R. M. Ar. R.M. Ramanathan Chettiar Alias ... vs S.M.O. Oomanathan Chettiar on 7 September, 1973

Equivalent citations: (1974)1MLJ221

JUDGMENT

M. M. Ismail, J.

1. A. S. No. 408 of 1967 has been preferred" by the defendant in O.S.No. 50 of 1965 on the file of the Court of the Subordinate Judge of Devakottai. The respondent in that appeal instituted the suit for recovery of a sum of Rs. 17,566.16, as per vaddi chittai filed along with the plaint, with subsequent interest. According to him, the appellant and the respondent had an open, mutual and current account between them at Shanmughanathapuram and they carried on the said dealings from 16th April, 1953 to 3rd December, 1953 on which date the amount due by the appellant to the respondent was Rs. 12,000. Under the agreement, interest on the respective amounts had to be calculated and added to the principal at the end of each Tamil year at the prevalent rates of interest. His further case was that the rate of interest at the outset, was at nine annas per centum per mensem, that it was later on increased to ten annas per centum per mensem from 16th April, 1956, that it was 11 annas per centum per mensem from 17th April, 1958 and that finally it was 12 annas per centum per mensem from 16th April, 1960 and that these rates of interest followed the prevalent increases of bank rates in accordance with the trade usage of the parties. The respondent further stated that four payments had been made by the appellant through his agent and that he had given receipts to that agent and that the said four payments were open payments and were made as follows:

> (1) Rs. 5,000 on 2nd May, 1962; (2) Rs. 1,500 on 14th October, 1962; (3) Rs. 2,500 on 24th October, 1962; and (4) Rs. 1,000 on 20th December, 1962.

The respondent further contended that he was entitled to appropriate these payments to the earliest amounts on the debit side of the appellant and interest thereon. Thus, after giving credit to the said sum, according to the respondent, a sum of Rs. 17,566.16 with interest upto and inclusive as on 7th September, 1965 was due and the respondent was entitled to recover the same from the appellant. The respondent also contended that the appellant was not an agriculturist entitled to any benefits under Madras Act IV of 1938. With reference to the question of limitation, the respondent pleaded that the appellant herein was in Malaysia during the several periods mentioned in the plaint that the appellant had written from Malaya, a letter on 9th September, 1957 acknowledging his liability and that at his request a vaddi chittai was furnished to him and that the appellant had promised to pay him.

2. The appellant-defendant in his written statement denied that there was an agreement to pay any interest. According to him in addition to the sum of Rs. 10,000 admittedly received by the

respondent herein, the appellant had paid a further sum of Rs. 2,000 on 22nd January, 1954 and that sum together with the sum of Rs. 10,000 referred to above, discharged his entire liability to the respondent. He further contended that the suit was barred by limitation and that he was an agriculturist entitled to the benefits of Madras Act IV of 1938.

3. The respondent filed a reply statement denying the allegations contained in the written statement and reiterating the case put forth by him in his plaint.

4. On the basis of these pleadings, the following issues were framed by the trial Court;

1. Whether the dealings between the plaintiff and the defendant were had as on a mutual, open and current account or as mere hand loan transactions ?

2. Whether the agreement for interest is true and to what amount of interest is the plaintiff entitled?

3. Is the usage for interest true ?

4. Is the plaintiff not entitled to appropriate the payments as mentioned in para. 6 of the plaint ?

5. Whether the suit is in time by reason of the defendant's absence from India as claimed ?

6. Whether the defendant's letter dated 9th September, 1957 constitutes an acknowledgement of liability and is the suit in time thereby?

7. Is the payment of Rs. 2,000 on 22nd January, 1964 (SCC) pleaded by the defendant true?

8. Is the discharge of liability pleaded by the defendant true ?

9. Is the defendant an agriculturist entitled to any benefits under the Madras Act IV of 1938?

10. To what relief, if any, is the plaintiff entitled?

5. The seventh issue was not considered by the trial Court as the respondent had taken an oath as challenged by the appellant herein and on that basis, that issue was answered in favour of the respondent herein: With regard to issue No. 9 the respondent did not press his contention that the appellant was not an agriculturist entitled to the benefits of Madras Act IV of 1938 and therefore that issue was answered in the affiramative and in favour of the appellant. On the other issues, the learned Subordinate Judge held that the parties had a mutual, open and current account, that there was agreement between the parties to pay interest, that the interest was at the prevalent rate, that the respondent herein was entitled to appropriate the payments made by the appellant herein towards the earliest amounts on the debit side of the appellant, that the suit was in time, that the appellant's letter, dated 9th September 1957 not only constituted an acknowledgement but also a fresh promise to pay and that the discharge of liability pleaded by the appellant was not true. In view of these findings, the learned Subordinate Judge by his judgment and decree, dated 9th March, 1967

decreed the suit for a sum of Rs. 12,000 being the principal with interest under Madras Act IV of 1938 from 20th December, 1962 being the date on which the last of the four payments referred to already was made by the appellant to the respondent herein. The learned Subordinate Judge arrived at this conclusion on the basis that the amount due to the respondent by the appellant as on 16th April, 1972 as per the ledger Exhibit A-2 maintained by the respondent was Rs. 22,874.36 made up of the principal of Rs. 12,000 and interest of Rs. 10,874.36 and that since the interest exceeded the payment of Rs. 10,000 the said payment should have been appropriated only towards interest to the knowledge of the appellant herein. Consequently, the learned Subordinate Judge held that the appellant was liable to pay the principal of Rs. 12,000 with interest at 51/2 per cent per annum from 20th December, 1962. It is against this decree and judgment A.S. No. 408 of 1967, has been preferred by the defendant in the suit.

6. The trial Court itself has directed the appellant herein to pay the respondent a sum of Rs. 13,967.16 with interest on Rs. 12,000 at 6 per cent, per annum from 8th September, 1965 being the date of the plaint till realisation. Though the amount decreed against the appellant is Rs. 13,967.16 with subsequent interest at6 per cent, per annum on Rs. 12,000 from the date of the suit, the appeal itself is confined only to a part of the decree, namely Rs. 6,562.27 and the disallowed portion of costs of Rs. 314.80. The appellant admitted his liability to the sum of, Rs. 8,486-89 though he has given his own (particulars as to how this admitted liability of Rs. 8,486.89 has been arrived at. However, the fact remains that it is not the entire decree passed by the trial Court that is appealed against and that the appellant has accepted his liability to pay a sum of Rs. 8,486.89, but disputed his liability only for the balance, namely, Rs. 6,562.27.

