RULE OF DAMDUPAT

Discussion of the matter in view of the two conflicting judgments of the High Court of A.P.

By

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1. The rule of Damdupat is a rule of ancient Hindu Law according to which interest on a loan exceeding the principal cannot be recovered.

2. The question is whether this rule is applicable as far as the State of Andhra Pradesh is concerned. In a decision reported in AIR 1988 Supreme Court 1200 the Honourable Judges of the Supreme Court laid down that this rule is applicable in the State of Maharashtra and some other areas and that this rule is not applicable in the State of Madras. Two points are decided in the said decision by the Apex Court. Firstly, that the rule of Damdupat covers mortgage loans also and secondly, that the rule does not apply to the State of Madras. A Full Bench decision of the Madras High Court reported in ILR 26 Madras, 662, was referred to and the Supreme Court decided on the first question that the Rule of Damdupat is equally applicable to mortgage loans. With regard to the applicability of the rule to the Madras State, the Supreme Court observed in para 21 of the judgment as follows:

> "Admittedly, the Rule of Damdupat was never applicable to Madras."

3. In Chapter – XVIII of Hindu Law by *Mulla* (16th Edition published in 1994), it has been mentioned at page 586 in para 600 as follows:-

> "Places in which the Rule of Damdupat applies: The Rule of Damdupat applies in the Bombay State. It also applies in the town of Calcutta, but not in any other part of Bengal. The rule is not given effect to in the State of Rajasthan or in any part of the Madras State or the U.P. The rule is applied by Section 6 of The Sonthal Paraganas Settlement Regulation to money debts in the Sonthal Paraganas. It applies to Berar when the creditor and debtor are Hindus".

4. This question has arisen for consideration before the A.P. High Court. In the decision reported in 1998 (1) ALD 530 = 1998 (1) ALT 735 = 1998 (1) LS 139 Hon'ble Mr. *Sudershan Reddy*, J., held as follows after referring to the above-mentioned Supreme Court decision and the Text Books:

> "Para 12. Under those circumstances and in view of the authoritative statement of the principle in *N.R. Raghavachariar's Hindu Law* (18th Edition) and *Mulla* on Principles of Hindu Law (15th Edition), I have no hesitation to hold that the Rule of Damdupat which no doubt enunicates an equitable rule, has no application whatsoever to the State of Andhra Pradesh. The rule cannot be applied either in case of simple loan transactions or in case of mortgage transaction. The rule has no application whatsoever in the transactions entered into by the Banking Company. The submissions made by the learned Counsel for the petitioner are upheld."

5. His Lordship discussed at length the decisions of the Supreme Court in AIR 1988 SC 1200 and the Full Bench of the Madras High Court in ILR 26 Madras 662 and also the views expressed by the celebrated authors of Hindu Law Texts and then decided the matter. His Lordship

referred to other precedents also. Therefore reading the above decision of the A.P. High Court along with the earlier decisions of the Supreme Court and the Full Bench of the Madras High Court and the authoritative text books, there can be no doubt that the rule of Damdupat is not applicable to the State of Andhra Pradesh which is originally part of the Madras Presidency.

7. While so, in a recent judgment reported in 1999 (1) Andhra Legal Decisions 250 = 1999 (1) An.WR 58. Another learned Judge Hon'ble Mr. *C.V.N. Sastry.,* J., of the A.P. High Court extended the benefit of the said Rule of Damdupat to a case from this State. The learned Judge observed in para 12 of the judgement that :

> "Having regard to these facts, I think that it is a fit case where the 1st defendant should be granted relief applying the equitable principle of Damdupat as laid down in the judgment of the Supreme Court referred to above by limiting the interest to the principal amount."

The Judgment of the Supreme Court referred to and relied upon by His Lordships Mr. *Sastry*., J., is the one reported in AIR 1965 Supreme Court page 1692. Neither the decision of the Supreme Court in AIR 1988 SC 1200 nor the one of our High Court in 1998 (1) ALD 530 have been referred to. It is not known whether the arguing Counsel placed these two decisions before his Lordship Mr. *Sastry,* J.

