

Raman Chettiar and ors. Vs. Raman Chettiar and ors.

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Court : Chennai

Decided On : May-01-1953

Reported in : AIR1954Mad97; (1953)2MLJ405

Judge : Mack, J.

Acts : International Law; Burma Accrual of Interest War-time Adjustment Act, 1947 - Sections 3; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 34, 47 and 151

Appeal No. : A.A.O. No. 376 of 1950

Appellant : Raman Chettiar and ors.

Respondent : Raman Chettiar and ors.

Advocate for Def. : R. Gopalaswami Ayyangar, Adv.

Advocate for Pet/Ap. : S. Thyagaraja Ayyar, Adv.

Disposition : Appeal allowed

Judgement :

Mack, J.

1. This is an appeal by the decree-holders against an order passed by the learned Subordinate Judge of Pudukottah allowing an application by the judgment-debtors under Sections 47 and 151, Civil P. C. and holding that they were not liable to' pay

interest of Rs. 2846-11-0 for the period 8-12-1941 to 31-3-1947 by virtue of the Accrual of Interest War time Adjustment Act (Burma Act 11 of 1947). The suit was one for recovery of monies deposited with the defendants in Burma admittedly many years ago. Section 3 of the Burma Act 11 of 1947 runs as follows:

'Notwithstanding: anything contained in any other law for the time being in, force, or in any contract of loan or mortgage deed, no interest shall accrue, or be payable, upon any loan or mortgage other than usufructuary mortgage made in Burma before the 5th day of May 1942 for or in respect of the period which falls within the 8th day of December 1941 and the date on which the provisions of Section 7 of the, Courts '(Emergency Provisions)' Act. 1943 cease to operate or are repealed'

(Admittedly 31-3-1947).

2. The point arising is one of importance and interest, namely, to what extent Courts in India are governed, by or should apply this very equitable and just Act passed in Burma in 1947. The object of the enactment, was to relieve debtors from liability, to pay interest during a period of foreign invasion and occupation and of most unsettled war conditions when any kind of business in the ordinary sense was rendered practically out of the question.

3. The learned Subordinate Judge in a short order allowing the application under appeal referred to full reasons, he gave in an order in E. P. No. 1 of 1949 in C. S. No. 106 of 1943, a decree of the High Court transferred to him for execution, for coming to the conclusion that the judgment-debtors were entitled to claim this relief in execution, where decrees were passed prior to the enactment of Burma Act XI of 1947. A printed copy of that order has been placed before me but the learned advocates have not been able, though adjournments were given for this purpose, to ascertain whether any appeal to this Court has been filed against that order.

4. I can see no obstacle to my disposing of this appeal on its merits taking into consideration the reasons given by the learned Subordinate Judge in the fuller report. It has been urged by Mr. Viswanatha Iyer for the appellants that the Burma Act cannot have no force in India and cannot be applied by Indian Courts in the

absence of legislative provision making the Burma Act applicable to the Indian Union. This aspect of the matter has not been considered by the learned Subordinate Judge, who assumed, in my opinion, rightly, though he gave no reasons that the Burma Act of 1947 was binding on the Courts of India. It is necessary, however, to examine the legal basis for this finding. The applicability of this Act to these contracts, as it appears to me, must be considered on principles of Private International Law, which is not the same in all countries. It has been described by Baty in his 'Polarized law' at page 48, as 'rights voluntarily chosen by a State for the decision of a case which have a foreign application'. The Court has often to decide an issue which is very closely connected with a foreign system of law, so as to necessitate recourse to that system. One of the parties, for instance, may be foreign by nationality or of a foreign domicile. A contract made in one country may be performed in another. In India Private Informational law is not regulated by statutes. In England, as in most countries it has perforce been developed only by judicial decisions in concrete cases.

I venture to express the view that Private International Law applicable to the Indian Union can ordinarily be built up by judicial decisions in concrete cases, and also the hope that there will be no attempt at any statutory enactment in this very wide and uncertain field which will invest it with a rigidity which may impede its natural evolution.

5. In the present case, we are in the domain of contract. Lord Esher laid down the following rule in -- 'Gibbs v. Societe Indus-trielle des Metaux', (1890) 25 QBD 399 (A), which is a leading case on the subject :

'The general rule as to the law which governs a contract is that the law of the country, either where the contract is made, or where it is to be so performed that it must be considered to be a contract of that country, is the law which governs such contract; not merely with regard to its construction, but also with regard to all the conditions applicable to it as a contract. I say 'applicable to it as a contract' to exclude mere matters of procedure which do not affect the contract as such, but relate merely to the procedure of the Court in which litigation may take place upon the contract. The parties are taken to have agreed that the law of such country

shall be the law which is applicable to the contract. Therefore if there be a bankruptcy law, or 'any other law of such country', by which a person who would otherwise be liable under the contract would be discharged, and the facts be such as to bring that law into operation, such law would be a law affecting the contract, and would be applicable to it in the country where the action is brought.'

In the case before me, the contracting parties are nationals or citizens of the Indian Republic and when they were doing business in Burma, both the Indian Republic and Burma were all included within the British Empire. They are presumed to have agreed that the laws of Burma, as it then was, should apply to these contracts. Since these contracts were entered into, there have been stupendous changes which have perhaps also led to this suit and similar suits being filed in the Pudukottah and other Courts of the present Indian Union, instead of in the Courts of Burma. If Burma had not been liberated after it fell under Japanese occupation or had passed as China has behind what is called the 'Iron Curtain', laws may perhaps have been enacted in that country which may have 'cut at the root of private contracts and private ownership of property in such a manner as to render enforcement of these contracts impossible. Would any such law govern the rights of the parties in a suit on these contracts tried by Indian Courts? I would answer this question in an emphatic negative.