7. The respondent also has filed a memorandum of cross-objections claiming a sum of Rs. 3,599 being the difference between the sum of Rs. 17,566.16 -for for which he prayed for a decree and the sum of Rs. 13,967.16 for which a decree has been granted.

8. During the pendency of this appeal, the Tamil Nadu Agriculturists Relief Act IV of 1938 (hereinafter referred to as the 1938 Act) has been amended by the Tamil Nadu Agriculturists Relief (Amendment) Act, 1972 (Act No. VIII of 1973), (hereinafter referred to as the 1973 Act), which received the assent of the President of India on 19th January, 1973 and which was published in the Tamil Nadu Government Gazette dated 24th January, 1973. This Amending Act (1973 Act) has effected considerable changes in the 1938 Act to which references will be made subsequently in the course of this judgment. Based upon this amendment, the appellant has filed CM. P. No. 7032 of 1973, praying that the appeal preferred by the appellant herein may be disposed of under the 1938 Act as amended by the 1973 Act. In the affidavit filed in support of this petition, the appellant stated that Section 19 of the 1938 Act as amended by the 1973 Act provided that where before the publication of the 1973 Act in the Tamil Nadu Government Gazette, a Court has passed a decree for the repayment of a debt, it shall, on the application, of any judgment-debtor apply the provisions of the Act to such a decree and shall notwithstanding anything contained in the Code of Civil Procedure, 1908 amend the decree accordingly or enter satisfaction, as the case may be. The appellant contended in the said affidavit that he continues to be an agriculturist even under the amended Act and this averment happened to be made in view of the fact that to get the benefit of the 1973 Act, he must be an agriculturist as on 1st March, 1972. The respondent herein has filed a

counter-affidavit in this petition. In paragraph 3 of his counter-affidavit, the respondent has stated that the allegation in paragraph 3 of the affidavit of the appellant that he continues to be an agriculturist is not admitted by him and that the question as to whether the appellant is an agriculturist under the Act as amended by the 1973 Act is yet to be determined on further materials and evidence. He has further contended that the decree debt is not liable to be scaled down under the Act as amended.

9. When the appeal was taken up for hearing, Mr. N. G. Krishna Ayyangar, learned Counsel for the appellant, contended that in view of the petition filed by the appellant requesting the Court to dispose of the appeal under the 1938 Act as amended by the 1973 Act, it was not necessary to canvass the correctness of the various conclusions reached by the trial Court, since the appellant was entitled to the relief on the basis of the 1973 Act amending the 1938 Act. Mr. G. Jagadisa Ayyar, learned Counsel for the respondent contended that the question whether the appellant herein continues to be an agriculturist under the 1973 Act has to be considered and determined and that for that purpose the matter has to be remanded to the trial Court. We are clearly of the opinion that this contention of the learned Counsel for the respondent is not sound. As we have pointed out already, before the trial Court, the respondent conceded that the appellant was an agriculturist under the 1938 Act notwithstanding the stand taken by him in the written statement that the appellant was not an agriculturist. In the affidavit filed in support of C.M.P. No. 7032 of 1973, the appellant stated that he continues to be an agriculturist even under the 1973 Act. Notwithstanding this specific averment, the respondent has not given any particulars with reference to which he denied the averment of the appellant. A vague and bald denial, that he (the respondent) is not admitting that the appellant herein is an agriculturist under the 1973 Act, does not justify an order of remand, as urged by the learned Counsel for the respondent. In view of the fact that the appellant was held to be an agriculturist under the 1938 Act and in view of the case of the appellant that he continues to be an agriculturist even under the 1973 Act, it is for the respondent herein to make out a prima facie case that the appellant herein does not continue to be an agriculturist under the 1973 Act. As a matter of fact, it is conceded before us that the appellant herein would not be an agriculturist under the 1973 Act only if he (1) had been assessed to income-tax under the Incometax Act, 1961, or under the Income-tax-Law in force in any foreign country in both the financial years ending 31st March, 1972; or (2) had in all the four half years immediately preceding the 1st March, 1972 been assessed to profession tax on a half-yearly income of more than one thousand two hundred rupees derived from a profession other than agriculture under the Tamil Nadu District Municipalities Act, 1920, the Madras City Municipal Corporation Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other State or Union Territory in India or any foreign State in the continent of India or under the Madurai City Municipal Corporation Act, 1971, or under the Tamil Nadu Panchayats Act, 1958; or (3) had in all the four half-years immediately preceding the 1st March , 1972 been assessed to property or house tax in respect of buildings or lands other than agricultural lands under the Tamil Nadu District Municipalities Act, 1920, the Madras City Muncipal Corporation Act, 1919, the Cantonments Act, 1924; or any law governing minicipal or local bodies in any other State or Union Territory. in India or under the Madurai Municipal Corporation Act, 1971 or under the Tamil Nadu Panchayats Act, 1958, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 1,200; or (4) was a landholder of an estate under the Tamil Nadu Estates Land Act, 1908 or of a

share or portion thereof, whether separately registered or not, in respect of which estate, share or portion any sum exceeding five hundred rupees is payable as peshkash or any sum exceeding one hundred rupees is payable under one or more of the following heads, namely, quit rent, jodi, kattubadi, poruppu or other due of a like nature, or is a janmi under the Malabar Tenancy Act, 1929, who is liable as such janmi to pay to the State Government any sum exceeding five hundred rupees as land revenue. If the respondent in the counter-affidavit filed by him in C.M.P. No. 7032 of 1973 bad at least stated that the appellant is not an agriculturist under the 1973 Act because he comes within one or more of the above enumerated cases, then for the purpose of ascertaining the correctness or otherwise of the said contention, we would have been justified in remanding the matter to the trial Court. In the absence of any such specific case put forward by the respondent herein, there is no justification whatever to remand the matter to the trial Court.

10. Mr. G. Jagadisa Iyer faintly contended that the question of vires of the 1973 Act may arise, though he himself did not state the grounds on which the said question would arise or has to be decided. Further, in the counter-affidavit filed by the respondent in C.M.P. No. 7032 of 1973, no such question has been raised. In view of this, we are of the opinion that there is no justification for considering any question of vires of the 1973 Act at this stage.

