

the instant case, where also the repudiation of grant has taken place after the formation of the Patiala and East Punjab States Union and even after the Constitution of India had been in force granting equal rights of citizenship to all the subjects of the Union of India. The repudiation could be justified only as an act of State which could be exercised by a sovereign power alone over the subjects of another such power during the course of acquisition of territories or otherwise. Those conditions did not obtain in the instant case, and the present suit is, therefore, clearly within the jurisdiction of the civil Courts. Whether or not the grant could be confiscated by legislation or other process of law is a different matter. The plaintiff is certainly entitled to have his claim adjudicated. I would, therefore, allow this appeal and reversing the decree and judgment of the learned Additional District Judge of Patiala restore that of the trial Judge. There would be no costs of this appeal.

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v.
The State of
PEPSU

Shamsher
Bahadur, J.

B. R. T.

LETTERS PATENT APPEAL

Before A. N. Bhandari, C. J. and D. Falshaw, J.

HUKAM SINGH AND OTHERS,—Appellants.

versus

DULI AND OTHERS,—Respondents.

Letters Patent Appeal No. 108 of 1956.

*Punjab Relief of Indebtedness Act (VII of 1934)—
Object of—Laws relating to usury—Construction of—Section 30—Benefit of—Whether allowable to the legal representative of a debtor.*

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Held, that the Punjab Relief of Indebtedness Act, 1934, was enacted with the object of protecting borrowers whose

needs or adversities compel them to borrow money against the oppressive exactions of money-lenders which often they are powerless to resist. It was accordingly enacted that no money-lender should charge a rate of interest for the use of money in excess of the interest set out in the body of the Act and that no Court should pass or execute a decree in respect of a debt for a larger sum than twice the amount of the sum found due by the Court to have been actually advanced.

Held, that although statutes relating to usury ought to be construed in accordance with the principles applicable to the construction of statutes, it must be remembered that such statutes establish a legislative policy which the Court ought to enforce. If, therefore, a question arises whether a greater sum has been exacted for the use of money than that allowed by the statute, it is the duty of the Court to enquire whether the provisions of law have been violated; and if it is satisfied that they have been, it is the duty of the Court to adopt that view of the law which is likely to accomplish the purpose of the legislature. A construction which is likely to nullify, destroy or defeat the intention of the legislature should not be adopted, for usury laws should not be converted from shields of protection into swords of offence.

Held, that the legal representative of a debtor is entitled to the benefit of Section 30 of the Punjab Relief of Indebtedness Act, 1934, as the suit is in respect of a debt as defined in Section 7(1) of the Act, and the Court is bound to give effect to the rule of Damdupat and to refrain from passing a decree in contravention of the provisions of section 30 of the statute. The language of the section is plain and unambiguous; it conveys a clear and definite meaning and there is no occasion to resort to complicated rules of interpretation. It is not open to a Court of law to create an ambiguity when none exists and then to clear it up by statutory construction.

Appeal under clause 10 of the Letters Patent against the Judgment and decree of Hon'ble Mr. Justice Bishan Narain, passed in R.S.A. Case No. 642 of 1952 on 5th March, 1956, whereby the decree of Shri Maharaj Kishore, Additional District Judge, Gurgaon, dated the 28th May, 1952, affirming that of Shri G. S. Bedi, Sub-Judge 1st Class,

Palwal, dated the 26th April, 1951 (granting the plaintiff a preliminary decree on payment of Rs. 270), was affirmed.

P. C. PANDIT, for Appellants.

D. N. AGGARWAL, for Respondents.

JUDGMENT

A. N. BHANDARI, C. J.—The one and only question which arises for decision in the present case is whether it is open to the legal-representative of a debtor to invoke the help of section 30 of the Punjab Relief of Indebtedness Act, 1934. Bhandari, C. J.

On the 28th May, 1897; one Lal Singh; an occupancy tenant, mortgaged his occupancy rights with the defendants in a sum of Rs. 400 and on the 20th December, 1927; he created a further charge of Rs. 135 on his property. Duli Chand, a son of the mortgagor, applied for the restitution of the mortgage under the provisions of the Restitution of Mortgaged Lands Act, 1938. The Special Collector appointed under the provisions of the said Act extinguished the original mortgage for Rs. 400 and directed the plaintiff to secure the help of a civil Court for the redemption of the mortgage in respect of the charge of Rs. 135. The civil Court applied the provisions of section 30 of the Relief of Indebtedness Act, granted a preliminary decree in favour of the plaintiff and directed the mortgagee to redeem the property on payment of a sum of Rs. 270. The order of the trial Court was upheld by the Additional District Judge of Gurgaon and later by a learned Single Judge of this Court. The mortgagee has appealed.

