Gamini Krishnayya And Others vs Curza Seshachalam And Others on 31 August, 1964

Equivalent citations: 1965 AIR 639, 1965 SCR (1) 195, AIR 1965 SUPREME COURT 639, 1965 (1) SCJ 533, 1965 (1) SCR 195, 1965 (1) SCWR 382

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Raghubar Dayal, S.M. Sikri

PETITIONER:
GAMINI KRISHNAYYA AND OTHERS

Vs.

RESPONDENT:
CURZA SESHACHALAM AND OTHERS

DATE OF JUDGMENT:
31/08/1964

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
DAYAL, RAGHUBAR
SIKRI, S.M.

CITATION:
1965 AIR 639 1965 SCR (1) 195
CITATOR INFO :
R 1992 SC 195 (6A)

ACT:
Madras Agriculturists' Relief Act (4 of 1938), ss. 9(1) and 13--Debt incurred after 1st October 1932 but before commencement of Act Renewal after commencement of Act-Provision applicable.

HEADNOTE:
Dealings between the family of the appellants (creditors) and the family of the respondents (debtors) commenced in 1934. In September 1938, after the Madras Agriculturists' Relief Act (4 of 1938) came into force in March 1938, a promissory note was executed by the debtors (who are agriculturists) in favour of the creditors for the amount

then found due. The debtors also agreed to pay interest at the rate of 93/8 per cent per annum on that amount. In arriving at the amount due to the creditors in 1951, the debtors contended that the debt should be scaled down under s. 9(1) of the Act, whereas the creditors contended, on the basis that it was a debt incurred after the commencement of the Act, that the only relief to which the debtors were entitled, was calculation of interest under s. 13 of the Act.

HELD : Though the transaction was entered into after the commencement of the Act, since the original indebtedness arose before the commencement of the Act but after October 1, 1932, s. 9(1) of the Act would be applicable. [210 D]

Under s. 7 of the Act every debt payable by an agriculturist at the commencement of the Act shall be scaled down and nothing in excess of the amount scaled down will be recoverable; and this would in effect operate as a discharge of the rest of the liability. Where, therefore, a suit is instituted for recovery of a debt from an agriculturist, the court will have to scale down the debt as provided in s. 8 if the debt was incurred before 1st October, 1932. If the debt was incurred after that date, the Court will have to apply the provisions of a. 9. In such a case, the debt incurred after the commencement of the Act will not cease to be a debt incurred after October 1, 1932, when it is a transaction in renewal of a liability which arose prior to the commencement of the Act. As to future interest, transactions prior to the commencement of the Act covered by ss. 8 and 9, are governed by s. 12, and transactions after the commencement of the Act, by s. 13. The object of the Legislature in enacting s. 13 is only to provide for a maximum rate of interest payable by agriculturists, on debts incurred for the first time after the commencement of the Act. [200 F-G; 201 C-E; 204 C-F].

Case law reviewed.

Nagabhushanam v. Seetharamaiah, I.L.R. [1961] 1 ~A.P. 485, approved.

Thiruvengadatha Ayyangar v. Sannappan Serval, I.L.R. [1942] Mad. 57, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 618 of 1961.

Appeal by special leave from the judgment and decree dated December 23, 1960 of the Andhra Pradesh High Court in Second Appeal No. 653 of 1956.

K.Bhimasankaram, C. M. Rao and K. R. Sharma, for the appellant.

A.V. V. Nair and P. Ram Reddy, for respondents Nos. 2 and

4. The Judgment of the Court was delivered by Mudholjkar J.The question that falls for decision in this appeal by special leave from the judgment of the High Court of Andhra Pradesh is whether a debtor who has executed a promissory note after the coming into force of the Madras Agriculturists' Relief Act, 1938 (Madras Act 4 of 1938) (hereafter referred to as the Act) in renewal of a debt incurred prior to the commencement of the Act is entitled to claim the benefit of S. 9 of the Act. The trial court- upheld the debtor's contention but in appeal the Subordinate Judge rejected it and decreed the appellants' suit in full. The High Court held that the interpretation placed on the relevant provisions of the Act by the Subordinate Judge was erroneous, allowed the appeal and restored the decree passed by the trial court.