11. Under these circumstances no other objection having been taken by the respondent, we allow C.M.P. No. 7032 of 1973 and proceed to consider the case of the appellant with reference to the 1938 Act as amended by the 1973 Act.

12. Though the Judgment of the learned Subordinate Judge bristles with assumptions and abruptness of conclusions and observations, we do not propose to consider all of them in view of the fact that we have allowed C. M. P. No. 7032 of 1973, and we proceed to dispose of the appeal on the basis of the 1938 Act as amended by the 1973 Act. Even with reference to this, the only two sections which are relevant and material are sections 8 and 19 of the Act.

13. For the purpose of disposing of the appeal on that basis, the relevant facts are very simple and they are as follows: By 3rd December, 1953, the appellant owed a sum of Rs. 12,000 by way of principal to the respondent herein. That principal carried interest at different rates under agreement between the parties. During 1962, the appellant had paid a sum of Rs. 10,000 in four instalments to the respondent herein and the last of the said four instalments was paid on 20th December, 1962 The question for consideration is. what is the relief to which the appellant is entitled under the 1938 Act as amended by the 1973 Act, with reference to the above facts.

14. The 1938 Act was enacted to provide for the relief of indebted agriculturists in the then Province of Madras. Various provisions were made in that Act for such reliefs. Chapter II of that Act consisting of sections 7 to 14 makes provision for scaling down of existing debts and future rate of interest.

Section 7 of that Act provided:

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 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.

The other sections in this Chapter made provisions with regard to three kinds of debts. One is, debts incurred before 1st October, 1932 for the scaling down of which provision was made in Section 8. The second is, debts incurred on or after 1st October, 1932, for the scaling down of which provision was made in Section 9. The third is, debts incurred by an agriculturist after the commencement of the Act and the rate of interest payable by an agriculturist in respect of such debts was provided for in Section 13 of the Act. Section 10 exempted certain cases from the scope of sections 8 and 9. Section 11 made provision as to costs decreed by a Court in certain cases. Section 12 statutorily fixed the rate of interest payable by an agriculturist on old loans. Section 13 fixed the rate of interest payable by an agriculturist on the debts incurred by him after the commencement of the Act. Section 14 provided for separation of share of debt in particular cases with reference to a Hindu family. These provisions and their effect have been pithily summarised by a Full Bench of this Court in Muthuswami Odayar v. Savarimuthu Udayar in the following terms:

The Act is intended to afford relief to indebted agriculturists providing for scaling down all debts due by them either by wiping out the outstanding interest or reducing the rate of intsrest agreed to be paid by an agriculturist on loan contracted by him. The Act classifies the debts into three categories: (1) those incurred prior to the 1st October, 1932; (2) those incurred after the 1st October, 1932 but before 22nd March, 1938 the date of coming into force of the Act; (3) debts incurred subsequent to the date, namely after the coming into force of the Act. In regard to debts prior to the 1st October, 1932, all interest outstanding on 1st October, 1937 is completely discharged (vide Section 8). Subsection (2) to that section provides for the application of the rule of damdupat to such debts, that is, where a debtor has paid twice the amount of the principal whether by way of principal or interest, the entire debt is deemed to be discharged. The section contains other provisions for determining the amount repayable by a debtor coming under that section. In respect of the second category of debts, sections 9 and 12 provide the machinery for scaling down. The rate of interest is reduced to five per cent, per annum simple interest and the amount paid, notwithstanding its appropriation at the contract rate is reappropriated at this statutory rate of interest and the balance if any is adjusted towards principal. (Vide Veeraraju v. Balakotiswara Rao I.L.R.(1951) Mad. 645 : A.I.R. 1951 Mad. 67 (F.B.)). In respect of debts falling under the third category, that is those debts incurred after the

Act came into force, the rate of interest is fixed by section 13 at 51/2 per cent, per annum and it will not be open to the creditor to recover anything more.

Section 19 which occurs in Chapter IV of the Act dealing with "procedure and miscellaneous" provided:

19. Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

For the purpose of this case, it is not necessary to refer to the other provisions of the Act. Even these provisions have undergone changes from time to time ever since the original enactment in 1938. As a matter of fact, Section 19 itself has been amended by the Tamil Nadu Act XXIII of 1948 by making the provision extracted above as Sub section (1) of Section 19 and by adding the following as Sub-section (2) of that section:

19 (2). The provisions of Sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement.

As we have pointed out already, substantial changes have been made to the 1938 Act by the 1973 Act. This 1973 Act has completely altered the three-fold classification of debts referred to above and classified all the debts due by the agriculturists into two classes, namely, debts incurred before the 1st March, 1972 and debts incurred on or after the 1st March, 1972. Consistent with this change made by the 1973 Act, section 7 of the Act also has been amended, which now reads as follows:

Section 7. Notwithstanding any law. custom, contract or decree of Court to the contrary, all debts payable by an agriculturist on the 1st March, 1972 shall be scaled down in acrordance with the provisions of this Chapter.

No sum in excess of the amount as 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 excees of the sum as scaled down under this Chapter.

Similarly in line with the change effected by the 1973 Act, Section 19 has been amended and the amended section reads as follows:

Section 19 (1). Where before the publication of the Tamil Nadu Agriculturists Relief (Amendment; Act, 1972, in the Tamil Nadu Government Gazette, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the publication of the Tamil Nadu Agriculturists Relief (Amendment) Act, 1972, in the Tamil Nadu Government Gazette in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

(2) The provisions of Sub-section (1) shall also apply to cases where, after the publication of the Tamil Nadu Agriculturists Relief (Amendment) Act, 1972 in the Tamil Nadu Government Gazette, a Court has passed a decree for the payment of a debt payable at such publication.

In view of this amended provision alone, the petition, C.M.P. No. 7032 of 1973 was made, since the decree against the the appellant was passed before the publication of the 1973 Act, in the Tamil Nadu Government Gazette.

15. Since the appeal involves the construction of the provision of Section 8 of the 1938 Act as amended by the 1973 Act, we shall consider the section as it originally stood and the amendments that were made to it subsequently. Section 8 as originally enacted provided as follows:

Section 8. 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, whichever 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, to increase the liability of a debtor to pay any sum in excess of the amounts which would have been payable by him if this Act had not been passed.

