

the charge-sheet, it is evident in some cases, the accused is not released on bail on the mere pretest, the investigation is not completed despite several months or years, which alone leads the confidence of the public is eroded. Hence to set at rest this controversy, a suitable amendment is a desideratum making the provisions of the Cr.P.C., mandatory regarding the statutory right of the accused to be released on bail on the event of the failure to file a charge-sheet within the stipulated period despite the

failure to complete the investigation and put an end to the frivolous, vague and unwarranted attempts of extension for investigation.

Hence, the entire focus is on the pressing reforms which accelerated the recent coalgate controversy which has tarnished the image and credibility of the C.B.I. institution.

These suggestions are only illustrative but not exhaustive. Let us anxiously look forward for amendments which are on the anvil.

RULE OF DAMDUPAT – ITS SCOPE AND APPLICABILITY

By

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The rule of Damdupat is a branch of Hindu Law of debts. There is lot of confusion with regard to applicability of Rule of Damdupat. Even today we can find that so many Advocates are taking the plea of Rule of Damdupat and contending that the plaintiff is not entitled to interest more than the principal amount. There are certain judgments which are favourable to the application of the Rule of Damdupat and there are certain decisions which are against to the applicability of Rule of Damdupat. There is no clarity with regard to the scope and applicability of this principle. In this article an attempt is made to clarify the position and to clear the ambiguity.

Hindu Law of Debts

“Debt” ordinarily means a liquidated or ascertained sum of money as distinguished from unliquidated damages. A debt may be contracted by a Hindu male for his own private purposes, or it may be contracted by him for the purposes of the joint family. The rule of Damdupat is a branch of Hindu Law of Debts. According to this rule, the

amount of interest recoverable at any one time cannot exceed the principal¹. The reason behind the rule is that the Hindu Law did not recognize any rule of limitation for the recovery of debts. Every debt which was lawful was binding and recoverable from the debtor irrespective of the period which may have elapsed since the original liability was incurred. It thus became necessary to impose a restriction on the amount of interest recoverable by the creditor, and such a restriction has been imposed by a rule of damdupat².

The Hon’ble Supreme Court by referring to various Hindu Law Texts, discussed the usefulness of the rule in *Hukumchand Gulabchand Jain v. Fulchand Lakshmidhand Jain*³, and in Paragraphs 30, 31 and 32 the Apex Court held that

“The rule of Damdupat applies to cases where a loan is advanced. This is clear from Colebrooke’s Digest on Hindu Law.

1. Mulla’s Principles of Hindu Law (14th Edition)
2. (1924) 46 All. 775
3. AIR 1965 SC 1692

Part I Vol.1 of Digest deals with contracts. Book I of this part deals with loans and payment. Section I of Chapter I of Book I deals with loans in general and describes what may or may not be loaned, by whom, to whom and in what form, with the rules for delivery and receipt. These matters are comprised under the title 'loans delivered (rinadhana)', which means the complete delivery of a loan, or debt, by whom, where and to whom made. Chapter II deals with interest and states at the commencement of Section I:

"Such interest, as may be taken without a breach of duty on the part of the creditor, is a rule (dharma) for delivery by the creditor, or for it is the nature of a loan, that it should produce to the lender the principal sum advanced, and interest in addition thereto."

The various Articles in this section use expressions 'creditor', 'lender', 'loan', 'principal', 'lent', 'borrower', and thus make it amply clear that it deals with interest on the amounts advanced by a creditor to a debtor. Section I deals with rate of interest to be charged. Section II deals with special forms of interest. Paragraph 53 thereof states :

"Interest on money, received at once, not year by year, month by month, or day by day, as it ought, must never be more than the amount of the principal paid at the same time."

This is what is known by the rule of Damdupat and has been rightly construed, as long ago as 1863, by the Bombay High Court in page 1226, *Dhondu Jagannath v. Narayan Ramchandra*, 1 Bom. HCR 47, 49. Section III deals with interest specially authorized and specially prohibited. Article II of this section deals with limits of interest. Paragraph 59 thereof states :

"The principal sum can only doubled by length of time, after which interest ceases."