Certain facts have to be stated in order to appreciate the contentions of the parties. The plaintiffs who are the appellants before us and the fourth defendant constituted a Hindu joint family of which the first plaintiff was the manager till the year 1944 when the fourth defendant separated from the rest and the remaining members continued to remain joint. On, September 14, 1938 the first defendant as manager of the joint family consisting of himself, the second and the third defendants executed a promissory note in favour of the first plaintiff as manager ,of the joint family consisting of the plaintiffs and the fourth defendant for a sum of Rs. 9,620-2-9 and agreed to pay interest at the rate of 9 and 3/8% per annum. This amount was found due to the family of the plaintiffs and defendant No. 4 on foot of dealings between that family and the family of defendants 1 to 3 which commenced in the year 1934.

In Original Suit No. 84 of 1949 brought by the fourth defen- dant against the plaintiffs for partition of the family property the first defendant deposited a sum of Rs. 13,576-0-0 on March 17, 1951 alleging that was the amount due to the family of the plaintiffs and defendant No. 4 from the family of defendants 1 to 3 on foot of the promissory note of September 14, 1938. In arriving at this amount the defendants 1 to 3 took into account the provisions of the Act and scaled down the interest as permitted by s. 9(1) of the Act. The plaintiffs disputed the correctness of the calculation whereupon the defendants 1 to 3 withdrew their application but all the same the plaintiffs withdrew the amount eventually. The plaintiffs thereafter instituted the suit out of which this appeal arises in which they claimed Rs. 3,858-13-3 and costs on the basis of the calculations made by them and set out in the memo accompanying the plaint.

Defendants 1 to 3 denied the plaintiffs' claim and stated that the amount deposited by them in the partition suit having been withdrawn by the plaintiffs nothing more is due to them from these defendants on the foot of the promissory note dated September 14, 1938.

The trial court, as already stated, substantially upheld the contention of the defendants 1 to 3 and passed a decree for Rs. 92-2-2 in favour of the plaintiffs and the fourth defendant and dismissed the suit with respect to the rest of the amount. This decree which was set aside by the appellate court has been restored by the High Court. On behalf of the plaintiffs who are the appellants before us it is strenuously contended by Mr. Bhimasankaram that the relevant provision of the Act with reference to which a debt like the one evidenced by the promissory note in suit can be scaled down would be s.

13 and not s. 9 as held by the High Court. the relevant portion of s. 13 reads thus :

> "In any proceeding for recovery of a debt, the court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 61 per cent per annum simple interest, that is to say, one pie per rupee per mensem simple interest,, or one anna per rupee per annum simple interest Provided that the State Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time."

According to learned counsel the execution of the promissory note itself brought into existence a debt and since the promote was executed on September 14, 1938, the debt evidenced by it must be regarded as having been incurred after the commencement of the Act and consequently s. 13 alone will have to be borne in mind for the purpose of calculating interest. Learned counsel did not dispute the fact that the original indebtedness of the respondents 1 to 3 commenced in the year 1934. But according to him the liability which was sought to be enforced against them was the one arising from the promissory note dated September 14, 1938 and, therefore, the debt must be deemed to have been incurred on the date of the execution of the promissory note in suit. Relying upon certain decisions of -the High Courts of Madras and Andhra Pradesh he contended, that the Act places debts incurred by agriculturists into -three classes: (1) those incurred before the 1st of October, 1932; (2) those incurred on or after the 1st of October, 1932 but before the coming into force of the Act and (3) those incurred after the coming into force of the Act. Section 8 applies to the, first category of debts, S. 9 to the second category of debts and s. 13 to the third category of debts. Since, the argument proceeds, all these provisions have reference to the date on which a debt is incurred and since a debt can be incurred only once, it would follow that for the purposes of these provisions the date on which the last transaction with reference to a debt took place can alone be regarded as the date on which the debt was incurred. The result of this, according to him, would be that the provisions of s. 8 would apply only when the last transaction was entered into before the 1st of October, 1932 subject to the provisions of the proviso to sub. s. (1) of s. 9; the provisions of s. 9 would apply only to a case where the last transaction was entered into after October 1, 1932 but before the commencement of the Act; and the provisions of s. 13 would apply where the last transaction was entered into after the commencement of the Act. It is desirable to set out fully the provisions of both ss. 8 and 9. They are as follows :

> "Debts incurred before the 1st October 1932 shall be scaled down in the manner mentioned hereunder, namely:-
>
> (1)All interest outstanding on the 1st October, 1937 in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date. (2)Where an agriculturist has paid to any creditor twice the amount of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding which ever is smaller, shall be repayable. (4)Subject to the provisions of sections 22 to 25 nothing contained in sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Explanation I : In determining the amount repayable by a debtor under this section, every payment made by him shall be debited towards the principal, unless he has expressly stated in writing that such payment shall be in reduction of interest.