8. After closely verifying the decision of the Supreme Court in AIR 1965 SC 1692 and the passages from the Text Books, I have to state with respect to His Lordship Mr. *Sastry* J., that the view taken by this Judge is not correct. It may first be noted that both the cases decided by the Supreme Court (1965 and 1988) are from the State of Maharashtra to which State admittedly the rule of Damdupat is applicable unlike in our State. In the 1965 decision before the Supreme Court, the question of applicability or otherwise of the rule to particular areas did not arise at all. The main question in that 1965 decision was about the applicability of the Rule of Damdupat to the case of a Trustee, who has committed breach of trust with respect of trust funds in his hands. The Supreme Court held that the rule does not apply to such a case, and that it applies in respect of interest due on amounts lent by the creditor to a debtor (*vide* paras 35 and 37 of the judgment).

As opposed to the above, in the later case of 1998 before the Supreme Court the question of applicability of the rule to Madras State has been considered and their Lordships clearly observed that the rule does not apply to Madras. Even assuming that it is only an observation of the Supreme Court, still it has to be taken as the law as it is from the Apex Court. When this same question arose directly before His Lordship Mr. *Sudershan Reddy,* J., in our High Court, the Judge followed the Supreme Court decision of 1988 and ruled in a line with the said decision.

9. Therefore I am of the humble opinion that the observations of His Lordship Mr. *Sastry,* J., in the recent case are not correct as they are contrary to the settled legal position. No doubt, His Lordship Mr. *Sastry,* J., observed in para 14 of the judgment that this particular judgment is rendered from the facts of that particular case and that it shall not be treated as a precedent in other cases. Though His Lordship is pleased to observe like that, Counsel appearing for debtors do not stop referring to this decision and urge before the Subordinate Courts in a line with it. The question will be how far the Subordinate Courts can venture to distinguish the same or not to follow the same. Therefore the lawyers as well as the Subordinate Courts might find themselves in a difficult situation.

10. Further Section 21-A of The Banking Regulation Act, 1949, introduced by amendment in 1984 specifically barred the power of Courts to reopen or make a scrutiny of the rates of interests payable to Banks inspite of the Usurious Loans Act or any other law relating to indebtedness in force in any State. This also does not appear to have been placed before His Lordship Mr. *Sastry*., J.

11. That is why the Supreme Court observed in AIR 1991 SC 1983 in para 21 as follows:-

> "In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of Judges of Superior Courts and Tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate Courts would find themselves in an embarassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law……."

12. Under all the above circumstances, I once again submit that the view taken by His Lordship Mr. *Sastry,* J., requires reconsideration. If the Rule of Damdupat is made applicable to cases of loans obtained from Public Sector Banking and Financial Institutions, the effect will be far reaching severely affecting the public exchequer in millions of rupees.

FREEDOM OF SPEEDY AND EXPRESSION :

Some Facts and Problems

(Babul Reddy Lecture, Hyderabad)

By

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At the outset it is necessary to scocth some persistent heresies about freedom of expression. Freedom of speech is not an exclusive western concept. It embodies a universal value transcending geographical barriers and national frontiers. Freedom of expression has been humanity's yearning, in times ancient and modern. Cato's anguished cri de coeur, "where a man cannot call his tongue his own, he can scare call anything else his own," articulates an universal lament.

Another heresy is to regard freedom of expression as a prorogative or a luxury of the affluent. In our country, thanks to the constitutional guarantee of freedom of expression, and its concomitant, the freedom of the press, numerous indigent and oppressed persons, such as under trial prisoners lanugishing for years in jails, inmates of asylums and care homes, labourers working in unhealthy conditions in stone quarries and brick kilns and countless children forced into hazardous employments, have obtained some ameliorative relief through Courts in public interest litigations. Our experience has demonstrated that freedom of expression is essential for safeguarding other human rights and vindicated the declaration at the first