Usurious Loans Act, 1918

Section 3 - RE--OPENING OF TRANSACTIONS

1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte 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 than7[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, premium, 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 par- ties 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 loan8[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, OBJECTS AND REASONS "We think it well to commence clause 3 by a specific reference to the Usury Laws Repeal Act, 1855, as the powers conferred by the Bill override pro tanto the provisions of that Act. We have accepted the view that the Court may act under the provisions of this clause suo motu as we attach considerable weight to the body of opinion which suggests this course and have modified the language of the Bill accordingly. We have careful consideration to the question whether there should not be some restriction on the powers of .the Court to re-open agreements closing previous dealings and creating new obligations. We think that there is something to be said for the view that the Courts should not be required or allowed in such a case to go back beyond a definite period. In the case of a running account such a restriction is not possible, but we have accepted the view that where there is such an

agreement which has been entered into by the parties or by their representatives in interest, the Court should not be allowed to re-open the agreement if it was made more than six years prior to the transaction before the Court. We have therefore inserted a proviso limiting in this way the powers under clause 3 (1) of the Bill annexed to this Report. To prevent any misapprehension we have also laid it down that the powers conferred by the clause shall not be used in such a way as to affect the decree of a Court. We have accepted the view expressed in many opinions that the concluding words of clause 2 (2) (a) of the Bill referred to us should be omitted. We recognized that there is some danger of a local combination creating a prevailing rate which would be an excessive rate. We have amended the closing words of sub-clause (2) (b) so as to make it clear that it is for the Court to decide the total advantage which may reasonably be taken to have been expected from any transaction. We have inserted an Explanation to make it clear that interest may of itself be sufficient evidence that a transaction is substantially unfair. By doing so we have deliberately adopted the view set forth in the House of Lords in Samuel v. New bold We have modified the provision in the Bill by which protection is afforded to a transferee for value so as to make it clear that it only extends to a case where a Court is satisfied that the transfer is bona fide, and that the transferee had at the time of the transfer no notice of any fact which would have entitled the debtor as against the lender to relief under Clause 3."- S. C. R.