This section as originally enacted contained only an Explanation which dealt with the renewal of a debt, which is not relevant for the present case. One thing which can be immediately seen is that the section itself applied to debts incurred before the 1st October, 1932 and each one of the Sub-sections (1), (2) and (3) had an independent operation, since each one of them could be worked and given effect to without reference to the other or others. Sub-section (1) wiped out all interest outstanding on the 1st October, 1937. Sub-section (2) provided that a debt shall be deemed to be wholly discharged if a debtor had paid to the creditor twice the amount of the principal, whether the said payment was by way of principal or interest or both. Sub-section (3) stated that where the sums so repaid fell short of twice the amount of the principal, such shortage, or the principal amount or such portion of the principal amount as was outstanding, whichever was smaller shall be repayable. Even though Sub-section (1) has provided for the wiping out of the interest outstanding on the 1st October, 1937, still it did not have any real significance, in view of Sub-section (4) which provided that nothing contained in Sub-section (1) shall be deemed to require the creditor to refund any sum which has been paid to him. Since Sub-section (2) takes in all payments made by a debtor, whether the same was by way of principal or interest or both, for calculating and finding out whether a debtor had paid twice the amount of the principal or not, the payment, if any, towards interest which has been wiped out under Sub-section (1) will also have to be taken into account for the purpose of Sub-section (2). One other thing to be noticed with regard to Sub-sections (2) and (3) of this section is that all the payments made by a debtor to a creditor are taken into account for the purpose of finding out whether he has paid twice the amount of the principal or not, irrespective of whether the said payments were made towards the principal or towards interest or towards both. Therefore it is totally immaterial as to how the payments made by a debtor were appropriated by the creditor, namely, whet en towards principal or towards interest or towards both, and whether the debtor has given any specific instructions with regard to the manner of appropriation or not. Since the section itself has not made any specific provision for the manner of appropriation by the creditor the law that was applicable was sections 59 to 61 of the Indian Contract Act. Section 59 of the Indian Contract Act enacts the rule in Clayton's case (1816) 1 Mer. 572, that when a debtor makes a payment, he has a right to have it appropriated in such manner as he desires and the creditor who accepts the payment is bound to make the appropriation in accordance with the directions of the debtor. But when the debtor himself does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor, who can exercise that right at any moment, even at the time of the trial and Section 60 embodies that rule and that is the rule in England as laid down in Cory Bros. & Co. v. Owner of the Turkish Steamship "Mecca" (1897) A.C. 286 at 293. It is only when there is no appropriation either by the debtor or by the creditor, the

appropriation has to be made as provided for in Section 61 of the Indian Contact Act, namely, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits and if the debts are of equal standing, the payment shall be applied in discharge of each proportionately. It is this position that prevailed when the 1938 Act was enacted. As we have pointed out already, the actual appropriation made by a creditor with reference to the said provisions has no real significance in view of the fact that sub-sections 2 and 3 take in every payment made by a debtor to a creditor.

. . . . We have already pointed out that Section 8 (1) of the Act may not have any real significance, in view of Sub section 4 and as a matter of fact in relation to the appropriations already made, Sub-section (1) of Section 8 has no significance at all. But that sub-section may have significance, if the amount paid by a debtor remains unappropriated. As we have pointed out already, in the absence of any specific directions by the debtor at the time of payment, the right of appropriation devolves on the creditor, and he can exercise that right at any time and even at the time of the trial, as provided for in Section 60 of the Indian Contract Act. But Sub-section (1) of Section 8 of the Act effected a change in this right of the creditor to make an appropriation under Section 60 of the Indian Contract Act, if there had been no previous appropriation by him. Section 8 (1) of the Act having provided that all the interest outstanding on 1st October, 1937, shall be deemed to have been wiped out, the question arises whether payments which had remained unappropriated either by the debtor under Section 59 of the Indian Contract Act or by the creditor under Section 60 of the Indian Contract Act prior to 1st October, 1937, could thereafter, be appropriated by the creditor towards interest. However, in view of the provision in Section 8 (1) of the Act that all outstanding interest on 1st October, 1937, shall be deemed to have been wiped out, it is not open to a creditor thereafter to exercise his right of appropriation and all such payments should be appropriated only towards the principal. That was the view taken by this Court in Rayam Duraiswamy Aiyangar and Ors. v. M. Raghavachariar (1940) 2 M.L.J. 648 : I.L.R. (1941) Mad. 57 : A.I.R. 1941 Mad. 107.

It was further held by this Court that payments made generally towards a debt or towards principal and interest, were liable on the above principle to be appropriated towards the principal after 1st October, 1937. Vide Chittpragada Veeraraju and Anr. v. Muppala Rayanim Dora Gam and Ors. (1940) 2 M.L.J. 758 : A.I.R. 1940 Mad. 940 and Kallakuri Venkateswarlu and Ors. v. Kalidindi Narayanaraju and Ors. (1946) 1 M.L.J. 272 : A.I.R. 1946 Mad.

16. We may also point out that no scaling down of the debt is involved with regard to Sub-section (2) because it simply provides that if all the payments made by a debtor are equal to or in excess of twice the amount of the principal the entire debt shall be deemed to have been wholly discharged. Consequently, the only question that will arise under Sub-section (2) is to find out the principal amount and also to find out the total payments made by a debtor. If the said total payments are equal to or exceed twice the amount of the principal, nothing is due from the debtor. With reference to Sub-section (3), if this calculation shows that the total payment ' falls short of twice the amount of the principal, then the shortage of the principal amount or such portion of the principal amount as is outstanding alone is repayable. Since the appropriation of payments made by a debtor is governed by sections 59 to 61 of the Indian Contract Act, depending upon the actual appropriation made by the creditor of the payments made by the debtor, either of the two figures contemplated by

Sub-section (3) may be smaller than the other.

17. As far as the present case is concerned, as we have pointed out already, the principal sum was Rs. 12,000 and twice the principal amount was Rs. 24,000 and the debtor had actually paid a sum of Rs. 10,000. Consequently, the payment made by the debtor falls short of twice the principal amount by Rs. 14,000. If the provisions had stood as they were and applied to the present case, the sum of Rs. 12,000 being the principal amount is smaller than twice the principal amount minus the actual payment, namely, Rs. 24,000 minus Rs. 10,000: Rs. 14,000 and consequently by virtue of Sub-section (3) of Section 8, the appellant herein would be liable to pay the said sum of Rs. 12.000 only with subsequent interest as provided for in the Act.

