

competent in law on the same facts to go behind the orders of his predecessor. Further, I am of opinion that in the present case where the mills have been working for the last ten years and that too under a licence from the Municipal Board, which is authorized to grant such licences under the United Provinces Municipalities Act, it is not proper to have recourse to the provisions of Chapter X of the Criminal Procedure Code. The proceedings under that Chapter are of a summary nature and intended to enable Magistrates to deal with cases of emergency and not intended to enable a complainant to obtain, by having recourse to this Chapter, relief which he should seek in the Civil Court. In my opinion that in the circumstances of the case, and especially in view of the previous order of 1937, the Magistrate should have left the complainants to move either the Municipal Board or to seek their redress in the Civil Court.

I, therefore, allow the application and set aside the orders passed by the learned Courts below. The proceedings under section 133 against the applicants will be consigned to records.

*Application allowed.*

### APPELLATE CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice J. R. W. Bennett*

THAKUR LAL RAM PARTAP SINGH (PLAINTIFF-APPELLANT) *v.* GANGA PRASAD AND ANOTHER (DEFENDANTS-RESPONDENTS)\*

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*Agriculturists' Relief Act (XXVII of 1934), section 33—Usurious Loans Act (X of 1918), as amended by U. P. Act (XXIII of 1934), section 3—Suit, whether can be brought on series of transactions under Usurious Loans Act—All transactions, whether can be re-opened.*

Where three mortgage-deeds were executed by the plaintiff in favour of the defendant and by the second the first deed

\*Second Civil Appeal No. 333 of 1936, against the order of Babu Gopendra Bhushan Chatterji, District Judge of Gonda, dated the 21st July, 1936.

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was paid off and some more money was taken and by the third the second deed was paid off and some more money was taken and a suit was brought on their basis for accounting according to the Agriculturists' Relief Act and for reduction of interest under that Act and the Usurious Loans Act, *held*, that the Usurious Loans Act permits a suit to be brought on a series of transactions and all the three transactions should be reopened and it should be seen whether interest was excessive or the transaction was substantially unfair between the parties.

Messrs. *M. Wasim* and *Ali Hasan*, for the appellant.

Mr. *S. N. Srivastava*, for the respondent No. 1.

ZIAUL HASAN and BENNETT, JJ.:—This second appeal against a decree of the learned District Judge of Gonda arises out of a suit brought by the plaintiff-appellant under section 33 of the Agriculturists' Relief Act.

It appears that the plaintiff-appellant executed three mortgage-deeds in favour of the respondents between 1918 and 1920. The first deed, which is Exhibit 1, on the record, was executed on the 1st July, 1918, for a sum of Rs.2,000 and provided for interest at Re.1-8 per cent. per mensem compoundable half yearly. The mortgage consideration consisted of the following items:

	Rs.	a.	
12,546	8		paid in cash.
3,500	0		due to the mortgagee or <i>bahi khata</i> account.
175	0		due on account of interest.
3,499	4		on account of price of cloth.
100	0		interest on price of cloth.
150	0		paid in cash.
29	4		paid in cash.
Total ..	20,000	0	

The second mortgage-deed, Exhibit 2, was executed on the 19th March, 1920, for Rs.28,000. Interest was stipulated at 12 per cent. per annum compoundable yearly. Out of the consideration a sum of about Rs.25,000 was set off against the amount due on the first mortgage and the rest was received in cash.

The third deed, Exhibit 3, was executed three months later on the 17th June, 1920. It was a mortgage for Rs.30,852 and carried interest at  $7\frac{1}{2}$  per cent. per annum compoundable yearly. This deed paid off the earlier deed, Exhibit 2, and the rest of the consideration was obtained in cash.

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The only question that arises in this appeal is whether or not the plaintiff-appellant is entitled to have the transactions of the 1st July, 1918, and 19th March, 1920, reopened under the provisions of the Usurious Loans Act.

