
**NIMALARATNE PERERA
VS
PEOPLE'S BANK**

COURT OF APPEAL
AMARATUNGA J.
CALA 124/2001,
D. C. ANURADHAPURA 174/65M
MAY 12, 2003,
JUNE 17TH, 30TH, 2003

Money Lending Ordinance - Section 5 - Introduction of Law of England Ordinance, 22 of 1986 - Parate Execution of Property - Can the Bank recover as interest a sum exceeding the principal sum lent ? Banking Business ? - People's Bank Act No. 29 of 1961 Amended by 32 of 1986 - 29 D - Resolution - Parate Execution.-Banking?

HELD -

- (i) Section 5 introduction of Law of England Ordinance enacts that the amount recoverable on account of interest or arrears of interest should in no case exceed the principal sum. However there is nothing to prevent the Bank from recovering at any time arrears of interest equal to the principal however much interest the Bank may have previously received.
- (ii) The Bank cannot recover any interest in arrears exceeding the principal at the time action is brought, but if the interest is paid from time to time, there is no limit to the amount the Bank may receive.
- (iii) By Ordinance 22 of 1986 English Law relating to Banks and Banking was introduced into Ceylon and in all questions which arise in Ceylon with respect of the Law of Banks and Banking the Law is the English Law, 'Banking' embraces every transaction coming within the legitimate business of a Banker.
- (iv) The accounts maintained by the Petitioner with the Peoples Bank were current accounts and the law applicable is therefore English Law and under English Law compound interest is recoverable.
- (v) Limitation placed by Section 5 on the amount recoverable as interest has no application to interest recoverable relating to a banking transaction.

- (vi) The Board of the Bank is not bound by the limitation spelt out in Section 5 - The Board is entitled to pass a Resolution to recover the total of the capital sum remaining unpaid together with the agreed interest thereon.

APPLICATION for Leave to Appeal from an Order of the District Court of Anuradhapura.

Cases referred to :

1. *Sinnathamby Cumaravely and another vs Mututambay Sitarapuvapulle* - 1881 - 4 SCC 28
2. *Tennant vs Union Bank of Canada* - 1894 AC 31
3. *National Bank of India vs Stevenson* - (1913) 16 NLR 496

Kalinga Indatissa with *Ranil Samarasinghe* for Petitioner.

Rohan Sahabandu with *Ms. Sitani Jayasinghe* for Respondent.

September 3, 2004

GAMINI AMARATUNGA, J

This is an application for leave to appeal against the order of the learned District Judge of Anuradhapura refusing to issue an injunction restraining the respondent Bank from auctioning the properties described in the schedule to the plaint to recover the money due to the Bank from the petitioner.

The Petitioner is a businessman who had two current accounts in the Anuradhapura branch of the respondent Bank. He has obtained several loans from the Bank and according to the plaint the total amount of the loans obtained by him from the Bank totaled up to Rs. 28,50,000. The Board of Directors of the Bank, by virtue of the powers vested in it by the People's Bank Act No. 29 of 1961 as amended, adopted two resolutions to sell by public auction the properties mortgaged to it as security, to recover the amounts due to the Bank from the petitioner. According to the two resolutions the amounts due from the petitioner were Rs. 6,84,130, and Rs. 20,00,000 together with interest (at the rate of 28% and 29%) up to the date of payment.

The Petitioner in his plaint alleged that he had paid more than rupees two million as interest for the loans he had taken. In his plaint the petitioner admitted that a part of the loan he had obtained from the Bank remained unsettled. However in his plaint or in the petition filed in this Court he has not specified the amount that remained due from him to the Bank. In his plaint the petitioner averred that under section 2 of the Money Lending Ordinance, (Cap. 80 CLE 1956 Revision) the Bank could not recover as interest a sum exceeding the sum lent. He therefore sought from the District Court a declaration that the Bank was not entitled to recover from him as interest a sum exceeding the principal sum lent to him. As consequential relief he sought an interim injunction restraining the Bank from auctioning the properties described in the schedule to the plaint.

The Court in the first instance issued an enjoining order restraining the Bank from holding the auction in terms of the resolution passed by its Board of Directors. After the Bank filed its objections to the petitioner's application for an interim injunction, the learned District Judge, for the reasons set out in his order dated 4.4.2001, refused the petitioner's application for an interim injunction. The petitioner now seeks leave to appeal against the said order.