Section 30 of the Punjab Relief of Indebtedness Act, 1934, is in the following terms:—

“30. In any suit brought after the commencement of this Act in respect of a

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debt as defined in section 7, advanced before the commencement of this Act no Court shall pass or execute a decree or give effect to an award in respect of such debt for a larger sum than twice the amount of the sum found by the Court to have been actually advanced”

Mr. P. C. Pandit, who appears for the mortgagee, contends that the rule of Damdupat propounded by section 30 reproduced above was intended for the benefit of the original debtor and not for the benefit of his legal-representatives, for the expression “debt” as defined in the Act of 1934 includes all liabilities of a debtor in cash or in kind and the expression “debtor” as defined in the said Act means a person who owes a debt. The case of *Sahibditta Mal and others v. Mohra Mal* (1), has been cited in support of this contention. In this case a question arose whether a legal-representative of a debtor should apply to a Conciliation Board under the provisions of section 9 of the Act of 1934. A Division Bench of the High Court at Lahore, presided over by Harries, C. J.; expressed the view that the word “debtor” in section 7 contemplates a person from whom a debt is personally due either because he himself incurred it or because otherwise he became liable to discharge it. The liability of a legal-representative to pay the debt is not his personal liability and, therefore, the legal-representative of a deceased debtor does not fall within the ambit of the expression “debtor” as defined in section 7. In view of this authority it is contended that although it would have been open to Lal Singh, the original mortgagor who was a debtor, to invoke the help of this section, it is not open to

(1) A.I.R. 1945 Lah, 58

his son who is not a "debtor" to seek shelter behind the rule of Damdupat.

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I regret I am unable to concur in this contention. The Punjab Relief of Indebtedness Act, 1934, was enacted with the object of protecting borrowers whose needs or adversities compel them to borrow money against the oppressive exactions of money-lenders which often they are powerless to resist. It was accordingly enacted that no money-lender should charge a rate of interest for the use of money in excess of the interest set out in the body of the Act and that no Court should pass or execute a decree in respect of a debt for a larger sum than twice the amount of the sum found due by the Court to have been actually advanced. Although statutes relating to usury ought to be construed in accordance with the principles applicable to the construction of statutes; it must be remembered that such statutes establish a legislative policy which the Court ought to enforce. If, therefore, a question arises whether a greater sum has been exacted for the use of money than that allowed by the statute, it is the duty of the Court to enquire whether the provisions of law have been violated; and if it is satisfied that they have been, it is the duty of the Court to adopt that view of the law which is likely to accomplish the purpose of the legislature. A construction which is likely to nullify, destroy or defeat the intention of the legislature should not be adopted, for, as pointed out by an eminent jurist, usury laws should not be converted from shields of protection into swords of offence.

It is common ground that the suit instituted by Duli Chand was brought after the commencement of this Act. It is also admitted that this suit is in respect of a debt as defined in section 7, for the expression "debt" includes all liabilities of a

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debtor in cash or in kind. It is also admitted that the debt was advanced before the commencement of the Act. It may be that the plaintiff in this case who is a legal-representative of the original debtor, is not a debtor as defined in sub-section (2) of section 7, but that fact cannot alter the fact that the suit has been brought in respect of a debt as defined in section 7(1). In these circumstances it was in my opinion the duty of the Court to do what it has actually done, namely to give effect to the rule of Damdupat and to refrain from passing a decree in contravention of the provisions of section 30 of the statute. The language of the section is plain and unambiguous; it conveys a clear and definite meaning and there is no occasion for us to resort to complicated rules of interpretation. It is not open to a Court of law to create an ambiguity when none-exists and then to clear it up by statutory construction.

For these reasons, I would uphold the order of the learned Single Judge and dismiss the appeal. There will be no order as to costs.

Falshaw, J. FALSHAW, J.—I agree.

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APPELLATE CIVIL

Before Mehar Singh and I. D. Dua, JJ.

MST. SHAM KAUR,—Appellant.

versus

SANTA alias SANTA SINGH, AND OTHERS,—Respondents.

Regular Second Appeal No. 481 of 1952.

1959
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Code of Civil Procedure (V of 1908)—Section 100—
Second Appeal—New point—Whether can be allowed to be
raised when it requires evidence—Riwaj-i-Am—Entries