Explanation II : Where the principal was borrowed in cash with an agreement to repay it in kind, the debtor shall, notwithstanding such agreement, be entitled to repay the debt in cash, after deducting the value of all payments made by him in kind, at the rate, if any, stipulated in such agreement, or if there is no such stipulation, at the market rate prevailing at the time of each payment.

Explanation III : Where a debt has been renewed, or included in a fresh document executed before or after the commencement of this Act, whether by the same or a different debtor and whether in favour of the same or a different creditor, the principal originally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.

Section 9: Debts incurred on or after the 1st October 1932 shall be scaled down in the manner mentioned hereunder, namely:-

(1) Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of Court under which it arises or at five per cent per annum simple interest, whichever is less and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due:

Provided that any part of the debt which is found to be a renewal of a prior debt (whether by the same or a different debtor and whether in favour -of the same or a different creditor) shall be deemed to be a debt contracted on the date on which such prior debt was incurred, and if such debt had been contracted prior to the 1st October 1932 shall be dealt with under the provisions of S. 8. (2)Subject to the provisions of sections 22 to 25, nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed."

We will proceed to examine these provisions and the other relevant provisions of the Act before we refer to the decisions upon which reliance has beer% placed on behalf of each of the parties to the appeal.

Chapter II of the Act deals with "Scaling down of debts and future rate of interest. Section 7 appears to be the most important provision therein because it is here that the legislature has given a mandate that every debt payable by an agriculturist at the commencement of the Act shall be scaled down and that nothing in excess of the amount so scaled down will be recover,able from such debtor. That section runs as follows:

> "Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this chapter.
>
> No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him; nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Chapter."

We will have to bear in mind the provision,% of this section while construing the other provisions in Chapter II, including those of sections 8, 9 and 13.

Where a suit is instituted before a court of law for recovery of a debt from an agriculturist the court, having regard to the document on foot of which the creditor has instituted a suit was executed, finds that that document was executed before October 1, 1932 it will have to proceed to scale down the debt as provided in section 8. If it finds that the debt was incurred after October 1, 1932 it will have to apply the provisions of s. 9 of the Act. It is these two broad categories into which debts have been divided under the Act. But, Mr. Bhimasankaram argued, there is also a third category and that is where a debt is incurred subsequent to the commencement of the Act. In one sense he is right because s. 13 also provides for the scaling down of interest due on a debt incurred after the commencement of the Act. But it has to be borne in mind that a debt incurred after the commencement of the Act will not cease to be a debt incurred' after October 1, 1932. It is common place that every provision of a statute has to be given full effect and wherever possible the court should not place that construction upon a provision which would tend to make it redundant or to overlap another provision or to limit its application in disregard of its general applicability unless, of course, that is the only construc- tion which could be reasonably placed upon it. If Mr. Bhimasankaram's contention is accepted we will have to limit the application of s. 9 only to such of the debts incurred after October 1, 1932 as were incurred prior to the commencement of the Act. There is nothing in the language of the section which would justify so limiting its provisions. Nor again is there anything in section 13 which would preclude the application of s. 9 to any case whatsoever of a debt incurred after the commencement of the Act. For, a debt may have been incurred after the com- mencement of the Act in the sense that the last transaction with respect to indebtedness may have been entered into, after the commencement of the Act. But that transaction