In his petition presented to this Court the petitioner has set out three grounds upon which he sought to assail the order of the learned Judge. Those three grounds are,

- (1) that the Judge failed to appreciate the legal principles involved in the issue of injunctions ;
- (2) the Judge failed to appreciate that the payments made by the petitioner exceed twice the amount of the principal sum loaned and advanced to the petitioner.
- (3) The Judge failed to appreciate the impact of section 5 of the Introduction of Law of England Ordinance, (Cap 79 CLE, 1956 Revision)

An examination of the order of the learned Judge clearly shows that the learned Judge has correctly appreciated and properly applied the legal principles relating to the issue of injunctions to the facts of the petitioner's case. There is no merit in the submission that the learned Judge has failed to appreciate the legal principles relevant to the issue of interim injunctions.

Items No. 2 and 3 above are linked and the validity of submission made in No. 2 above would depend on the interpretation one would place on the provisions of section 5 of the Introduction of Law of England Ordinance. Before I proceed to examine the provisions of the said section 5, I wish to make the following observation. In the District Court the petitioner's contention was that in view of the provisions of section 2 of the Money Lending Ordinance, the Bank was not entitled to recover as interest any sum exceeding the principal sum lent. The learned Judge in his order had very clearly analyzed the provisions of section 2 of the Money Lending Ordinance and had demonstrated that section has no relevance to the petitioner's case at all. In this Court the petitioner has jettisoned the submission based on section 2 of the Money Lending Ordinance and has relied on section 5 of the Introduction of law of England Ordinance which spells out a limitation similar to the limitation prescribed in section 4 of the Money Lending Ordinance.

Section 5 of the Introduction of Law of England Ordinance (cap 79, C. L. E. 1956 Revision) enacts that the amount, recoverable on account of interest or arrears of interest shall in no case exceed the principle. The principle embodied in this section has received judicial interpretation as far back as in 1881. In *Sinnathamby Cumaravelly and another vs. Muttulambay Sittarapuvallipulle*¹, Carley C. J. referring to this principle said "there is however, nothing to prevent the obligee of a bond from recovering at anytime arrears of interest equal to the principle, however, much interest he may have previously received. He cannot indeed recover any interest in arrears exceeding the principal at the time of actions brought; but if the interest is paid from time to time. There is no limit to the amount he may receive. (emphasis added)

By Ordinance No. 22 of 1866, English Law relating to Banks and banking was introduced into Ceylon and in all questions which arise in Ceylon with respect of the law of banks and banking, the law to be administered is the same as would be administered in England in the like case. The expression 'banking' embrace every transaction coming within the legitimate business of a banker. *Tennant vs. Union Bank of Canada*². Maintaining a current account between a bank and a customer and granting a loan or other banking facilities are legitimate businesses relating to banking and accordingly the law applicable is the English Law.

The accounts maintained by the petitioner with the respondent were current accounts. Therefore, the law applicable to the transactions is the English law. According to English Law compound interest is recoverable. In *National Bank of India vs. Stevenson*² the question arose whether in Sri Lanka a bank could charge compound interest. It was argued that although it is possible under the English Law, which is also applicable in Ceylon, the operation of that part of English Law stands removed by reason of section 3 (present section 5) of Ordinance No. 5, 1852, (Introduction of Law of England Ordinance) which limits the amount of interest recoverable. This argument was specifically rejected by Pereira J. This decision clearly shows that the limitation placed by section 5 of the Introduction of Law of England Ordinance on the amount recoverable as interest has no application to interest recoverable relating to a banking transaction.

Further, I hold that when the Board of Directors pass a resolution under section 29D of the People's Bank Act No. 29 of 1961 as amended by Act No. 32 of 1986, the Board is not bound by the limitation spelt out in section 5 of the Introduction of Law of England Ordinance. The Board is entitled to pass a resolution to recover the total of the capital sum remaining unpaid together with the agreed interest thereon.

For the reasons set out above I hold that section 5 of the Introduction of Law of England has no application or relevance to the petitioner's case. In view of this finding it is not necessary for me to consider or answer the second submission urged by the petitioner in support of this leave to appeal application.

In the result I hold that there is no merit in this leave to appeal application, I accordingly refuse leave to appeal and dismiss this application with costs in a sum of Rs. 10,000.

Application dismissed