18. The provisions of this section were amended by adding two Explanations as Explanations I and II and making the existing Explanation as Exblanation III, by the Amending Act XXIII of 1948 and we are concerned with Explanation I alone and that is as follows:

> In determining the amount repayable by a debtor under this section, every payment made by him shall be credited towards the principal, unless he has expressly stated in witing that such payment shall be in reduction of interest.
>
> The above amendment was necessitated by a Bench decision of this Court in A. S. Duraiswamy Mudaliar and Anr. v. Muhammad Amiruddin and Ors. (1948) 1 M.L.J. 441 : A.I.R. 1948 Mad. 434. In that case a sum of Rs. 5,400 was paid "in part payment of a decree debt in C.S. No. 500 of 1930." It was held by Sir Frederick William Gentle, G.J. and Bell, J., that the payment was liable to be appropriated first towards interest due under the decree and then towards the the principal. The learned Chief Justice stated:
>
> The principle of law which always has been observed and recognised is that when a payment is made in respect of principal and interest, there is an inference that the payment is ordinarily first allocated towards interest and thereafter the balance in respect of principal. That was recognised in two decisions under the Madras Agriculturists Relief Act, 1938, in Ramaswami Aiyar v. Ramayya Sastrigal (1941) 1 M.L.J. 295 : A.I.R. 1941 Mad. 571 and in Venkiteswara Aiyar v. Ramaswami Aiyar (1941) 1 M.L.J. 9 : A.I.R. 1941 Mad. 403. In my view the recognised and acknowledged principle regarding the utilisation of a payment which is made in respect of principal and interest has in no way been interfered with by any provision in the Madras Agriculturists Relief Act, 1938.
>
> In the two decisions referred to in the above extract, there had in fact been appropriations of the payments before the Act came into force. However, the decision itself dealt with a payment made after the Act came into force. But the larger principle laid down in this decision, namely, when there was no specific appropriation by either the debtor or the creditor, an inference of appropriation would arise under law and therefore the payments could not be reappropriated

> towards the principal under Section 8(1) of the Act ran counter to the earlier decisions of this Court holding that unless there was specific appropriation, the payment should be held to be open and such payments should be appropriated towards principal, is by the operation of Section 8 (1) of the Act, there would be no interest outstanding..

19. The Explanation I was introduced by the Amending Act XXIII of 1948 with the object of taking away the right of the creditor to appropriate payments towards interest unilaterally as he would be entitled to under Section 60 of the Indian Contract Act and to nullify the effect of the decision of this Court in A. S. Duraiswami Mudaliar and Anr. v. Muhammad Amiruddin (1948) 1 M.L.J. 441 : A.I.R. 1948 Mad. 434 and to give legislative recognition to a principle which, prior thereto rested on the force of judicial decisions. This position was so explained by a Full Bench of this Court in Gerimella Suryanarayana v. Gada Venkataramana Rao .

20. Whenever a debtor makes a payment as pointed out by the Judicial Committee in Rama Shah v. Lalchand (1940) 1 M.L.J. 895 : 51 L.W 578 : A.T.R. 1940 P.O. 63 : 67 I.A. 160 at 173:

> There are, indeed, four possibilities as to the debtor's intention--(i) intention that the sum paid should go against interest, (2) that it should go against principal, (3) that it should go against both interest and principal, (4) no intention of appropriation as between interest and principal.
>
> The effect of the above Explanation is thus to statutorily appropriate all payments made by a debtor to the creditor towards the principal amount except in the ingle case where the debtor has expressly stated in writing that such payment shall be in reduction of interest. It can be immediately seen that though the Explanation was introduced for the purpose of nullifying the principle laid down in A. S. Duraiswami Mudaliar and Anr. v. Muhammad Amiruddin and Ors. (1948) 1 M.L.J. 441 : A.I.R. 1948 Mad. 434, its impact on Sub-section (2) of Section 8 is very limited. That is, with reference to the interest outstanding as on 1st October, 1937,5!'a debtor has not expressly stated in writing at the time when he made the payment that the payment shall be in reduction of interest and the creditor himself in his turn in exercise of his right under Section 60 of the Indian Contract Act has not already appropriated the said payment towards the interest so outstanding, he cannot do so after the 1st October, 1937, since the interest outstanding as on that date has been wiped out. The Explanation has no further relevancy to Section 8 (1) of the Act. The said Explanation has no impact on Sub-section (2) of that section, since that sub-section merely concerns with the total payment made by a debtor to a creditor for the purpose of finding out whether the amount so paid is equal to or in excess of twice the principal amount and consequently the question of appropriation of payments either towards the principal or towards interest has no relevancy. Therefore, the Explanation has real and vital impact only on Sub-section (3) of Section 8, since the question of appropriation will arise with regard to that sub-section for the purpose of finding out whether if is the entire principal that is outstanding or portion of the principal that is

> outstanding and, if so, what portion. For this purpose, the sub-section even necessitates the reopening of the appropriation already made. Even with this Explanation, Sub-section (3) can be given effect to in full.

21. We shall take an illustration. Suppose the principal amount is Rs. 1,000 and a sum of Rs. 1,500 by way of interest at the rate of 15 per cent, per annum for a period of ten years was outstanding. Suppose the debtor has paid a sum of Rs. 1,500 expressly stating in writing that the said payment was towards interest. In such a case, the difference between twice the amount of the principal and the actual payment of Rs. 1,500 is Rs. 500 and the entire principal of Rs. 1,000 is outstanding. As between them, the sum of Rs. 500 is smaller than the principal amount of Rs. 1,000 and consequently under Sub-section (3) read with Explanation I, what is repayable to the creditor is only Rs. 500.

22. In the same illustration, if out of the sum of Rs. 1,500 paid by the debtor, he had paid Rs. 1,000 towards interest and Rs. 500 towards the principal, the difference between twice the amount of the principal and the total payment will be Rs. 500 and the principal outstanding will also be Rs. 500 and consequently with reference to Sub-section (3) of Section 8 the amount repayable will be Rs. 500.

23. Suppose again in the same Illustration, out of the sum of Rs. 1,500 paid by him, the debtor has paid Rs. 800 towards interest and Rs. 700 towards the principal, the difference between twice the amount of the principal and the total amount paid will be Rs. 500 while the portion of the principal outstanding, will be Rs. 300 and the latter being smaller than the former, under subsection (3), only the sum of Rs. 300 is repayable by the debtor.

