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APPELLATE CIVIL.

Before Kapur and Soni, JJ.

VAISHNU DASS AND OTHERS,—*Appellants.*

versus

THAKUR DASS SON OF KANSHI RAM,—*Respondent.*

1952

October, 8th

Regular Second Appeal No. 331 of 1948.

Interpretation of Statutes—Whether language alone to be looked at—If not, what other factors to be considered—Usurious Loans Act (X of 1918) as amended by Punjab Acts VII of 1934 and XII of 1940—Whether applicable to loans raised before its commencement—Amended section 3(2)(a)—Whether applicable to suit for redemption.

G.S. mortgaged property in suit with possession in favour of K. R. in 1915. G. S. sold a part of the mortgaged property to M. R. in 1916. M. R. filed a suit for redemption against T. D., son of K. R. in 1945. Rate of interest stipulated in the mortgage deed was Rs 1-8-0 per cent per mensem. Usurious Loans Act came into force in 1918 and its section 3(2)(a) was amended in the Punjab in 1934 and 1940 by which it was provided that 'the rate of interest shall be excessive if it exceeds 7½ per cent per annum on secured loans.' Section 2(3)(c) defined suit to mean suit for the redemption of any security given after the commencement of the Act in respect of any loan made either before or after the commencement of the Act. The question canvassed before the High Court was whether the said Act applied to suits for redemption of mortgages executed before the commencement of the Act.

Held per Kapur, J.—while interpreting a statute the Judge must set to work on the constructive task of finding the intention of the Legislature, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature. Usurious

Loans Acts have been passed to remedy the evil of usury and these Acts must be interpretted in a manner which advances that object.

Seaford Court Estates, Ltd. v. *Asher* (1), relied on.

Held further, that the Usurious Loans Act as amended in the Punjab before or after the commencement of the Act and Section 3(2)(a) of the Act, applies as much to suits for redemption of a mortgage as to suits to enforce the mortgage by sale.

Per Soni, J.—It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity, while the other will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided. Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used.

Shamaras V. Parulekar v. *The District Magistrate, Thana and others* (2), quoted.

Second appeal from the decree of Shri Siri Ram Puri, District Judge, Amritsar, dated the 6th December 1947, modifying that of Shri Mohd. Afzal Khan, Sub-Judge, 1st Class, Amritsar, dated the 7th November, 1945, granting the plaintiff a decree for possession by redemption of properties, kotha, well, platform and A B C D shown in Ex. P. 1, together with the site 24 x 35 shown in Ex. D. 3 against the defendant on payment of Rs 4,018 by 7th December 1946, and that in case of default the suit shall stand dismissed with respect to the above properties and dismissing the suit in respect of B C E F unconditionally and leaving the parties to bear their own costs by reducing the amount payable to the mortgagee to Rs 8,841 and leaving the parties to bear their own costs.

K. L. GOSAIN, for Appellants

N. L. WADHERA, for Respondent.

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(1) (1949) 2 A.E.R. 155
(2) 1952 S.C.R. 683 at page 690

JUDGMENT.

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KAPUR, J. The only point for decision in this case is one of rate of interest and the applicability of the Usurious Loans Act, 1918, as amended later, to the facts of the present case.

On the 9th November 1915, Gian Singh mortgaged the property in dispute with possession in favour of Kanshi Ram for Rs. 600. On the 19th December 1916, Gian Singh sold 2 *kanals* 12 *marlas* of land out of the land mortgaged to Mela Ram for Rs. 900. Mela Ram on the 29th August 1945, filed the present suit against Thakar Das, son of Kanshi Ram, for redemption. One of the issues raised was as to the rate of interest which the defendant was competent to charge, and it was held that as the mortgage was previous to the Usurious Loans Act of 1918, the rate of interest chargeable was the stipulated rate of Rs. 1-8-0 per cent. per mensem, and this decree was upheld by the first appellate Court. This was on the 6th December 1947. The question of the rate of interest does not seem to have been argued in the Court of the District Judge although the question had been raised in the grounds of appeal. In the second appeal by the plaintiff the only question which has been canvassed for our opinion is one of interest to be awarded in view of the amended provisions of the Usurious Loans Act.

