

**Raman Chettiar and anr. Vs. Raman Chettiar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/799544](http://sooperkanoon.com/799544)

**Court :** Chennai

**Decided On :** Feb-14-1957

**Reported in :** AIR1957Mad680

**Judge :** Rajamannar, C.J. and ;Panchapakesa Ayyar, J.

**Acts :** (Burma) Accrual of Interest (War Time Adjustment) Act, 1947 - Sections 2 and 3; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 34

**Appeal No. :** Letters Patent Appeal No. 149 of 1953

**Appellant :** Raman Chettiar and anr.

**Respondent :** Raman Chettiar and ors.

**Advocate for Def. :** K.S. Desikan and ;S. Thyagaraja Ayyer, Adv.

**Advocate for Pet/Ap. :** R. Gopalaswami Iyengar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

1. The only question which it is necessary for us to decide for disposal of this appeal relates to the construction of the Accrual of Interest (War Time Adjustment) Act, which is Burma Act 11 of 1947. This Act came into force on 25-2-1947 and the operative provision of this Act is contained in Section 3 which runs thus:

"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the date on which the provisions of Section 7 of the Courts (Emergency Provisions) Act, 1943, cease to operate or are repealed."

"Loan" is denned in Section 2 as meaning

"a loan whether of money or in kind and includes any transaction's which is in the opinion of the Court in substance a loan."

The present proceeding arise out of a suit filed by the respondents to direct defendants 1 and 2 to render true and proper accounts to them in respect of a deposit in the defendants' AR. M. A, firm in Danubyu by the first plaintiff's adoptive mother and to which another death the first plaintiff became entitled, and which the first plaintiff transferred in the name of his minor daughters, the other plaintiffs, and to pass a decree in favour of the plaintiffs for the amounts so found due, together with subsequent interest and costs of the suit. On 7-9-1943 a decree was passed in favour of the first plaintiff for a sum of Rs. 12,053-3-9 with subsequent interest at 4 1/2 per cent, per annum from 23-8-1941 and costs.

There was eventually a final decree also passed on 14-8-1944. There were payments from time to time of moneys towards this decree and for the balance remaining due the decree-holders filed an execution petition. Thereupon the judgment debtors who are the appellants before us, filed art application purporting to be under Sections 47 and 151, C. P. C., objecting to the execution petition, alleging that that they were not liable to pay interest for the period 8th December 1941 to 31st March 1047 because of the provisions of Burma Act XI of 1947. which we have just quoted above, and that a sum of Rs. 2846-11-0 being the interest for the said period should be deducted from the claim of the decree-holders.

The decree-holders inter alia urged that the Burma Act would not apply to interest due under decrees of Court. But the learned Subordinate Judge held that so long

as the debt originated in Burma the provision of the enactment will apply even when the debt had merged into a decree whether as a result of compromise or otherwise. Applying therefore the said Act he held that the judgment debtors were not liable to pay Interest for the period 8th December 1941 to 31st March 1947.

But he did not determine the actual amount of interest for the period because he thought it was unnecessary. He cast the burden on the decree-holders to omit in any execution petition they may file the claim for interest for the above-said period.

Against this order of the learned Subordinate Judge the decree-holders filed an appeal to this court, C. M. A. No. 376 of 1950, which was heard and disposed of by Mack J. The learned Judge allowed the appeal and set aside the order of the learned Subordinate Judge. He was inclined to agree with the view of the learned Subordinate Judge that even interest due under a decree would be governed by the provisions of Section 3 of the Burma Act, but he held that an executing court could not wipe out an amount included in the decree by applying the provisions of that Act. He considered that it was necessary that on an application the decree should be amended on the analogy of amendment of decrees under Madras Act IV of 1938.

The learned Judge further held that interest from the date of suit to date of decree is a matter solely for the court to decide under Section 34, C. P. C., and would not fall within the purview of Section 3 of the Burma Act. It is on these grounds that the learned Judge held against, the judgment-debtor who have filed the present Letters Patent appeal against that decision.

3. In our opinion the construction placed by the learned Subordinate Judge and Mack J., on the provisions of Burma Act XI of 1947 is not sound. The Act gives relief by way of wiping out interest only in respect of certain kinds of liability, namely, liability for interest which accrues or is payable "upon any loan or mortgage other than usufructuary mortgage" made in Burma before 5th May 1942.

Unless therefore interest can be held to have accrued or have become payable upon any loan or mortgage the debtor cannot obtain the benefit of Section 3 of the Act. Now in this case can it be said that there is any interest which has accrued or

which has become payable upon any contract of loan or mortgage? The relevant period is from 8th December 1941 to 31st March 1947. Now the preliminary decree was passed on 7th September, 1943.

That was in terms of a compromise and the figure of Rs. 12,053-3-9- is the figure agreed upon between the parties. How much of this sum represents interest we are unable to ascertain. It is therefore impossible to apply the provisions of the Burma Act in any event to the period between 8th December, 1941 and 7th September, 1943.

4. What then about the interest accruing under the decree after the passing of the decree? Giving the plain meaning to the language of Section 3 of the Burma Act read with the definition of "loan" in Section 2, we are of the view that interest which is due and payable under a decree of court cannot be treated as interest accruing or become payable upon the loan or mortgage.

The fact that the decree itself was passed in a suit based on a loan would not render the liability to pay interest under the decree as directed by the court a liability flowing from the contract of loan. The award of interest from the date of decree to the date of payment is not because of the terms of any contract between the parties. It is because of the Act of the court in exercising the power conferred on it by Section 34, C. P. C.

Apparently this is the view taken by the Burma Court on this question. Mack J's attention was drawn to this but he was not prepared to agree with this view. We however think that this is the proper view to take of the provisions of Section 3 of the Burma Act. We agree with the order of Mack J., though not on the same ground given by the learned Judge, that the claim of the judgment-debtors founded on the provisions of the Burma Act is not sustainable. The appeal is dismissed, but there will be no order as to costs.

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