24. Two things can be noticed in the illustration given above. One is, the creditor gets back the principal plus something more. The second is, even though the total amount repaid by a debtor is the same, depending upon the manner of appropriation, as between the two figures, namely, the difference between twice the amount of the principal minus the total payments, and the principal or such portion of the principal amount as is outstanding, either may be smaller than the other.

25. The 1973 Act has made a vital) change in Section 8. In the opening) portion of the section, for the expression "1st October, 1932", the expression "1st March, 1972" has been substituted. Sub-section (1) of Section 8 has been omitted. In Sub-section (4) of Section 8, reference to Sub-section (1) has been omitted in view of the omission of Sub-section (1) itself. In Explanation I, for the expression, "unless he has expressly stated" the expression "notwithstanding that he has expressly stated" has been substituted. The effect of this change is that this section applies to all debts incurred by an agriculturist before the 1st March, 1972 and the amended Explanation I stands as follows:

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

> The effect of this Explanation is, to put an end to all the appropriations already made either with reference to sections 59 to 61 of the Indian Contract Act before the introduction of Explanation I, for the first time, to Section 8 by the Amendment Act XXIII of 1948 or with reference to Explanation I to Section 8 as introduced by the Amendment Act XXIII of 1948 and to statutorily and compulsorily appropriate all payments made by a debtor to a creditor only towards the principal. As a matter of fact, the appropriations already made have to be reopened for the purpose of applying the provisions of the Act and for finding out the amount repayable by a debtor.

26. The impact of this Explanation I as amended by the 1973 Act may now be considered. We have already shown that under Sub-section (3) of Section 8, whether before the introduction of Explanation I by the Tamil Nadu Act XXIII of 1948 or after its introduction, either of the two figures, namely, the difference between twice the amount of the principal minus all the payments made by a debtor and the principal amount or such portion of the principal amount as is outstanding can be smaller than the other. However, by virtue of Explanation I as amended by the 973 Act, this position is completely changed. Since all payments made by a debtor to the creditor have now to be appropriated only towards the principal, the portion of the principal outstanding will always be smaller than the difference between twice the principal amount minus all the payments. In other words, the principal amount minus all payments will always be smaller than twice the principal amount minus the said payments. Sub-section (3) as it stands, contemplates the possibility of either of the two figures being smaller than the othor. By virtue of the amendment made to Explanation I by the 1973 Act, this possibility is nullified, because the principal amount minus all payments will always be smaller than twice the principal amount minus all payments and therefore there is no chance of twice the principal amount minus all payments being in any case smaller than the principal amount minus all payments. In other words, the contingency contemplated by sub-section (3), namely that in some cases the difference between twice the principal amount minus all payments can be smaller than the principal amount or the portion of the principal amount outstanding becomes unreal and has no significance whatever in view of the amendment made to Explanation I by the 1973 Act.

27. As soon as we reached the above conclusion, we wanted to give an opportunity to the Bar as such to show whether any other interpretation is possible, since the question is a general one and is of considerable importance and concerns the interpretation of the relevant statutory provision as amended by the 1973 Act. Hence, we gave an opportunity to the members of the Bar to have their say on this question of construction of the relevant statutory provisions and adjourned the hearing of the case for that purpose. Pursuant to this opportunity afforded by us, Mr. Kothandarama Nainar, President of the Madras Advocates Association, Mr. P. S. Ramachandran and Mr. V. Sridevan appeared before us. Mr. Kothandarama Nainar submitted that no conclusion other than the one indicated by us already was possible. Mr. P. S. Ramachandran contended that the omission of Sub-section (1) clearly showed that the Legislature did not intend to wipe out any portion of interest and therefore to construe the statutory provision in the manner indicated by us will not carry out the intention of the Legislature because a creditor would be receiving only the amount of principal and nothing towards interest at all. Mr. Sridevan in addition to putting forward the same contention

wanted us to construe Sub-section (3) as if it compares three figures, namely, twice the principal amount minus all payments, the principal amount and the portion of the principal amount outstanding and provides that the smaller of these three will have to be chosen.

28. In support of the contention of Mr. P. S. Ramachandran, a copy of the report and the proceedings of the Joint Select Committee on L. A. Bill No. 22 of 1972, that is, the Tamil Nadu Agriculturist Relief (Amendment) Bill, 1972 was produced before us. The said Bill in Clause 6 thereof originally retained Sub-section (1) of Section 8 as it was in the 1968 Act except for two modifications, namely, the substitution of the expression as "1st October, 1966" for the expression "1st October, 1932" in the marginal heading and in the opening portion, the expression "1st October, 1972" for the expression "1st October, 1937" in Sub-section (1) of Section 8. Explanations III and IV of Section 8 were sought to be amended, but no amendment to Explanation I was proposed. But the Report of the Select Committee shows that the Select Committee was not in favour of discharging the entire interest outstanding, since that would result in agriculturists not getting sufficient credit facilities. Consequently, a decision was taken to omit Sub-section (1) of Section 8 and the Act itself dealing with only two categories of debts, namely, those incurred before and after 1st March, 1972. Similarly the report also shows that with the object that if the debtor had paid interest at exorbitant rate, such payment towards interest should be reopened and credited towards the principal. Explanation I was amended in the form in which it now finds a place, which has already been extracted. Mr. Ramachandran's argument is that when the Select Committee has amended the bill, as originally introduced, by deleting Sub-section (1) of Section 8, with the object of not wiping out the interest outstanding, to hold that a creditor will be entitled only to the principal amount advanced by him, which would be the effect of the amended Explanation I, as we have pointed out already, is not to give effect to the said intention of the Legislature. We are not able to accept this argument. We are of the opinion that the reports of the Select Committee cannot be taken into account by a Court as an aid to construction of statutes, though they may be referred to for ascertaining the conditions prevailing at the time when the statute was enacted and the purpose of making a particular amendment. The object of all interpretation is to discover the intention of the Legislature and the intention of the Legislature must be deduced from the language used, for it is well accepted that beliefs and assumptions of those who frame Acts of Parliament cannot make the law--Vide Maxwell on Interpretation of Statutes--12th Edition--page 28. As we have pointed out already, Explanation I has a real and vital impact on Sub-section (3) of Section 8 and as a matter of fact it is the key provision, and consequently Explanation I as amended cannot be ignored or thrown away in order to give effect to the assumed intention of the Legislature. Section 7 enacts a statutory mandate that all debts should be scaled down in accordance with the provisions contained in Chapter II of the Act. Similarly Explanation I to Section 8 enacts a further command in determining the amount repayable by a debtor under Section 8. In the light of these statutory commands, it is not open to any Court to ignore either of the two for the purpose of giving effect to such an assumed intention of the Legislature. The truth is when the Select Committee or the Legislature amended Explanation I to Section 8 by enacting the 1973 Act, it failed to consider its impact on Sub-section (3) of Section 8. As we have pointed out in the course of this judgment, Sub-section (3) of Section 8 can be given effect to in full before the introduction of Explanation I by the Amending Act XXIII of 1948 and even after the introduction of the said Explanation. But only because of the amendment effected to Explanation I by the 1973 Act, one contingency contemplated by Sub-section (3) of