The limits of interest is different under other paragraphs for loans advanced in different circumstances. Paragraph 61 repeats what has been stated in Paragraph 53 of Section II and adds a special rule to the effect :

"On grain, on fruit, on wool or hair, on beasts of burden lent to be paid in the same kind of equal value, it must not be more than enough to make the debt quintuple."

It is therefore, clear, as stated earlier, that the rule of Damdupat applies in respect of interest due on amounts lent by a creditor to the borrower, the debtor."

In Paragraph 37 it was held as under :

"The principle of Damdupat was evolved both as an inducement to the debtor to pay the entire principal and interest thereon at one and the same time in order to save interest in excess of the principal and as a warning to the creditor to take effective steps for realizing the debt from the borrower within reasonable time so that there be not such accumulation of interest as would be in excess of the principal amount due, as in that case he would have to forego the excess amount. There may be justification for the principle of Damdupat applying in the case of an ordinary creditor and a debtor, but there seems no justification for extending that principle to a case of trustee who has to pay interest on the funds in his hand with respect to which on certain grounds he is held liable to pay interest. We, therefore, hold that the rule of Damdupat will not apply with respect to the interest adjudged payable by a trustee on his committing breach of trust with respect to the trust funds in his hands."

In *H.P. State Co-operative Bank Ltd. v. State of H.P. and others*⁴, referring to the ancient Hindu Law Texts, it has been observed that:

4. 2008 (1) Shim. LC 189

“The rule of Damdupat is a branch of the Hindu Law of Debts. The rule is stated by Gautama in these words :

“If (the loan) remains outstanding for a long time, the principal may be doubled (after which interest ceases).” Sacred Books of the East, Vol.II Chap.XII, 31, page 242.

In Manu the rule is stated thus :

“In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal).” Laws of Manu, Chap.VIII, 51, page 280.

The other texts have been collected in Colebrooke’s Digest, in *Mandlik’s* translations of Mayukha and in *Ganganath Jha’s* Hindu Law in its Sources, Chap.V, Vol.1. Some of these texts have been cited in 1 Bom. HCR 47, 3 Bom. HCR ACJ 25 at P.26, 12 WROC 9 and 10 NLR 91. According to the rule of Damdupat the amount of interest recoverable at any one time cannot exceed the principal : 1 Bom. HCR 47, 14 Cal. 781 at P.789.”

In *Madhwa Sidhanta Onabini Nidhi v. Venkata Ramanjulu Naidu*⁵, the Hon’ble High Court of Madras held that the rule of Damdupat does not apply to mortgages executed after the Transfer of Property Act 1882, came into force. The reason given being that under Sections 86 and 88 of that Act, a mortgagee was entitled to the principal and interest in arrears at the contract rate, even if exceeded the principal. However, in the year 1988 the Hon’ble Supreme Court, by passing judgment in *M.R. Patil and others v. S.B. Rainade and others*⁶, overruled the judgment in *Madhwa Sidhanta Onabini Nidhi’s* case (supra). The Apex Court held that:

“16. We may now consider the second question as to whether the rule of

Damdupat is applicable to a mortgage transaction. Admittedly, it is an equitable rule debarring the creditor to recover at any given time the amount of interest which is in excess of the principal amount due at that time. It is urged by the learned Counsel appearing on behalf of the appellants that the rule is applicable only to simple loan transaction and not to a transaction of mortgage. We are unable to appreciate this contention. In every mortgage there are two aspects, namely (1) loan and (2) transfer of interest in immovable property. As mortgage is principally a loan transaction, we do not find any reason why the rule of Damdupat which is an equitable rule should not apply also to mortgage.”

