State Bank Of India vs Yasangi Venkateswara Rao on 21 January, 1999

Equivalent citations: AIR 1999 SUPREME COURT 896, 1999 (2) SCC 375, 1999 AIR SCW 568, 1999 (1) ARBI LR 366, 1999 (1) ADSC 317, 1999 (1) SCALE 131, 1999 (1) LRI 238, 1999 (1) ALL CJ 775, 1999 ADSC 1 317, (1999) 1 JT 145 (SC), 1999 (1) JT 145, 1999 (1) UJ (SC) 443, 1999 UJ(SC) 1 443, (1999) 1 CURCC 49, (2001) 1 BANKCAS 87, (1999) 3 MAD LW 130, (1999) 1 SCJ 337, (1999) 1 ARBILR 366, (1999) 2 BANKLJ 5, (1999) 1 SUPREME 196, (1999) 2 ICC 59, (1999) 1 SCALE 131, (1999) BANKJ 302, (1999) 2 CIVLJ 650, (1999) 95 COMCAS 805, (1999) 1 BANKCLR 21

Bench: B.N. Kirpal, S. Rajendra Babu

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           CASE NO.:
Appeal (civil)  4607 of 1989

PETITIONER:
STATE BANK OF INDIA

RESPONDENT:
YASANGI VENKATESWARA RAO

DATE OF JUDGMENT: 21/01/1999

BENCH:
B.N. KIRPAL & S. RAJENDRA BABU

JUDGMENT:
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JUDGMENT 1999 (1) SCR 213 The Judgment of the Court was delivered by KIRPAL, J. The challenge in this appeal is to judgment of the High Court which, while allowing the appeal filed by the respondent, had declared Section 21-A of the Banking Regulation Act as being ultra vires. Briefly stated the facts are that a suit for recovery of money was filed by the appellant before the District Munsif, Eluru. The Trial Court passed a preliminary decree and the same was substantially upheld by the District Court.

In the second appeal which was filed, one of the contentions which was raised related to the charging of interest by the appellant. After the decree of the Trial Court, by the Banking Laws (Amendment) Act 1 of 1984, new Section 21-A was inserted in the Banking Regulation Act. The said Section reads as follows.

> "Notwithstanding anything contained in the Usurious Loans Act, 1918 or any other law relating to indebtedness in force in any State, a transaction between a banking

> company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such trans-action is excessive."

Relying upon this provision, the contention of the appellant was that there would be no occasion for the court to reduce the rate of interest which the borrower had contracted to pay.

The High Court in the second appeal, even without an issue being framed to this effect, entertained the plea regarding the validity of the said Section and observed as follows :

> "Considering the fact that grant of debt relief has always been treated in our country as a legislative subject to be passed upon by the regional Governments alone and that the words "Relief of agricultural indebtedness"

were specially added by our Constitu-tion to enable the State Legislatures to alleviate the suffering of the farmers from their agricultural indebtedness and that the Constituent Assembly had deliberately rejected an amendment moved seeking to transfer this item to the concurrent list, I hold that Section 21-A of the Banking Companies Regulation Act which forbids the Courts from reopening the bank loans on the ground of excessive interest is not a law enacted by the Parliament with respect to the item of Banking."

The learned Additional Solicitor General contends that the aforesaid observation of the High Court is not correct. He also submits that the High Court had erred in observing that "normally where security offered by the debtor is good and adequate as it is in a case of mortgage of property, the Courts will hold charging of compound interest to be excessive."

We are unable to understand as to how the High Court could come to the conclusion that the Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21-A deals with the question of the rate of interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers the Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of the Parliament. The said Section applies to all types of loans which are granted by a banking company, whether to an agricul-turist or a non-agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted.

We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be paid, we fail to understand as to how the court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged.

With the aforesaid observations, this appeal is allowed, the judgment and decree of the High Court is set aside and that of the lower appellate court restored. No order as to costs.