Section 8 has become unreal and bereft of its significance. It may be that the Select Committee did not want to wipe out all outstanding interest. But the amendment of Explanation I has produced a totally unintended result and consequence of not only wiping out all interest but also adjusting even the amount already paid towards interest only towards the principal. Thus, this consequence is inevitable and we shall consider later whether there is anything in the principle or rule of interpretation of statutes which will militate against our taking such a view of the relevant statutory provisions. However, all that we are concerned in indicating at this stage is that apart from pointing out that the amended Explanation I has the effect of making one of the contingencies contemplated by Sub-section (3) of Section 8 unreal, Mr Ramachandran himself was not able to suggest any other construction which will give significance and reality to that contingency as well as effect and efficacy to the amended Explanation I.

29. With regard to the contention of Mr. V. Sridevan that Section 8 (3) contemplates a comparison between three figures, for two reasons we are not able to accept the same, apart from the fact that even the acceptance of such an argument will not solve the problem as to the effect of the amended Explanation I. The first reason is that if we hold that Sub-section (3) of Section 8 contemplates a comparison between three figures, we must assume that the Legislature contemplated that as between the two figures of the principal amount or a portion of the principal amount outstanding, either of them can be smaller than the other. On the face of it, such an assumption cannot be made for the simple reason that a portion of the principal amount will always be smaller than the principal amount. The second reason is that though the section refers to the three figures conjunctively by the use of the word, "or", when it states, "such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding", if really it intended a comparison between three different figures, instead of the expression, "whichever is smaller", the statute would have used the expression, " whichever is the smallest" and the actual use of the word "smaller" is in consonance and consistent only with the comparison of two figures and not more than two. We may point out that even Mr. Sridevan was not able to tell us what other construction of Section 8 (3) read with the amended Explanation I is possible.

30. Under these circumstances, we have come to the inevitable conclusion that if the amended Explanation I is given effect to, as we ought to, with reference to Sub-section (3) of Section 8 of the Act, the principal amount alone in case no payment whatever has been made, will be repayable by a debtor, because that will be smaller than twice the principal amount and such portion of the principal amount as is outstanding alone will be repayable in case where some payments have been made and those payments have been appropriated towards the principal, since that portion of the principal amount will be smaller than twice the principal amount minus the said payments.

31. We shall new consider, whether the above conclusion of ours is opposed or contrary to or inconsistent with any recognised and settled principle or rule of construction of statutes.

32. Many must have been the occasions when the Courts in this country have echoed the feelings of Lord Dunedin :

> Mr Lords, in common with all who have had to interpret statutes, I have frequently experienced difficulties which more careful draftsmanship might have obviated. But T confess that the clauses which in this case your Lordships have to interpret do for blundering English surpass anything I have hitherto seen." (Vide Murray v. Commissioners of Inland Revenue) (1918) A.C. 541 at 552.
>
> Notwithstanding this the Court cannot shirk the responsibility of finding out what the intention of the Legislature was in enacting a particular piece of legislation, as gatherable from the language used therein and giving effect to it The principle is that no Court can ignore or refuse to give effect to a particular statutory provision as unworkable.

33. As Lord Dunedin himself has pointed out in the very same decision:

> It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a Judge to declare a statute unworkable.

34. Viscount Simon, L.C., declared in Mokes v. Doncaster Amalgamated Collieries Ltd. (1940) A.G. 1014 at 1022.

The golden rule is that the words of a statute must prima facie be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

It is these principles that were applied by the Privy Council in the construction of the somewhat complicated provisions of the Closer Settlement (Amendment) Act, 1907, emerging from the subsequent amendments, in Pye and Ors. v. Minister for Lands for New South Wales (1954) 3 All.E.R. 514. The entire position in this behalf has been stated succinctly in Halsbury's Laws if England, 3rd Edn., Volume 36 at page 389 as follows:

> If it is possible, the words of a statute must be construed so as to give a sensible meaning to them, ut res magis valeat quam pereat. A statute must, if possible, be construed in the sense which makes if operative, and nothing short of impossibility so to construe it should allow a Court to declare a statute unworkable. Thus where a

> statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the Courts must decide what meaning the statute is to bear, rather than reject it as a nullity. It is not permissible to treat a statutory provision as void for mere uncertainty, unless the uncertainty cannot be resolved, and the provisions can be given no sensible or ascertainable meaning and must therefore be regarded as meaningless.
>
> Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of a draftsman, unless such language is intractable.

35. Applying these principles to the present problem before us, we are clearly of the opinion that there is no escape from the conclusion which we have already reached. If at least two constructions are possible, there may be scope for the contention that the construction which will enable a creditor to realise the interest in addition to the principal should be preferred to the one which denies him any interest altogether, in view of the deliberate omission of Sub-section (1) of Section 8. As observed by Lord Reid in Inland Revenue Commissioners v. Hunchy 1960 A.G. 748.

We can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament.

In this particular case, as we have pointed out already, no other construction which will simultaneously give effect to Explanation I as amended by the 1973 Act as well as to the entire language of Sub-section (3) of Section 8 was suggested, by any one appearing before us. Under such circumstances, only two alternatives are possible. One is to give effect to Explanation I as amended by the 1973 Act and to hold on that basis that under Sub-section (3) a creditor will be entitled to the principal amount or such portion of the principal amount as is outstanding, because that is smaller than the difference between twice the principal amount minus the payments made by a debtor. The second is to ignore the amendment made to Explanation I by the 1973 Act altogether on the ground that if it is given effect to, it will wipe out all interest outstanding and such was not the intention of the Legislature inasmuch as it has deliberately omitted Sub-section (1) of Section 8. For the reasons already indicated by us, it is certainly not open to the Court to have recourse to the second alternative. As pointed out by us already, Explanation I constitutes the key provision in the application of Sub-section (3) and it also constitutes a statutory command from which Courts have no escape. A statute must be construed so that the intention of the Legislature may not be treated as vain or left to operate in the air. If the second alternative referred to by us is adopted, the deliberate amendment to Explanation I made by the Legislature will have to be treated as in vain and Sub-section (3) of Section 8 has to be applied without reference to the said Explanation I, notwithstanding the fact that the said Explanation directly and vitally affects and controls the operation of Sub-section (3) of Section 8. After all, what exactly is the problem with reference to the impact of the amended Explanation 1 on sub-section {3) of Section 8? As observed by Lord Porter in Pye and Ors. v. Minister for Lands /or New South Wales (1954) 3 All.E.R. 514 referred to already,

Technically it presents some difficulty, but, in practice, no actual difficulty has been encountered.

