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A.S.(MD)NO.102 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2025

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

A.S.(MD)No.102 of 2024 AND

C.M.P.(MD)No.5728 of 2024

K.Vasantha

... Appellant / Defendant

Vs.

S.Kalyani

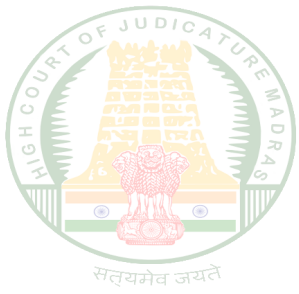
... Respondent / Plaintiff

Prayer: Appeal suit filed under Section 96 CPC r/w. Order 41 Rule 1 CPC, to set aside the judgment and decree dated 21.12.2023 made in O.S.No.75 of 2019 on the file of the learned Principal District Judge, Dindigul and allow the appeal suit.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.V.R.Shanmuganathan

* * *

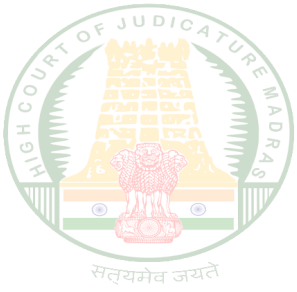
**J U D G M E N T**

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(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

“O believers! Do not consume interest, multiplying it many times over. And be mindful of Allah, so you may prosper” - Surah Al-Imran (3:130).

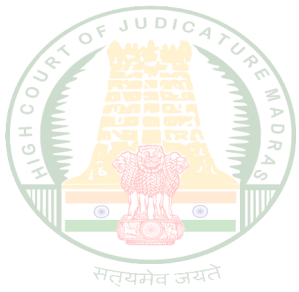
The defendant in O.S.No.75 of 2019 on the file of the Principal District Judge, Dindigul is the appellant herein. The respondent herein filed the said suit for recovery of a sum of Rs.59,76,307/- with interest. The plaintiff filed the said suit on the basis of three promissory notes executed by the appellant for a total sum of Rs.20,00,000/- (Ex.A.1 dated 31.08.2010, Ex.A.2 dated 01.09.2010 and Ex.A.3 dated 02.09.2010). As per the terms of the promissory notes, the principal amounts were to be repayable with interest @ 24% p.a. Since the appellant committed default, the plaintiff issued Ex.A.4 legal notice dated 24.11.2016. The defendant replied vide Ex.A.5 dated 22.12.2016 admitting the execution of the promissory notes but took the stand that the agreed rate of interest was @ 18% and not @ 24%.



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2. Since the demand set out in the legal notice was not complied with, the suit came to be filed. The written statement reflected the stand set out in the reply notice. Based on the rival pleadings, the issues were framed. The plaintiff examined herself as P.W.1. Ex.A.1 to Ex.A.7 were marked. The defendant examined herself as D.W.1 and one Valliyappan who witnessed the transaction was examined as D.W. 2. Ex.B.1 was marked. After considering the evidence on record, the trial Court vide judgment and decree dated 21.12.2023 directed the defendant to pay a sum of Rs.59,76,307/- with interest @ 9% p.a. on the principal sum of Rs.20,00,000/- with effect from 11.03.2018 till the date of judgment and @ 6% p.a. from the date of judgment till date of realization. In other words, interest @ 24% p.a. was to be the applicable rate of interest from the date of execution of the promissory notes till the date of filing of the suit and interest @ 9% p.a. was to be applicable during the pendency of the suit and interest @ 6% p.a. was to be the applicable rate on the decretal amount.

3. Challenging the same, this appeal has been filed.



4.The learned counsel appearing for the appellant submitted that notwithstanding the admission made by the defendant, the applicable rate of interest fixed by the Government under Section 7 of The Tamil Nadu Money-lenders Act, 1957 would be 12% p.a and not 24%. According to him, the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 have to be applied.

5.Per contra, the learned counsel for the plaintiff / respondent submitted that the appellant cannot go back on what was originally agreed by her. He pointed out that both in the reply notice as well as in the written statement, the defendant had agreed to settle the loan amount with interest @ 18% p.a. The learned counsel invoked the principle of estoppel. He submitted that the impugned judgment is well reasoned and that it does not call for interference. The Court below had merely enforced the terms that were explicitly agreed between the parties in writing. He pressed for dismissal of this appeal.