may be in renewal of a liability which arose prior to the commencement of the Act. Where such is the case it is difficult to exclude the applicability Of s. 9 of the Act. As to how interest is to be calculated with respect to a debt incurred after October 1, 1932 the court cannot ignore the provisions of sub-s. (1) of s. 9. It was, however, contended that where the last transaction was subsequent to the commencement of the Act the court has no power to go behind it and find out what interest has been charged by the creditor up to the date of the last transaction. No doubt, where the accounts have been settled between the parties and on the basis of settled accounts a new transaction is entered into between them, normally speaking, the court has no power to enquire further , except in the circumstances envisaged in some of the provisions of the Contract Act. But then there are special provisions like the Usurious Loans Act and the Act in question which clothe the courts with the requisite power. Hem such a power is specifically given to the courts under Chapter II. Now, the proviso to sub-s. (1) of s. 9 clearly states that any part of the debt which is found to be a renewal of a prior debt shall be deemed to be a debt contracted on the date on which such prior debt was incurred. Therefore, though a promissory note may have been executed after the, commencement of the Act if it was in fact in renewal of a -prior debt, it will hale to be treated as if it was a debt incurred when the prior debt was incurred. This appears to be the true meaning of the proviso, though according to Mr. Bhimasankararn it deals with a debt originally incurred prior to October 1, 1932. In support of his contention Mr. Bhimasankaram relies upon the concluding portions of the proviso which read thus:..... and if such debt had been contracted prior to the 1st October 1932, shall be say that the use of the conjunction 'and' clearly shows that the dealt with under the provisions of section 8." it is sufficient to proviso applies as much to debts contracted prior to October 1st 1932 as to debts contacted after October 1, 1932 even though they may have been incurred after the commencement of the Act. If indeed it was the intention of the legislature to limit the application of the proviso in the manner suggested by Mr. Bhimasankaram it would have been easy for the legislature to say "provided that any debt or any part of a debt which is found to be the renewal of a debt contracted prior to 1st October, 1932" instead of using the expression "prior debt" in that Part of the proviso and then in the concluding portion say "if such debt has been contracted prior to 1st October, 1932". Then Mr. Bhimasankaram argued that the proviso is to sub-s. (1) of S. 9 and should, therefore, not be extended to embrace a debt renewed after the commencement of the Act. To accept this argument would give rise to this curious position that a debt renewed after the commencement of the Act would for the purposes of the Act not be a debt incurred after October 1, 1932.

Another argument advanced by Mr. Bhimasankaram is that unless a statute makes a provision to the effect that a debt would in certain circumstances be deemed to be discharged, the liability to pay it would still remain on the debtor and that merely providing for the scaling down of interest is not enough. In this connection he refers to the provision in sub-s. (1) of s. 8. Under that provision interest outstanding on October 1, 1937 in favour of any creditor of an agriculturist shall be deemed to be discharged and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agri- culturist on that date. Sub-setion (2) of s. 8 further provides that where an agriculturist has paid to the creditor twice the amount whether by way of principal, interest or both, the entire debt shall be deemed to be wholly discharged. It is true that sub-s. (1) of s. 9 which provides for scaling down of debts incurred on or after October 1, 1932 does not use similar language. But it seems to us that the difference in language would not make any

difference in the result because reading sub-s. (1) of s. 9 along with the provisions of s. 7 it is abundantly clear that what the creditor would be entitled to obtain from the court and what the court will have to do would be to award interest only to the extent permissible by sub-s. (1) of s. 9 and this would in effect operate as a discharge of the rest of the liability for interest under the contract between the parties. Learned counsel further said that by applying the provisions of sub-s. (1) of s. 9 to a debt renewed after the commencement of the Act would result in an anomaly in that with respect to renewals of certain old debts the entire liability for interest after October 1, 1932 will be wiped out whereas with regard to others the liability would exist to the extent of 5% per annum, simple interest. In our judgment no anomaly results because the complete discharge of interest up to October 1, 1937 is provided for only with respect to debts first incurred prior to October 1, 1932 and this would be the position whatever be the date of renewal of such debts. This would be the consequence of the express terms of the proviso to sub-s.(1) of s. 9 which makes the provisions of s. 8 applicable to debts contracted prior to October 1, 1932 but renewed after October 1, 1932 but not to debts incurred subsequent to that date.

The last contention of Mr. Bhimasankaram is that there is no provision for future interest corresponding to that in sub-s.

> (1) of S. 13 of the Act and, therefore, in so far as the interest after the commencement of the Act is concerned, s.