The first contention raised by the defendant-respondent is that the question of the applicability of the Usurious Loans Act was not raised in the first appellate Court and cannot be raised now. The answer to that is a very simple one, and that is that under section 3(1) of the Act as amended in the Punjab for the word 'may' the word 'shall' has been substituted and therefore it is incumbent upon the Court to exercise the powers given under the Act.

It is then submitted by Mr. Wadehra for the respondent that this Act can have no application because it applies to securities given after the commencement of this Act, which was in 1918, the

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mortgage being of 1915. It is necessary to examine the scheme of the Act. 'Loan' is defined in section 2(2) to mean—

> "'Loan' means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan."

In section 2(3) it is provided—

> "'Suit to which this Act applies' means any suit—
>
> (a) * * *
>
> (b) * * *
>
> (c) 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."

Section 3(2) (a) has been amended in the Punjab by Act VII of 1934 as amended by Act XII of 1940, and therefore in regard to mortgages the amount of interest shall be excessive if it exceeds 7½ per cent per annum. The question is whether this amended section is to be applied to a case of redemption. Mr. Gosain submits that under clause (c) of section 2 (3) the Act applies to all loans whether made before or after the commencement of this Act and also to such securities which have been given in respect of any loan after the commencement of this Act, whether the loan was made before or after the Act, and that the word 'loan' includes a 'mortgage loan', because the definition of the word as given in the Act would cover it, and he further submits that if this interpretation is not given, i.e., if the Act is not applicable to redemption suits in regard to securities given before the Act, then there will be inconsistency between the wording of that section and subsection (3) of section 3 which is as follows:—

> "3(3) This section shall apply to any suit whatever its form may be, if such suit

> is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security."

There is a great deal of force in this submission. The words used in subsection (3) of section 3 are that the section applies to any suit if such suit is substantially * * * * for the redemption of any such security. If these words are to be interpreted in their literal sense then this Act must apply to the present suit also. The language used in section 2(3)(c) can only be reconciled with subsection (3) of section 3 if this interpretation is accepted. In this connection I would like to quote a passage from the judgment of Denning, L. J., at page 164 of the report in *Seaford Court Estates, Ltd.* v. *Asher* (1)—

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of

(1) (1949) 2 A.E.R. 155

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Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give 'force and life' to the intention of the legislature."

The proper way of construction, in my opinion, is as pointed out by Denning, L.J. These Acts have been passed to remedy an evil and are consonant with the prevailing social ideas which are against usury. If we accept the contention of Mr. Wadehra, it will come to this that if a creditor brings a suit for the recovery of a loan, the Usurious Loans Act will apply in the Punjab whether the loan was advanced before or after the commencement of the Act and if the mortgagee enforced his mortgage the debtor would be entitled to get relief as provided by the amended Act, in the Punjab, but if the debtor wishes to pay back the creditor and wishes to redeem his property he will not be entitled to get the relief which in my opinion is wholly inconsistent with the underlying idea of the Usurious Loans Act. The Legislature in the Punjab has chosen to say that interest of more than 7½ per cent. per annum on secured loans shall be usurious and it would not be in accordance with the social idea in the Punjab as expressed by the Legislature to allow interest at a higher rate and thus to perpetuate the very evil which the Legislature wants to put an end to.

I would therefore allow this appeal to the extent that the interest will be reduced from Rs. 1-8-0 per cent. per mensem to 7½ per cent. per annum, and interest calculated at this rate would come to Rs. 1,046-4-0. Thus, the decree will be reduced to Rs. 1,696-4-0, principal being Rs. 450 *plus* interest Rs. 1,046-4-0, and cost of improvements Rs. 200. In view of the circumstances of the case the parties will bear their own costs throughout.

SONI, J. I agree. It has been recently pointed out by the Supreme Court in *Parulekar's case* (1), decided on 26th May, 1952, that—

> "It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity, while the other will give effect to what commensense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided: See the speech of Lord Wensleydale in *Grey* v. *Pearson* (2), quoted with approval by the Privy Council in *Narayan Swami* v. *Emperor* (3), also *Salmon* v. *Duncombe* (4). The rule is set out in the text books: See Maxwell on the Interpretation of Statutes, 9th Edition, page 236, and Craies on Statute Law, 5th Edition, pages 89 to 93. * * * Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course this does not mean that an Act or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used."

(1) Petition No. 86 of 1952
(2) (1857) 6 H.L.C. 61 at 106
(3) A.I.R. 1939 P.C. 47
(4) 11 A.C. 627 at 634