It is not, therefore, in all cases where the general rule laid down by Lord Esher can be applied. The rule is only applicable when any change of law in the country in which the contract was made is not repugnant to the principles of our Constitution, or of those principles of justice, equity and good conscience on which our own 'lex fori' is founded. If such be the case, the change of law, as I see it, will not be applied by our Court. But by an extension of the principle governing English Private International Judge-made law, by which we may be guided, the Burma Act of 1947 which is clearly founded on principles of justice, equity and good conscience, should govern such contracts when sued upon in the Indian Courts.

6. The principle deducible may be said to be one of just and equitable adaptation of a just and equitable law, passed, in the country of contract, after the contract was entered into, and having on the contract a retrospective effect, the law being

necessitated by unforeseen arid calamitous happenings, which between 1941 and 1947, suspended in Burma all ordinary business. It would, in short be most inequitable for the Indian Courts to enforce these contracts in disregard of this law: nor is it necessary for Courts to wait till the Union legislature makes the Burma Act of 1947 applicable to these contracts. In a domain where there is no statutory law or even within the ambit of a statute, where the statute is silent and does not specifically legislate for a particular case which may arise for determination as between parties in Court, there is scope and need for judge-made law in the shape of decisions in concrete cases. It is not of course the function of a judge to legislate; but it is his primary function to do justice as between parties. He cannot act in violation of statutory enactment or binding judicial precedents. There is, however, no need or any excuse, in my humble opinion, for a Judge to express helplessness to do justice and blame legislatures for failure to legislate and even when they do legislate, for failure to instruct them; exactly as to how they should act in every type of case which may occur. Even in a country where the law is mainly codified, Judges have the onerous duty cast upon them of administering justice by laying down principles in a wide and uncharted domain not covered by statutes in actual concrete cases which may arise before them. Courts can in this way give complementary and ancillary constructive aid to legislatures in the great task of upholding and administering justice, instead of being, as is sometimes the case, a little too prone to wait for legislation or to pick holes destructively in legislation which may be passed.

7. I have no hesitation in agreeing with the contention of the learned Subordinate Judge that the Burma Act 11 of 1947 should be applied to these contracts so far as applicable. The order of the learned Subordinate Judge giving fuller reasons makes reference to a certified copy of an order of the Rangoon High Court in C. M. P. No. 69 of 1947 that decrees already passed cannot be reopened under the Burma Act, taking the view that the decree of a Court was not a transaction between the parties, and that the amount due under the decree cannot be regarded as a loan within the purview of Section 3 of the Act reproduced supra. The learned Subordinate Judge took a different view and as it appears to me rightly held that the fact that the loan ripens into a decree does not deprive the decree of its basic characteristic of a loan liability. The word 'debt' has indeed in

several enactments such as the Insolvency Act, Section 20, Limitation Act and the Madras Agriculturists Relief Act been specifically defined so as to include judgment-debts as well. I am in agreement with him that a decree would come within the definition of 'loan or mortgage' as contemplated in Section 3 of the Burma Act. If the Rangoon High Court ultimately confirmed the view in the C. M. P. placed before the learned Subordinate Judge, I think it is an erroneous one and that interest on deposits included in a decree between 8-12-1941 and 31-3-1947 on which date the Courts (Emergency Provisions) Act, 1943, ceased to operate shall not be payable.

8. The next point which arises in this appeal is whether an executing Court can wipe out interest included in the decree as contemplated by the Burma Act. In the present case the question is really academic, as the executing Court is the Sub-Court, Pudukotta, which took over the jurisdiction and the work of the Chief Court of Pudukottah which passed the original decree. In my view it is not open to an executing Court as such to give any relief under the Burma Act of 1947.

Mr. Gopalaswami has urged that the Burma Act operates as a statutory discharge of all interest included in the decree between the prescribed dates. There are, however, manifest inconveniences in an executing Court being able to grant this relief without going into the plaint particularly in a compromise decree passed prior to the Burma Act, where other factors have to be taken into consideration. The view to which I am inclined is that relief to debtors under the Burma Act 11 of 1947 can only be granted by the Court which passed the decree by an application made to it under Section 151, Civil P. C. for amendment of the decree on the analogy of applications to amend decrees and wipe out interest under Act 4 of 1938.

9. This appeal must, however, succeed on the contention of Mr. Viswanatha Iyer for the appellant-decree-holders that the suit itself on which this decree was passed having been filed on 23-8-1941, the plaint amount did not include any interest which could in any event be wiped out by the Burma Act, which only wiped out interest between 8-12-1941 and 31-3-1947. This decree was a compromise one passed as between the parties and carried interest at 6 per cent, per annum

from the date of the decree. Under Section 34, Civil P. C. interest from the date of the suit to the date of the decree is a matter solely for the Court to decide at such rate as it deems reasonable.

Mr. Gopaldaswami has urged that interest even at court rate should be wiped out between dates 8-12-1941 and 31-3-1947 as interest was charged on a decree obtained on a loan and therefore interest on the loan itself. It is not possible to accept this contention. The court rate of interest, namely, 6 per cent, from the date of the decree certainly has no relation to the nature of the contract on which the decree was passed, and allows the decree-holder interest at 6 per cent, on an amount to which he has been held to be rightfully entitled.

10. All that the judgment-debtor should have done was to have satisfied the decree in which no interest such as that contemplated by the Burma Act was included, without allowing it to accumulate at court rate. Neither in law nor on grounds of equity has any case been made out for wiping out any interest under this decree on this suit filed on 23-8-1941.

11. The appeal succeeds. The lower Court's order is set aside. The decree will be executed for the amount rightfully decreed. I direct the parties to bear their own costs.

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