The theoretical construction of subsection (3) leads to the inference that the Legislature contemplated either of the two figures compared therein being smaller than the othor. But the operation of the amended Explanation 1 is to make one figure always smaller than the other. Consequently, the actual working of the said sub-section along with the amended Explanation I does not give rise to any difficulty and it produces, a definite, clear and effective result. Therefore, we are of the opinion that the result we have reached is the only result that is possible, having regard to the language of the amended Explanation I and its mandatory character.

36. It is pertinent to point out one other circumstance as will. In our opinion it is rather difficult to hold that in effect the 1973 Act makes an amendment to the 1938 Act in these matters though in form it is an amendment. As we have pointed out already, the 1938 Act classified the debts into three categories, while the 1973 Act classifies the debts into two categories and there is no correspondence and correlation between the categories dealt with and provided for in the 1938 Act and those dealt with and, provided for in the 1973 Act. The provisions of Section 8 of the 1938 Act dealt with debts incurred before 1st October, 1932, while the provisions of Section 8 of the 1938 Act as amended by the 1973 Act deal with debts incurred before 1st March, 1972. Consequently, Section 8 of the 1938 Act as amended by the 1973 Act constitutes a new legislation with reference to all debts incurred by an agriculturist prior to 1st March, 1972. This conclusion is re-in-forced by the fact that the Tamil Nadu Legislature has enacted an independent Act, namely, the Tamil Nadu Debt Relief Act (XXXVIII of 1972). Section 7 of the Act enacts Section 8 of the 1938 Act as amended by the 1973 Act as a separate and independent provision applicable to all debts incurred before 1st March, 1972 by a debtor as defined in that Act. The bill which resulted in that enactment, namely, L.A. Bill No. 21 of 1972 was considered along with L.A. Bill No. 22 of 1972 which became the 1973 Act. In view of the provision of section 7 of that Act being identical with the provision of Section 8 of the 1938 Act as amended by the 1973 Act, it cannot be contended that any difficulty presented by Section 8 of the 1938 Act as amended by the 1973 Act is due solely to the fact of the amendment.

37. Now coming to the facts of the present case, we have already pointed! out that on the date when the suit was instituted by the respondent herein, the appellant had repaid a sum of Rs. 10.000 as against the principal of Rs. 12,000 and if the 1038 Act had applied to the debt in question on the date of the suit, the difference between twice the principal amount minus the payment of Rs. 10,000, namely, Rs. 14,000 being bigger than the principal amount of Rs. 12,000, the appellant would be liable to pay only the smaller of the two, namely, Rs. 12,000. However, Section 8 of the 1938 Act becomes applicable to the appellant only by virtue of the amendment of 1973, which, as we have already pointed out, was published in Tamil Nadu Government Gazette on 24th January, 1973. By that time, the appellant herein had paid to the respondent a further sum of Rs. 8,486-89, because he admitted his liability to that amount and the said amount is not the subject-matter of the present appeal. Consequently, by the time the 1973 Act came into effect, the appellant had paid a sum of Rs. 18, 486-89. If this amount is appropriated towards the principal, as provided for in Explanation I as amended by the 1973 Act, the appellant has paid a sum of Rs. 6,486-89 in excess of the principal and therefore no part of the principal is outstanding as on the date of the publication of the 1973 Act in the Tamil Nadu Government Gazette. Consequently, no further amount is payable by

the appellant to the respondent herein. By virtue of subsection (4) of Section 8 of the Act, the appellant will not be entitled to a refund of this excess sum paid by him.

38. Mr. N. G. Krishna Ayyangar wanted to put forward a contention that subsection (4) of Section 8 will not cover this excess amount, as it was paid under orders of this Court. For this purpose he relied on the orders of this Court dated 30th May, 1967, made in C. M. P. No. 6617 of 1967. In that petition, notwithstanding the fact that the appellant had not preferred the present appeal against the entire decree amount, but only against a part of the decree amount, he had prayed for stay of the execution of the entire decree in O. S. No. 50 of 1965 on the file of Sub-Court, Devakottai. It is only with reference to such petition, this Court passed an order to the effect that on the petitioner (appellant herein) depositing a sum of Rs. 8,486-49 (being the admitted amount) within the time stipulated therein and on furnishing security for the balance of the decree amount, there would be stay of execution of the decree. Even if this Court had not passed any order with reference to the said sum of Rs. 8,486-89, the appellant could net have withhold that amount from the respondent herein, because the said amount not being the subject matter of the appeal could have been recovered by the respondent by executing the decree. As a matter of fact, under Order 41, rule 5 of the Code of Civil Procedure, this Court could not have granted any stay of execution of the decree with reference to the said amount, the same not being the subject-matter of any appeal. Consequently, we are unable to accept the contention of Mr. Krishna Ayyangar that the fact that this Court made reference to the said sum in the order passed by it in C.M.P. No. 6617 of 1967 makes any difference, when the said amount was paid by the appellant herein to the respondent in discharge of his admitted liability.

39. Under these circumstances, we allow the appeal and modify the decree of the trial Court in O.S. No. 50 of 1965 by confining it only to a sum of Rs. 8,486-89, which has already been paid by the appellant to the respondent. We also record satisfaction of that decree. Since we have allowed the appeal, the memorandum of cross-objections has necessarily to fail and the same is dismissed. We further direct that the parties to this appeal and cross-objections, shall bear their respective costs both here as well as in the trial Court.

40. We place on record our appreciation of the assistance rendered by Mr. Kothandarama Nainar, Mr. P. S. Ramachandran and Mr. V. Sridevan, Advocates.