6.We carefully considered the rival contentions and went through the evidence on record. The only question that calls for

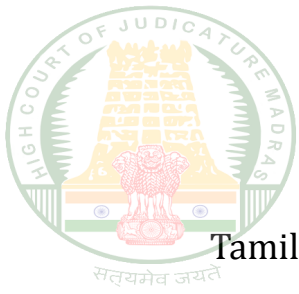


consideration is whether the provisions of Tamil Nadu Act 38 of 2003 can be applied to the case on hand.

7.The learned counsel for the plaintiff / respondent drew our attention to the decision reported in **(2010) 2 LW 74 (*Indiabulls Financial Services Ltd v Jubilee Plots and Housing Pvt Ltd*)** and the decision reported in **2022 SCC OnLine Mad 960 (*P.Sundareswar Vs. Pinky Jain*)** and contended that since the loan was advanced on the basis of negotiable instruments exceeding Rs. 10,000, Tamil Nadu Act 38 of 2023 cannot be invoked at all.

8.On the other hand, the learned counsel for the appellant submitted that a learned Judge of this Court in the decision reported in **2022 (3) MWN (Civil) 201 (*A.M.Gopalan vs M.Sivaram*)** had taken the view that when the defendant had availed an unsecured loan, the plaintiff can at best charge interest @ 12% p.a. and not beyond that.

9.It is seen that in ***Indiabulls case***, the learned Judge went by the definition of the term “loan” found in Section 2(6)(vi) of the



Tamil Nadu Money Lenders Act, 1957. The said provision is as follows:

“ “loan” means an advance, whether of money or in kind at interest; and includes any transaction which the Court finds in substance to amount to such an advance but does not include the advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 exceeding Rs. 10,000/-.”

It is not in dispute that Section 13 of the Negotiable Instruments Act, 1881 defines “negotiable instrument” as including a promissory note. What we have to consider now is whether the suit transaction would fall within the scope of the term “loan” as defined in the Tamil Nadu Money Lenders Act, 1957.

10. Section 2(10) of the Tamil Nadu Act 38 of 2003 states that the words and expressions used but not defined in that Act shall have the meanings assigned to them in the Tamil Nadu Money Lenders Act, 1957. It is pertinent to note that the term “loan” has been defined in Tamil Nadu Act 38 of 2003. Section 2(6) of the said Act defines loan as an advance of money for daily vatti, hourly vatti, kandhu vatti, meter vatti or thandal. Each of these expressions have

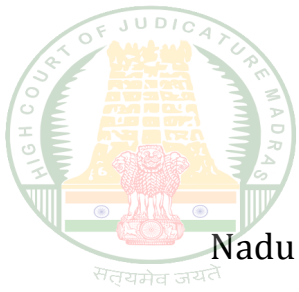


been defined in Section 2 itself. If a given transaction would constitute loan within the meaning of Section 2(6) of Tamil Nadu Act 38 of 2003, the question of said transaction falling under Section 2(6) (vi) of Tamil Nadu Money Lenders Act, 1957 would not arise.

11. Admittedly, the plaintiff is not a money-lender nor has she advanced any loan for *daily vatti*, *hourly vatti*, *meter vatti* or *thandal*. That gives rise to the issue if the plaintiff had advanced loan for “kandhu vatti”. The expression “*kandhu vatti*” has been defined in Section 2(5) of the Tamil Nadu Act 38 of 2003 as follows:-

“ “kandhu vatti” means an interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money-lenders Act; ”

Kandhu vatti thus refers to the interest that is charged above what has been fixed by the Government under Section 7 of the Tamil Nadu Money-Lenders Act, 1957. It is not in dispute that under Section 7 of the Tamil Nadu Money Lenders Act, the Government had fixed 12% as the chargeable interest for an unsecured loan and 9% for secured loan. The interest charged in the case on hand falls within the expression “*kandhu vatti*” as defined in Section 2(5) of the Tamil



Nadu Act 38 of 2003. When the loan transaction between the parties would fall within the scope of Section 2(5) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the provisions of the said Act will automatically kick in.