13 alone will, have to be resorted to. As already stated, Chapter IV divides debts into two broad categories and in so far as debts incurred prior to October 1, 1932 are concerned transactions in renewal of older ones have been brought within the purview of s. 8 by adding thereto Explanation III and transactions subsequent to October 1, 1932 within the purview of s. 9 by the proviso to sub-s. (I). Having made these provisions, there was nothing further that the legislature need have done in so far as transactions in renewal of debts contracted prior to the commencement of the Act were concerned. As to future interest, in so far as transactions prior to the commencement of, the Act were concerned, the legislature has made a provision in s. 12 and in so far as transactions after the commencement of the Act are concerned it has made a provision in S. 13 . Indeed, the object of the legislature in enacting s. 13 does not appear to be any other than to provide for the maximum rate of interest payable on debts incurred after the commencement of the Act and since it follows S. 12 it seems that just as the legislature divided debts into two categories it also divided rates of interest payable after the commencement of the Act into two categories. In section 12 it has prescribed the maximum rate of interest payable on debts scaled down under ss. 8 and 9 and in s. 13 has provided for an identical maximum rate with respect to debts which could not be scaled down under ss. 8 and 9 subject to the power of the State Government to alter it from time to time. There does not appear to be any other object such as creating a separate or independent category of debts while enacting S.

13. Upon a plain construction of these provisions, therefore, we see no difficulty in upholding the ultimate decision of the High Court.

Coming now to the decisions which were referred to at the bar, the earliest in point of time is Thiruvengadatha Ayyangar v. Sannappan Servai(1). This incidentally is the only decision which

completely supports the appellants' contention. In that case the debt was due on a promissory note dated October 2, 1938 which discharged the prior promissory note dated October 1, 1931. The District Munsiff had applied the proviso to sub-s. (1) of s. 9 and treated the debt as renewal of an earlier debt upon which interest upto March 22, 1938 bad to be reduced to 5%. The High Court pointed out that the scaling down machinery under that section has the effect of only reducing interest up to the date of the commencement of the Act and (1) I.L.R. [1942] Mad. 57.

said that it may reasonably be, inferred from this that the legislature did not intend the section to apply to those debts which had no existence before the last point of time up to which the scaling down under the Act could be effected. The High Court had not lost sight of the provisions of s. 12 which empower the court to award future interest after the commencement of the Act but it pointed out that that section would not apply to a debt which was incurred for the first time after March 22, 1938 and therefore s. 9 would not be applicable to an earlier debt renewed after March 22, 1938. The High Court then observed:

> "It seems to us that, having regard to the scheme of the Act, if it had been the intention of the Legislature to introduce the theory of renewals into the scaling down operations in respect of debts incurred after the commencement of the Act, some specific provisions would have been made in this behalf. We are of opinion that all debts incurred after the common man of the Act, whether they be in discharge of prior debts or not, will fall only under section 13."

The answer to the view of the High Court would be that in the first place every provision in the statute must be given effect to unless by doing so any conflict with any other provision of the Act would arise. In the second place we cannot ignore the object of the legislature in enacting this law which was to grant relief to the agriculturists and that any beneficial measure of this kind should, as far as permissible, be, interpreted in such a way as to carry out the main object which the Legislature had in view. What we have said earlier in our judgment is in consonance with these principles and by interpreting ss. 9 and 13 in the way we have done no violence will be done to the language of either of these provisions. The basis of the decision of the High Court appears to be that unless every transaction entered into after the commencement of the Act can be brought within the purview of s. 9, sub-s. (1) that provision could not apply to it at all whatever may be the date on which the original indebtedness arose. With respect, we do not see any reason for so construing the two provisions i.e., ss. 9(1) and 13. In our judgment it is sufficient to say that full effect has to be given to both the provisions and they are to be construed harmoniously. The next decision is Arunagiri Chettiar v. Kuppuswami Chettiar(1). This is a judgment by one of the two Judges who was (1) [1942] 2 M.I.J. 275.

supp.164-14 ,a party to the earlier decision. That was a case in which a claim -was made on behalf of a debtor for refund of excess interest which was paid by the debtor to the creditor after the commencement of the Act. Negativing the claim the learned Judge ,observed:

> "The two payments in 1938 and 1939 were definitely appropriated towards interest at the time when they were made. Neither the debtor nor the creditor has the right to

> tear up these appropriations by an unilateral act. The Court has no power to re-appropriate the payments to principal unless the Act contains a provision for such re-appropriation. I am not aware of any such provision in Act IV of 1938."