The legal proposition laid down in the said case is that the rule of Damdupat is applicable to mortgages. In the same judgment the Hon’ble Supreme Court observed that admittedly, the rule of Damdupat was never applicable to Madras. The Hon’ble High Court of A.P., applied the rule of Damdupat in *Lokam Ramachandra Rao v. Bank of Baroda and another*⁷ and *V. Bala Subba Rayudu v. Lakki Reddy Chennamma*⁸ cases. The Hon’ble High Court in *Lokam Ramachandra Rao’s* case held that:

“11. In the said judgment the Supreme Court after referring to certain Hindu Law Texts held that the rule of Damdupat applies in respect of the interest due to the creditor by the borrower, the debtor and that it applies to cases where a loan is advanced. It is, however, a moot question whether the said principle is applicable to the loans advanced by Banks which are governed by specific terms and conditions of the contract and also certain statutory provision like Section 21A of the Banking Regulation Act. Without going into that

5. (1903) 26 Mad. 662

6. AIR 1988 SC 1200

7. 1999 (2) ALD 250

8. 2005 (2) ALD 134

question, in view of the peculiar facts and circumstances of the case, I feel that relief should be granted to D1 by following said principle.”

The principle of Damdupat was applied by the Hon’ble High Court of A.P. without going into the question whether it was applicable to loans advanced by the Banks. The said principle was again followed by Hon’ble High Court of A.P., in *Bala Subba Rayudu’s* case (supra) and it was held that:

“8. In support of his contention, the Counsel for the appellant sought to rely on *Hukumchand v. Fulchand*, AIR 1965 SC 1692, *Lokam Ramachandra Rao v. Bank of Baroda*, 1999 (2) ALD 250 and *M.R. Patil v. S.B. Rainade*, AIR 1988 SC 120. Earlier, the principle of Damdupat has been enunciated by the Apex Court in *Hukumchand’s* case (supra), which was followed by this Court in *Lokam Ramachandra Rao’s* case (supra), even in respect of bank transaction. In view of the earlier decision of the Madras High Court in *Madhwa Sidhanta Onabini Nidhi v. Venkataramanjulu Naidu*, (1903) ILR 26 Mad. 662, in this area, the principle of Damdupat was never applied, but, however, subsequently, the Apex Court in *M.R. Patil’s* case (supra), has held that the decision in *Madhwa Sidhanta Onabini Nidhi* case, overruled the same and accordingly, the principle of Damdupat is made applicable to all the transactions. In view of the binding decisions of the Apex Court, it has to be held that the principle of Damdupat applies to all transactions including the one in this case.”

The Hon’ble High Court of A.P. observed that:

“10. These questions as to the applicability of the principle of Damdupat and working out of equities thereunder require an enquiry with proper opportunity to both parties.”

Therefore, the question as to applicability of rule of Damdupat was not decided by the Hon’ble High Court of A.P. both in *Lokam Ramachandra Rao’s* and *Bala Subba Rayudu’s* cases. The ratio in the *M.R. Patil’s* case is that the rule of Damdupat is applicable even to mortgages. The Hon’ble Supreme Court in Paragraph 21 of its judgment observed that the rule of Damdupat was never applicable to Madras. The direct question as to applicability of rule of Damdupat in the State of Andhra Pradesh arose before Hon’ble High Court of A.P. in *Syndicate Bank, Kurichedu, Prakasham District, rep. by its Branch Manager v. Induri Guravareddy and others*⁹ wherein it was observed that:

“12. The trial Court following the said decision came to the conclusion that the Rule of Damdupat since applicable to transactions of mortgage also, the petitioner cannot be allowed to proceed further in the matter, as admittedly, the total amount of interest is much more than the amount of principal amount. But, the trial Court failed to appreciate that in the very same decision, the Apex Court held “admittedly, the rule of Damdupat was never applicable to Madras.” The Apex Court judgment is not an authority for the proposition that the rule of Damdupat is applicable throughout India, including the State of Andhra Pradesh. On the other hand, it is held in categorical terms that the rule of Damdupat was never applicable to Madras. It is true the Apex Court held that the law was not correctly laid down in *Madhwa Sidhanta Onabini Nidhi v. Venkataramanjulu Naid*. The observation of the Apex Court about *Madhwa Sidhanta’s* case is required to be understood, in its context. The Apex Court was dealing with the question as to whether the rule of Damdupat is applicable only to simple loan transaction or even to transaction of