12. Debtors have always faced exploitation at the hands of the lenders on account of charging of usurious rates of interest. Legislations have been periodically introduced to provide relief to borrowers. The enactment of Tamil Nadu Act XXVI of 1957 was one such instance. The Tamil Nadu Money-Lenders Act, 1957 was enacted with an aim to regulate and control the business of money-lenders in the State of Tamil Nadu. The Statement of Object and Reasons read as follows:

“ It has since been found that these provisions are not adequate. The Government, therefore, considers that legislation should be undertaken to regulate and control the business of money-lenders, other than pawnbrokers, mainly **with a view to control the activities of a class of unscrupulous money-lenders who threaten and molest borrowers.**”

13. Even the provisions of this Act proved to be inadequate. When G.Venkateswaran, a popular film producer, committed suicide

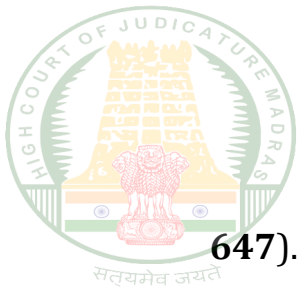


on 3rd May 2003, unable to bear the harassment of the money-

lenders, it provoked widespread outrage. The Tamil Nadu Government, recognizing the urgent need to offer protection to borrowers, brought out an Ordinance on 9th June 2003 itself to check the menace of charging of exorbitant interest. This culminated into passing of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The purpose of the enactment cannot be lost sight of. The statement of objects and reasons leading to the enactment of the Act 38 of 2003 is as follows :

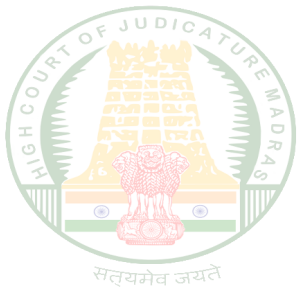
"In order to obviate the difficulties experienced by the public at large, falling prey to any person charging exorbitant interest like daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal, the Government have decided to prohibit lending money for such exorbitant interest and to provide for stringent punishment therefor and decided to enact a new legislation for the purpose..."

This special enactment is undoubtedly a beneficial piece of legislation. It is well settled that in construing such legislations, courts should adopt a beneficent rule of construction (vide ***Alembic Chemical Works Ltd vs The Workmen*** reported in AIR 1961 SC



647). The 2003 Act should therefore be interpreted in an expansive manner so as to effectuate the legislative object. In ***M/S New India Sugar Mills Ltd vs Commissioner Of Sales Tax, Bihar*** reported in ***AIR 1963 SC 1207***, the Hon'ble Supreme Court held that it is a recognized rule of interpretation of statutes that expressions should be ordinarily understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the legislature used the expression in the sense which would carry out its object.

14.The Hon'ble Supreme Court in the decision reported in **2007 14 SCC 297** (vide M/S. ***P.Vaikunta Shenoy & Co vs P. Hari Sharma***) while interpreting the provisions of The Karnataka Money-lenders Act, 1961 held that a purposive construction has to be adopted having regard to the object of the statute. In ***Aharon Barak's*** (a jurist and former President of the Supreme Court of Israel) seminal work on “**Purposive Interpretation in Law**”, the author emphasises the ultimate purpose of a statute in the following terms:



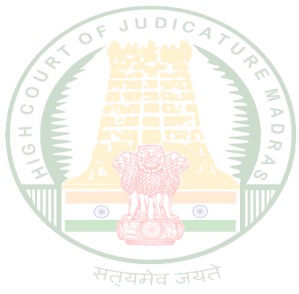
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“Judges interpret a statute according to the purpose it is designed to achieve. The purpose of a statute is the interests, objectives, values, policy and social function that the statute is designed to actualize. It is the social change that the statute visits on existing law. It is the *ratio legis*...”

15.The author also places considerable importance on taking the pre-legislative history and social and legal background of a statute into account while construing its purpose. In **Indiabulls**, it was observed that Section 2(6)(vi) of the Tamil Nadu Money-lenders Act, 1957 was enacted to obviate the lower middle class people, particularly the salaried servants and wage earners from the exploitation of the money lenders. The learned Judge held that neither the Tamil Nadu Money Lenders Act, 1957 nor the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 have any application to the mammoth loan transactions based on negotiable instruments but only seek to address the grievance of the gullible public who borrow small loan on usurious interest slapped on them. We are of the view that such an approach fails to take into account the background in which the law was made. As already mentioned, the suicide of a film producer triggered the legal developments.