Then the learned Judge observed that the only way in which a debtor might get back money which he has paid after the Act came into force in excess of the amount properly due under the provisions of the Act would be by establishing a right to a refund under the ordinary law on the ground that the payment was made under a mistake. It will thus be seen that the matter involved in this case is different from the one before us.

The next decision is Mellacheruvu Pundarikakshudu v. Kuppa Venkata Krishna Shastri(1). That was a suit based upon a promissory note dated August 18, 1948 which was in renewal of a -promissory note executed on August 14, 1945. It was thus a case which was covered by S. 13 alone. The learned Judges rightly held that under S. 13 a debtor cannot trace back his debt to the, original debt which itself was incurred after the Act came into force. In this connection they relied on Thiruvengadatha Ayyangar's case(2) as well as on the decision in Krishanayya v. Venkata Subbarayudu(3). In the latter case it was held: "It is we,]] settled that a debt incurred after the commencement of Madras Act 4 of 1938, cannot be scaled down except in accordance with section 13 of that Act." The words 'a debt incurred' were meant to include a transaction in renewal of a debt actually contracted prior to the commencement of the Act. This is, therefore, a statement which supports the appellants but in point of fact the learned Judges were not concerned with a pre-1932 debt and so they did not have to decide the kind of point which arises in the case before us. While we agree that s. 13 by itself does not enable a debtor to trace back the debt to the original debt a further question can arise whether upon the facts the provisions (1) I.L.R. [1957] A.P. 532.

(2) I.L.R. 1942 Mad. 57.

(3) [1952] 1 M.L.J. 638.

of s. 9 are attracted to a debt incurred after the commencement of the Act (in the sense that the last transaction pertaining to it was subsequent to the commencement of the Act) because the original liability arose prior to the commencement of the Act. If s. 9 is attracted the proviso to subs.(1) thereof which permits the tracing back of certain debts can be resorted to if the facts permit that to be done.

Then there is the decision in Mallikharjuna Rao v. Tripura Sundari(1). That was a decision of a single Judge, Rajamannar C. J., who held that where a promissory note is executed for an amount in excess of what was due on the basis of Madras Agriculturists' Relief Act there is failure of consideration in so far as the excess amount is concerned and the plaintiff would not be entitled to more than what would be due to him after applying the provisions of that Act to the original debt and its renewals. The next decision relied on is Nainamul v. B. Subba Rao (2) The point which was referred to the Full Bench for its opinion was as follows:

> "Whether in the case of a debt incurred after the Act came into force a payment made expressly towards interest at the contract rate,can be reopened and reappropriated towards interest payable under the provisions of s. 13 of the Act."

The question was answered by the Full Bench in the affirmative. This decision thus substantially goes against the contentions of Mr. Bhimasankaram. The following observations of Subba Rao C. J. (as he then was) may be quoted in support of the view which we have taken:

> "Unhampered by decided cases, I shall proceed to consider the scope of the section having regard to the aforesaid declared object of the Act and the express words used in the section. The object of s. 13 is to give relief to agriculturists in the matter of interest in respect of a debt incurred after the Act. If such a debt is sought to be enforced, it is caught in the net of the scaling down process. At that stage, all the interest due on the debt is reduced to the statutory level or, to put it differently, whatever may be the contract rate of interest, it is rep laced by the statutory rate. If the appropriations (1) A.I.R. 1953 Madras 975.
>
> (2) A.I.R. 1957 A.P. 546 F.B made earlier are not reopened, the intention of the statute would be defeated for the contract rate prevails over the statutory rate up to a stage.

Doubtless the courts are concerned with the expressed intention of the legislature. The crucial words in s. 13 are 'all interest due on any debt'. The word 'interest' is qualified by two words 'all' and 'due. If interest outstanding alone is scaled down the emphatic word 'all' becomes otiose. If that was the intention, the words 'interest outstanding' would serve, the purpose as well. The word 'all', therefore, cannot be ignored and must be given a meaning. It indicates that the entire interest, which a debt earned, is scaled down."

