

1939

RAJA
SYED
MOHAMMAD
SAADAT
ALI
KHAN,
v.
KHAN
BAHADUR
RAJA
MOHAMMAD
AMR
AHMAD
KHAN

conditions which included the recognition of the general custom in Oudh that abandonment entitled the landlord to recover possession of the groves.

I think, therefore, that the decisions of the courts below are correct and I, therefore, dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

1939

March,
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Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

BABU SARSUTI PRASAD (APPELLANT) v. LALA BAIJNATH SINGH (RESPONDENT)*

Usurious Loans Act (X of 1918), as amended by U. P. Act (XXIII of 1934), section 3(2)(b), provisos 3 and 5—Interest, reduction of—Finding as to transaction being unfair, if necessary to reduce interest—Stipulated rate of interest on unsecured debt, ranging between 9 and 24 per cent.—Court's discretion to hold interest to be excessive.

Under the United Provinces Usurious Loans Act the Court can relieve the debtor against a portion of the stipulated rate of interest without having to consider whether or not the transaction was substantially unfair.

According to the 3rd and 5th proviso to section 3(2)(b) of the Usurious Loans Act (XXIII of 1934) if the stipulated rate of interest ranges between 9 per cent. and 24 per cent. the court has discretion, regard being had to all the circumstances, to hold that it is excessive.

Messrs. *Radha Krishna Srivastava and Chandra Prakash Lal*, for the appellant.

Messrs. *L. S. Misra, Kashi Prasad Srivastava and Tribhawan Nath*, for the respondent.

ZIAUL HASAN and YORKE, JJ.:—This appeal arises out of a claim put forward in proceedings under the United Provinces Encumbered Estates Act.

The respondent Lal Baij Nath Singh and some trustees appointed by him for the management of his estate applied under section 4 of the Encumbered

*First Civil Appeal No. 19 of 1937, against the order of Pandit Percy Lal Bhargava, Special Judge, 1st Grade, Partabgarh, dated the 13th October, 1936.

Estates Act and included the present appellant among the creditors of the respondent. The appellant filed a written statement claiming Rs.10,980 as the amount due to him from the respondent on a promissory note executed by the respondent in his favour for Rs.6,000 on the 15th September, 1932. The debt carried interest at 2 per cent. per mensem. The applicants however contended that the rate of interest was excessive and prayed for being relieved from a portion of it.

The learned Civil Judge acting under the Usurious Loans Act reduced interest from 24 per cent. to 12 per cent. per annum. The creditor brings this appeal and contends that the learned Judge was wrong in holding the stipulated rate of interest to be excessive.

We have heard the learned counsel for the parties and though we do not agree with the learned Judge's finding, or rather opinion, that the interest stipulated for rendered the transaction substantially unfair, the expression of this opinion being not only uncalled for, as no such plea was taken by the respondent, but also unnecessary as under the United Provinces Usurious Loans Act, the court below could relieve the debtor against a portion of the stipulated rate of interest without having to consider whether or not the transaction was substantially unfair, we are of opinion that no good case has been made out for interference with the discretion exercised by the court below.

The learned counsel for the appellant has relied on some cases in which even compound interest at 24 per cent. per annum was allowed even on secured debts; but we are to be guided by the law as it stands in these provinces, at present. The United Provinces Act XXIII of 1934 has fixed limits within which a court has discretion to hold whether a certain rate of interest is excessive or not. The third proviso added by the local Act to section 3(2)(b) of the Usurious Loans Act of 1918 provides that in the case of unsecured

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debts the court shall deem the interest excessive if the rate exceeds 24 per cent. per annum, and the fifth proviso lays down that if the rate does not exceed 9 per cent. per annum the court shall not deem it to be excessive. If, therefore, the stipulated rate ranges between 9 per cent. and 24 per cent. the court has discretion of course with due regard to all the circumstances, to hold that it is excessive. In the present case we find that the respondent is possessed of property which pays a land revenue of Rs.32,000. It must therefore be taken to be worth about Rs.6,00,000. The debts standing against the respondent amount to only Rs.1,60,000 approximately. The list of debts on the record shows that most of the debts were advanced to the respondent on interest at 12 per cent. per annum simple though there are some which carried interest even at a lesser rate. In these circumstances we do not think the learned Judge of the court below was wrong in holding that the interest in the present case was excessive. We have come to this opinion on the law as it stands at present in spite of the fact that we do not think that there was anything improper in the appellant stipulating for interest at 24 per cent. per annum.

The appeal is therefore dismissed but in view of the special circumstances of the case we order each party to bear his own costs of this court.

Appeal dismissed.