Obviously, G. Venkateswaran did not borrow a small amount from a loan shark. He was neither a person belonging to “lower middle class” nor a member of the “gullible public” but a renowned producer who would not have borrowed an amount less than Rs.10,000. This is the legislative history that cannot be overlooked. In the Money Lenders Act, an unnaturally low ceiling of Rs.10,000/- had been fixed. The Act also lacked teeth. There were no strong penal provisions. The Government could have amended the Money Lenders Act. Instead, it thought it fit to bring in a new legislation altogether. That is how, Tamil Nadu Act 38 of 2003 came to be born. If Tamil Nadu Act No 38 of 2003 is to be held inapplicable on the ground that the loan was given on the basis of promissory note for a sum exceeding Rs. 10,000, the laudable object of the legislation would be frustrated and defeated. If in every case we apply the definition found in Section 2(6)(vi) of the Tamil Nadu Money Lenders Act, the Tamil Nadu Act 38 of 2003 can be very easily circumvented. All that a lender has to take from the borrower is a promissory note for a sum in excess of Rs.10,000/-.

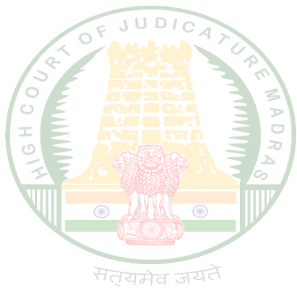


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16. In view of the discussion above, we hold that the proposition laid down in ***Indiabulls Financial Services Ltd v Jubilee Plots and Housing Pvt Ltd (2010) 2 LW 75*** that a money-lender who advances loan on the basis of a negotiable instrument exceeding Rs.10,000/- is not a person referred to in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is not correct. We notice that this proposition has been followed in a number of subsequent judgements such as ***P.Sundareswar Vs. Pinky Jain***. We hold that all of them have been incorrectly decided.

17. A learned Judge of this Court in W.P No. 28536 of 2023 vide order dated 30.11.2023 (vide ***S. Mohan Kumar vs State of Tamil Nadu***) observed as follows:

8..(ii) Further, it is relevant to note that the legislators were not oblivious of the [Money Lenders Act](#), of 1957 when the later Act, i.e., Tamilnadu Prohibition of Charging Exorbitant Interest Act in the year 2003 was enacted. In [section 3](#) of the Act, there is a reference to Money Lending Act and [section 2\(1\)](#) defines “daily vatti” as collection of interest on daily basis which will work out to an interest rate more than that fixed by the Government under [section 7](#) of the Money-Lenders Act. Likewise, in [Section](#)



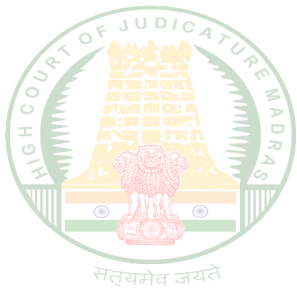
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2(5) “Kanthu vatti” is defined as interest which will work out to an interest rate more than that fixed by the Government under [Section 7](#) of the Money-Lender Act.

(iv) When the later legislation having considered the earlier legislation and employ ‘non-obstante clause’, **there is no sense in contending that the petitioner with Money Lenders license fall outside the purview of Tamilnadu Prohibition of charging Exorbitant interest Act.** The definition of 'Kanthu vatti' covers all sort of money transaction which will work out to an interest rate more than the government fixed rate of interest under the Money Lender’s Act. **The later Act does not prescribe any lower or upper limit regarding money involved like Rs.10,000/- and above or less than Rs.10,000/- meaning to restrict its application for transactions involving huge amount running to lakhs or crores.** The Act also neither specifies any restrictions about its application to any particular mode of payment nor collection like negotiable instruments.

(vi) **The definition of 'Loan' in the Money Lending Act, 1957 and in the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 are not one and the same.** While in the earlier Act the definition is wider and it relates to advancing of money for interest, in the later Act the definition of 'loan' is restricted to the advance of money



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for interest by any name charged over and above the interest fixed by the Government as per [Section 7](#) of the money lending Act.