9. 1998 (1) ALT 735

mortgage. The Madras High Court in *Madhwa Sidhanta's* case took the view that the Rule is not applicable in case of mortgage transaction, but applicable only in cases of simple loan transaction. But, it is required to notice that even the Madras High Court in *Madhwa Sidhanta's* case held that the Rule of Damdupat is not applicable to Madras Province. Having held so, there was no need for Madras High Court to proceed further and decide as to whether the Rule of Damdupat is applicable in cases of mortgage transaction. Under those circumstances, the Apex Court observed that the law in *Madhwa Sidhanta's* case was not correctly laid down and consequently held that the Rule of Damdupat applies even in cases of mortgage transaction also. Only to that extent, the Apex Court held that the Madras High Court did not correctly lay down the law. It is required to notice that neither the Madras High Court in *Madhwa Sidhanta's* case nor the Apex Court in *M.R. Patil's* case (supra), laid down any law holding that the Rule of Damdupat is applicable to the province of Madras. All that the Apex Court held in *M.R. Patil's* case (supra), is that the Rule of Damdupat is equally applicable in cases of mortgage transaction also as in the cases of simple monetary transaction. Therefore, neither the decision in *Madhwa Sidhanta* case (since overruled by the Apex Court), nor the decision in *M.R. Patil* case (supra), lay down any law to the effect that the Rule of Damdupat is applicable to Madras Province.”

The Hon’ble High Court of A.P. after going through the judgments in *Madhwa Sidhanta's*¹⁰ case and *M.R. Patil's*¹¹ case, held that...

“13. Under those circumstances and in view of the authoritative statement of principle in *N.R. Raghavachariar's* Hindu

Law (Eight Edition) and Mulla’s Principles of Hindu Law (Fifteenth Edition), I have no hesitation to hold that the Rule of Damdupat, which no doubt enunciates equitable Rule, has no application whatsoever to the State of Andhra Pradesh. The Rule cannot be applied either in case of simple loan transaction or in cases 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.”

The question as to applicability of Rule of Damdupat again arose before Hon’ble High Court of A.P., in *Suryapaga Ravi Kumar v. Pakkela Rama Rao and another*¹², wherein the Hon’ble High Court of A.P. discussed the question of territorial applicability in the following terms :—

“18. Coming to the applicability of Rule of Damdupat, it is true that *Lokam Ramachandra Rao v. Bank of Baroda*, 1999 (1) An. WR 58 = 1999 (2) ALD 250, the Principle of Rule of Damdupat was applied but the learned Judge was specific that the relief was being granted without going into the moot question whether the principle of Rule of Damdupat is applicable to the loans advanced by Banks or not in view of peculiar facts and circumstances of the case. It is clear from the unambiguous observations of the learned Judge that neither the principle about the application of the Rule of Damdupat to any categories of loans nor the applicability of the said rule to a particular territory were being considered on merits in the said decision.

19. Similarly, it is equally true that in *Viswanatham Bala Subbarayudu v. Lakki Reddy Chennamma*, 2008 (1) ALT 665 = 2005 (2) ALD 134, the learned Judge held that the principle of Damdupat applies to all transactions including mortgage

10. (1903) ILR 26 Mad. 662

11. AIR 1988 SC 1200

12. 2009 (5) ALT 574

transactions. The learned Judge, of course, observed about the extension of the principle to all transactions by the decision of the apex Court in *M.R. Patil v. S.B. Rainade*, AIR 1988 SC 1200, overruling *Madhwa Sidhanta Onabini Nidhi v. Venkataramanjulu Naid*, (1903) ILR 26 Mad. 662. But, his Lordship was not considering the territorial applicability of rule of Damdupat in that case.

20. However, the Apex Court itself observed in *M.R. Patil v. S.B. Rainade* (supra), in Para 21 that admittedly, the rule of Damdupat was never applicable to Madras and the overruling of *Madhwa Sidhanta's* case (supra), was not with reference to the extension or exclusion of the applicability of the rule to any territory, but with reference to the applicability of rule even to the mortgages governed by the Transfer of Property Act (the case before Their Lordships having arisen from Bombay, to which territory, the rule of Damdupat applies).

