand the word "creditor" to mean a person who has the right to receive money in such a suit. Taking this view there can be no doubt to my mind as to the fact that the transferee of the mortgagor, who has purchased the right to redeem, is a debtor within the meaning of section 3. It has been argued by the learned Counsel, who opposes this contention, that a transferee of a creditor is not a creditor within the meaning of section 3. clause 4 but I do not agree with

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this view. In my opinion the transferee of a creditor is a creditor although under the provisions of section 3, clause 4 a transferee for value, who satisfies certain conditions, is protected to a certain extent. That clause does not exclude such a transferee, and does not say that such a transferee is not a creditor. It only states that he is protected to a certain extent. I would, therefore, answer the question put to us in the affirmative.

I have, however, to add that the answer to this question will not terminate the matter. I am certainly of opinion that the court can relieve the transferee of a debtor, but it will be a matter for the court to consider whether it shall relieve such a transferee. The decision will depend upon the circumstance of the particular case. It may well be that if the court is of opinion that the transferee has accepted the transfer with his eyes open or that he is a pure speculator the court while having the power to relieve him may refuse to relieve him. This, however, in no way affects the question which has been referred to us. In my opinion such a transferee is a debtor and has a legal right to put forward the plea. I would return the reference with this answer.

RAZA, J. :—I agree. I would also answer the question in the affirmative.

SRIVASTAVA, J. :—I agree with the answer given in the affirmative by the Hon'ble the CHIEF JUDGE to the question referred to the Full Bench. The Usurious Loans Act was enacted with the object of giving relief against oppressive loan transactions. Before the Act was passed the powers of courts in this country to grant relief in such cases were limited to cases of unconscionable bargains in which the elements of undue influence could be established

and to cases of stipulations by way of penalty. These powers were quite inadequate to meet a large class of cases in which the transactions were decidedly oppressive but which could not be brought within the four corners of section 16 or 74 of the Indian Contract Act. So in order to meet these cases the Legislature has given very wide powers for granting relief under this Act. There can be no doubt that the legal representatives and transferees of debtors can claim the benefits of section 16 and section 74 of the Indian Contract Act, just as much as the debtor himself. I can, therefore, see no reason for the Legislature intending to confine relief under the Usurious Loans Act to the debtor personally.

Dealing with a question of construction under the Money-lenders Act, 1900 (63 and 64 Vict. c. 51) it was observed in *Manuel and another v. Newbold* (1) that a court of law ought not to be alert in placing a restricted construction upon the language of a remedial Act. These remarks would also govern the construction of the provisions of the Usurious Loans Act. Turning to the provisions of the Act I find that a "suit to which this Act applies" has been defined in section 2, clause (3) of the Act. This definition refers to the nature of the suit, but makes no reference to the personnel of the parties. If the Legislature intended to confine the benefits of this Act to the original parties to the loan transaction I should have expected some express provision to that effect. The learned Counsel for the appellant has relied strongly upon the provisions of section 3, clause (4) of the Act. This provision, far from supporting the appellant's contention, seems to me to go against it. Where was the need for the

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Legislature to make this provision for the protection of *bonâ fide* transferees for value if the Act was not intended to apply to transferees at all?

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Reference has been made to cases in which transferees from mortgagors have sought benefit of the equitable doctrine of clog, or of the provisions of Hindu law intended for the protection of sons in joint Hindu families. These cases also do not help the appellants. It was held by a Bench of this Court in *Kuddi Lal v. Aisha Jehan Begam* (1) that the plaintiff in that case, who was a donee from the mortgagor could claim to be relieved of the long term on the ground of its being a clog. Similar opinion was expressed in *Thakur Bakhsh Singh v. Jagdat* (2). Though the question was not definitely decided, yet in *Nasir-uddin v. Ahmad Husain* (3) their Lordships of the Judicial Committee expressed the opinion that a transferee from a Hindu son was entitled to question the providence of the bargain, in the case of a sale made by the father. A Bench of this Court in *Ram Kishore v. Baij Nath* (4) also allowed the transferee of a Hindu son to raise pleas which were available to the transferor under the Hindu law. I think the present case is really much stronger. If a transferee can be permitted to avail himself of the benefits of the provisions of the Hindu law designed for the protection of Hindu sons or can be allowed to raise the equitable plea of clog I can see no good reason for refusing him the benefits of the Usurious Loans Act.

BY THE COURT :—The reference is returned to the Bench with the question answered in the affirmative.

(1) (1927) I. L. R., 2 Luck., 562;

4 O. W. N., 411.

(3) (1927) 25 A. L. J., 20.

(2) (1928) 5 O. W. N., 525.

(4) (1928) I. L. R., 3 Luck., 598.

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