18.In the decisions relied on by the learned counsel for the plaintiff, Section 12 of the Tamil Nadu Act 38 of 2003 was not fully appreciated. Section 12 of the Act reads as follows:-

“12. Applicability of provisions of Money-lenders Act.

- **Subject to the provisions of the Act**, the provisions of the Money-lenders Act, in so far as they are applicable to money-lenders shall mutatis mutandis apply to a person referred to in Section 3 of this Act”

The expression “subject to” has been interpreted in the decision reported in **AIR 2007 SC 1984 (S.P. Industries Co. Ltd vs Electricity Inspector and E.T.I.O)** as conveying the idea of a provision yielding place to another provision or other provisions subject to which it has been made. A Four Judges Bench of the Hon'ble Supreme Court in the decision reported in **AIR 1966 SC 1318 (vide Punjab Sikh Regular Motor Service vs Regional Transport Authority)** held that when Provision A is subject to Provision B, a case falling under Provision B



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is taken out of Provision A. The phrase “subject to” is a simple provision which merely subjects the provisions of the subject section to the provisions of the master section. When there is no clash, the phrase does nothing ; if there is collision, the phrase shows what is to prevail (vide *Ram Gopal Sharma v Madhya Pradesh State Road Transportation (1978 SCC OnLine MP 151)*). Section 12 opens with “Subject to”. Therefore, the provisions of the Tamil Nadu Money Lenders Act, 1957 cannot prevail over the provisions of the Tamil Nadu Act 38 of 2003. Section 3 of the 2003 Act states that **no person** shall charge exorbitant interest on any loan advanced by him. The word “**person**” has to be interpreted expansively and not in a narrow sense. It would include a money lender or any person advancing a loan. There can be only one qualification. The loan transaction has to fall within the scope of Section 2(6) of the 2003 Act. It is only this interpretation that will further the object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

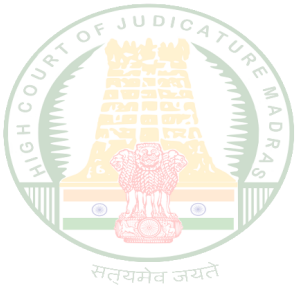
19. Since the borrower is in desperate need of funds, he would definitely be signing on the dotted lines. It is well settled that there can be no estoppel against the statute. Giving precedence to the

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contract entered into between the parties over the statutorily stipulated percentage of interest is definitely not contemplated by the legislature. In other words, what is impermissible on account of a statutory limitation cannot be resorted to by taking shelter under the terms of the contract. We are therefore of the view that the judgments that had concluded that if a loan is given on the basis of a negotiable instrument for a sum in excess of Rs.10,000/-, it would fall outside the purview of Tamil Nadu Act No.38 of 2003 and that the contract would prevail, do not lay down the correct law. We overrule the same.

20.The plaintiff in this case would fall within the expression “person” occurring in Section 3 of the 2003 Act. The loan advanced by her attracts the definition set out in Section 2(6) of the said Act. Once these two ingredients are fulfilled, the transaction will fall within the prohibitory sweep of the 2003 Act. It is well settled that there can be no estoppel against statute. Even if the borrower had agreed to pay in excess of the ceiling set out in the Act, the lender cannot enforce the same.



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21.In this view of the matter, we hold that the principal sum stated in the plaint can only be Rs.20,00,000/- + interest @ 12% p.a.

In the deeds mentioned in Ex.A.1 to Ex.A.3 (Rs.40 Lakhs), the plaintiff would be entitled to charge interest @ 9% p.a. during the pendency of the suit and 6% p.a. on the decree amount. Accordingly, the impugned judgment and decree are modified.

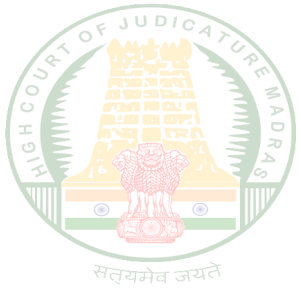
22.This appeal suit is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
29th April 2025

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To:

The Principal District Judge, Dindigul.



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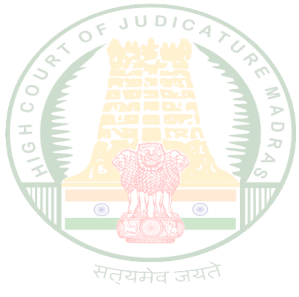
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