21. In fact in *Syndicate Bank v. I. Gururaveddy*, 1998 (1) ALT 735, in which the learned Counsel for the appellant herein Sri T.S. Anand was *Amicus Curiae* assisting the Court, his Lordship Hon'ble Sri Justice B. Sudershan Reddy (as his Lordship then was) specifically considered the territorial application of rule of Damdupat. His Lordship made it clear that the Apex Court judgment in *M.R. Patil v. S.B. Rainade* (supra), is not an authority for the proposition that the rule of Damdupat is applicable throughout India including State of Andhra Pradesh, but on the other hand, it is held in categorical terms that the rule of Damdupat was never applicable to Madras. His Lordship also made it clear that the observations of the Apex Court about *Madhwa Sidhanta's* case (supra), are required to be understood in their context and the question dealt with was whether the rule of Damdupat is applicable only to simple loan transactions

or even to mortgage transactions. With reference to the authoritative statement of the principle in *N.R. Raghava Chariar's* Hindu Law (8th Edition) and Mulla on Principles of Hindu Law (15th Edition), His Lordship held that the Rule of Damdupat has no application whatsoever to the State of Andhra Pradesh in respect of any transactions. His Lordship had been pleased to place on record the appreciation for the assistance rendered by Sri T.S. Anand, learned *Amicus Curiae* in that case.

22. With reference to the self-same precedence, I held in the judgment in AS No.1445 of 1997 dated 13.3.2007 that the Rule has no application to the State of Andhra Pradesh and cannot be used to negative the right to claim the contractual rate of interest unless it is shown to be otherwise usurious in nature and penal in effect. Therefore, the claim of the appellant to the benefit of the rule of Damdupat cannot be upheld."

The legal proposition laid down in *I. Gururava Reddy's* case and *Suryapaga Ravi Kumar's* case, is that the rule of Damdupat is not applicable in the State of Andhra Pradesh and it has no application to any of the money transactions. Mulla's Principles of Hindu Law is an authoritative Book on the subject. The author of the book has dealt with the law of Damdupat in Chapter XXVIII of Fourteenth Edition. Section 600 of Mulla's Principles of Hindu Law, deals with places to which the rule of Damdupat applies. It says that.....

"600. *Places in which the rule of Damdupat applies* :—The rule of Damdupat applies in the Bombay State. It applies also 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 Uttar Pradesh. The rule of applied by Section 6 of the Sonthal Parganas Settlement Regulation to money debts in the Sonthal

Parganas. It applies to Bearar when the creditor and debtor are Hindus.”

The question that arises is, why the rule is applied in certain areas only. A Full Bench of Rajasthan High Court in *Sheokaransingh v. Daulatram*¹³, dealt with the question of applicability of rule of Damdupat and the question before the Hon’ble High Court of Rajasthan was whether the rule of Damdupat as recognized by Hindu Law, in the absence of any statute, is of binding force and/or can be given effect to in this State. The Hon’ble High Court had discussed about the places where the rule of Damdupat was applicable and as to why it was applicable in those places, in the following terms :

“(4) The principle or rule of Damdupat is said to be a branch of Hindu Law of debts, and, according to this rule, the amount of interest recoverable at any one time cannot exceed the principal. This rule, however, is not applicable anywhere in what was formerly British India, except the following places :

- (i) the Town of Calcutta,
- (ii) the State of Bombay
- (iii) Bearar,
- (iv) Santhal Parganas

(5) It is also clear that the principle of Damdupat as a branch of Hindu Law of debts was not applied as a principle of Hindu Law even where it is applicable in other parts of India. In the town of Calcutta it was applied because of a special provision in Statute 21, George III, C.70, S.17 which enjoined upon the Supreme Court of Fort William to determine “all matters of contract and dealing between party and party in the case of Gentus by the laws and usages of Gentus.”

The Calcutta High Court therefore held that so far as the Town of Calcutta was concerned, the rule of Damdupat applied

as between Hindus in view of this provision of Statute 21. At the same time, it was made clear that the rule did not apply to the rest of Bengal outside the Town of Calcutta : (See “*Nobin Chunder Bannerjee v. Romesh Chunder Ghose*, 14 Cal. 781 Pg. 788 (A)).