The next decision referred to is that in Mansoor v. Sankara- pandia(1). That was a decision of the Full Bench of the High Court and the points which arose for consideration and the decision of the Court are correctly summarised in the following head note:

> "Section 13 of the Madras Agriculturists' Relief Act (IV of 1938) deals with debts incurred after the Act. Under that section there is no provision for any automatic discharge of interest stipulated at a rate higher than that prescribed therein. Such excess interest is only made irrecoverable if the creditor sought to enforce it in a court of law. 'Mere being neither a prohibition against a stipulation for payment nor an automatic discharge of higher rates of interest agreed to be paid by an agriculturist debtor, it cannot be said that, when a creditor in regard to a debt contracted after the Act with the assent of his debtor added to the principal loan the interest accrued in terms of the contract and the debtor entered into a fresh contract treating the consolidated amount as principal for the fresh loan, there would be anything illegal or even a failure of consideration in regard to the new loan. Such a new loan would constitute the debt incurred on the date of renewal and if a suit is based on that debt,

the provisions of section 13 could be attracted to that debt alone and not to the earlier debt of which it was a renewal or substitution.

(1) I.L.R. [1959] Mad. 97.

The power to go behind a suit debt and to apply the provisions of the Act for the original liability is confined only to cases falling under sections 8 and 9 of the Act.

But even in cases coming under section 13 it would be open to the defendants to plead and prove that the debt sued on could not form the basis of an action or that there was a failure of consideration in respect of it. Such a defence is not by virtue of anything in or peculiar to the Act, but one under the general law. In cases where a debt was contracted prior to the Act, but renewed after the Act by one or series of successive documents, such renewals including interest at the contract rate, which had been statutorily discharged by reason of the provisions of sections 8 and 9 of the Act, there would be a failure of consideration to the extent to which the interest was so discharged. This principle will or can have no application in the case of a debt incurred after the Act and renewed thereafter. In those cases there would be no failure of consideration, for no portion of interest has been discharged by section 13, it being open to the debtor to agree to pay the higher stipulated rate of interest."

That again was a case where the original indebtedness was subsequent to the commencement of the Act and, therefore, stands on a footing different from the one before us. The observations made by the court in the case upon which reliance is placed on behalf of the appellants appear to have been limited by the learned Judges to cases which fall under s. 13 alone. Since, however, the learned Judges seem to have accepted the view taken in Thiravengadatha Ayyangar's case(1) it is necessary for us to say that to that extent we do not concur in the view taken by them. It has to be remembered that where the plaintiff sues upon a document executed after the commencement of the Act the Court has to bear in mind also the provisions of s. 9 inasmuch as the document is one executed after October 1, 1932. If the pleadings show that the original indebtedness commenced before the coming into force of the Act the court will first have to deal with the document with reference to the provisions which precede s. 13 of the Act. It is not as if the Court has to shut its eyes to everything except the fact that the document sued upon was executed subsequent to the commencement of the Act. There-

I.L.R. [1942] Mad. 57.

fore, if the court finds that the original indebtedness arose prior to the commencement of the Act either s. 8 or s. 9 will apply and it would not be relevant for it to consider whether by executing a renewal after the commencement of the Act the parties agreed to treat the interest accrued up to the date of renewal as principal from the date of the renewal of the debt. That consideration may be relevant in cases which completely exclude the applicability of ss. 8 and 9.

We were also referred to the decision in Punyavatamma. v. Satyanarayana(l); Nagabushanam v. Seetharamaiah(2) and Chellammal v. Abdul Gaffoor Sahib(3). In the first and the third of these

cases the original liability arose after the commencement of the Act but in the second one it arose before the commencement of the Act. We agree with the view taken in the latter case that relief can be given to an agriculturist in such a case under s. 8 or S. 9 as the case may be.

Thus it would appear that wherever a transaction was entered into after the commencement of the Act but the original indebtedness arose before the commencement of the Act, the preponderant view is that ss. 8 and 9 would not be inapplicable. That, as already stated, is also our view. In the result we dismiss the appeal with costs. Appeal dismissed (1) I.L.R. [1960] 2 A. P. 111.

(2) I.L.R. [1961] 1 A. P. 485.

(3) I.L.R. [1961] Mad. 1061.