

Usurious Loans Act, 1918

Section 3 - Reopening of Transactions

(1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, (25 of 1855) where, in any suit to which this Act applies, whether heard ex parse or otherwise, the Court has reason to believe,

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair,

the Court may exercise all or any of the following powers, namely, may,

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that, in the exercise of these powers, the Court shall] not

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than {Subs.by Act 28 of 1926, s.3, for " six ".}[twelve] years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation. In the case of a suit brought on a series of transactions the expression " the transaction " means, for the purposes of proviso (i), the first of such transactions.

(2) (a) In this section " excessive " means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been

known, to the creditor.

Explanation. Interest may of itself be sufficient evidence that the transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan {Ins. by Act 28 of 1926, s. 3.} [or for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word " notice " shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.