(6) In Bombay, the rule was applied to the city of Bombay for the same reason as in Calcutta. As to the rest of the Bombay State, the rule was originally applied by Bombay Regulation No.V of 1827, and though that Regulation seems to have been repealed, the rule is still in force : (*Vide* Note (1) at Page 16 of Mayne’s Hindu Law 11th Edn.)

(7) In Bearar it appears that there has been a practice from time immemorial to apply the rule of damdupat to all debt cases :

(See *Jairam v. Debidayal Surajprasad*, AIR 1917 Nag. 116(B)).

(8) In Santhal Parganas its application is by Statute Law.

(9) Though, therefore, Damdupat in text books of Hindu Law is a rule of Hindu Law of Debts, it is not in force in any part of India now as a principle of Hindu Law, as now enforced by the Courts of law, is confined only to matters of personal law, while the question of interest is not a matter of personal law, but civil law generally. Wherever, therefore, the rule of Damdupat is applicable, it is applied by virtue of a statute or custom, and not as a branch of Hindu Law.”

The power of the Courts of India to apply the Hindu Law to Hindus is derived from and regulated by certain statutes of the British Parliament and by imperial and provincial legislation passed during the period of British rule, which unless altered or repealed are to continue in force under the express provisions of Article 372 of the Indian Constitution¹⁴.

13. AIR 1955 Raj. 201

14. Mulla’s Principles of Hindu Law.

The Hindu Law as administered by the Courts of India is applied to Hindus in some matters only. Through out India, questions regarding succession, inheritance, marriage, and religious usages and institutions, are decided according to Hindu Law, except insofar as such law has been altered by legislative enactment. Besides the matters above referred to, there are certain additional matters in which the Hindu Law is applied to Hindus, in some cases by virtue of express legislation, and in others on the principle of justice, equity and good conscience. These matters are adoption, guardianship, family relations, wills, gifts and partitions. As to these matters also, the Hindu Law is to be applied subject to such alterations as have been made by legislative enactment¹⁵.

Conclusion

The rule of Damdupat is a branch of the Hindu Law of Debts. According to this

rule, the amount of interest recoverable at any one time cannot exceed the principal due at that time. According to Hindu Law there is no period of limitation for recovery of debts. Every debt was binding upon the debtor irrespective of the period. It, thus, becomes necessary to impose restriction on the amount of interest recoverable at any one time by the creditor. The rule of Damdupat applies to secured as well as unsecured debts. It applies to the simple money bond as well as loans secured by mortgage of immovable properties or pledge of movable properties. The rule is applicable in the Bombay State, Town of Calcutta, Bearar and Santhal Parganas. The rule of Damdupat is not applicable to the province of Madras, Uttar Pradesh, State of Rajasthan. The rule is not applicable to the State of Andhra Pradesh to any money transactions including Bank loans. A judgment with regard to territorial applicability of rule of Damdupat is awaited from the Apex Court.

IS SURROGACY AN ALTERNATIVE TO ADOPTION IN THE WAKE OF SOCIAL CHANGE OF THE GLOBE

By

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Inspite of the fact that parents construct the child biologically and the child constructs the parents socially, the problem mainly arises where the parents are unable to construct the child naturally (through the conventional biological means) mainly from infertility, which is faced by more than 15% couples all over the world. It is from the changing social norms and biomedical technologies, surrogacy now a days is in consideration as a large solace to the infertile by the Assisted Reproductive Technologies to achieve pregnancy by artificial or partially artificial

means, in contrast to the age old concept of adoption of child from a known family without intervention of Court or adoption of an orphan or destitute child through intervention of Court (in-country or inter-country) as a substitute to a childless parent/s.

The biomedical technologies & other scientific advances like Genetic Engineering, Assisted Reproductive Technologies-(ARTs), Human Cloning *etc.*, have opened new gates in unimagined dimensions in benefitting the mankind on practical side with phenomenal

15. Mulla's Principles of Hindu Law.

1. District Judge-cum-Chairman, A.P. Endowments Tribunal, Hyderabad.