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 and  
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Both the courts below have held that these transactions cannot be reopened. The trial court reduced the contractual rate of interest under the provisions of section 30 of the Agriculturists' Relief Act and held that a sum of Rs.8,419-11 was still due by the plaintiff to the defendants-mortgagees.

Section 3 of the Usurious Loans Act as amended by the Local Act XXII of 1934 provides that if in any suit to which the Act applies, "the court has reason to believe (a) that the interest is excessive or (b) that the transaction was as between the parties thereto substantially unfair the court shall . . . reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest . . . and set aside either wholly or in part any . . . agreement made in respect of any loan." The question therefore is what is "the transaction" in the present case. The learned counsel for the respondent says that the transaction in suit in the present case is only the last mortgage of the 17th June, 1920, and as the stipulated rate of interest  $7\frac{1}{2}$  per cent. per annum compoundable yearly is not excessive and as the transaction was not substantially unfair, the two earlier transactions cannot be reopened. We are of opinion however that the transaction in suit in the present case covers all the three mortgages mentioned above. Beyond

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the fact that the mortgage deed of the 17th of June, 1920, was mentioned in the plaint first of all, there is no indication that the plaintiff wanted an account to be taken under section 33 of the Agriculturists' Relief Act in respect of that transaction only. On the other hand paragraph 1(a) of the plaint mentions the earlier transactions also in the following terms:

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"That the mortgage-deed mentioned in paragraph 1 was executed in lieu of mortgage-deed, dated the 1st July, 1918, and 19th March, 1920, which carried interest at the rate of 1/8 per cent. per mensem compoundable six-monthly and yearly rests and the property was mortgaged which is hard and unlawful according to section 3 of the Usurious Loans Act hence the plaintiff is entitled to a rendering of accounts and a deduction in the interest in the consideration money of the deed mentioned in paragraph 1 regarding those deeds."

Further, the relief claimed by the plaintiff clearly shows that he wanted accounts to be taken of all the three transactions.

Sub-paragraph (a) of the reliefs claimed is as follows:

"That after accounting according to the Agriculturists' Relief Act regarding the reduction of interest the amount due from the plaintiff to the defendants be mentioned and declared that accounts be made in respect of the *deeds mentioned in paragraphs (1) and (1a)* that after making an account of interest according to the Agriculturists' Relief Act and Usurious Loans Act and after making deductions of the sums paid by the plaintiff the amount due from the plaintiff be notified that if any surplus amount be found due to the plaintiff then it be got returned to him by the defendants."

That the Usurious Loans Act permits a suit to be brought on a series of transactions is shown by the explanation to proviso (i) to section 3(1) of the Act. It runs as follows:

"In the case of a suit brought on a series of transactions, the expression 'the transaction' means for the purposes of proviso (i) the first of such transactions."

We have therefore no doubt that this was a suit brought on a series of transactions and that as such we have to see whether interest was excessive or the transaction was substantially unfair between the parties. Under the provisos to sub-section (2) of section 3 of the Act, on a loan secured by a first mortgage interest must be deemed to be excessive if the rate exceeds 12 per cent. per annum but it is not to be deemed excessive if it does not exceed 7 per cent. per annum. By this standard interest on the mortgage of the 1st July, 1918, was undoubtedly excessive and that on the mortgage of the 19th March, 1920, may possibly be excessive by being in excess of 7 per cent. per annum compoundable half-yearly.

Then again it is alleged by the plaintiff and not denied by the defendants that the plaintiff has made payments amounting to Rs.47,458-14-2 to the defendants out of which Rs.24,147 was paid on account of principal and Rs.23,311-14-2 as interest. In view of the above we are of opinion that the trial court should have reopened all the three transactions and given relief to the plaintiff under the Agriculturists' Relief Act and the Usurious Loans Act.

The appeal is therefore decreed with costs and the suit remanded to the trial court for retrial by reopening all the three transactions.

*Appeal allowed.*

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