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CRP. No.4695 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:04.08.2025

Pronounced on:14.08.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. No.4695 of 2024

S.Sekar

Petitioner

Vs

M/s.P.C.Choudhary & Sons,
Rep by its Kartha
Mr.Padamchand Choudhary
“Gaurav Vara”, No.32, New Avadi Road,
Kilpauk, Chennai – 600 010.

Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to revise the fair order and decreetal orders passed in O.P. No.2 of 2022 dated 25.10.2024 on the file of the IX Assistant Judge, City Civil Court and the Special Court designated under the Tamil Nadu Prohibition of charging Exorbitant Interest Act, 2003.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.M.Kempuraj

ORDER

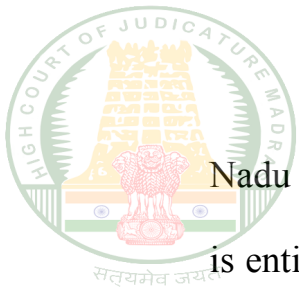


A borrower who filed O.P.No.2 of 2022 under Sections 3, 5, 8 and 12 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is the revision petitioner. Aggrieved by dismissal of the said original petition, he has preferred the present revision petition.

2. I have heard Mr.S.Kamadevan, learned counsel for the revision petitioner and Mr.M.Kempuraj, learned counsel for the respondent. I have also gone through the records and the decisions on which reliance has been placed on by the learned counsel on either side.

3. The learned counsel for the petitioner, Mr.S.Kamadevan would state that for recovering a mortgage loan of Rs.75 lakhs and the respondent being a money lender, there is a clear bar for the respondent from charging exorbitant interest and in terms of the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and The Tamilnadu Money Lenders Act,1957 the interest would have to be calculated only at 9% per annum.

4. The learned counsel would rely on a memo of calculation and contend that if the interest is calculated in terms of Section 7 of the Tamil



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Nadu Money Lenders Act, 1957, the respondent being a secured creditor is entitled to only 9 % simple interest and after giving credit to payments made by the revision petitioner, only a sum of Rs.14,73,750/- is due and payable towards interest and adding the principal sum of Rs.75 lakhs, a sum of Rs.89,73,750/- alone is due and payable. The learned counsel for the petitioner would also state that the petitioner is willing to pay the said amount within a period of two months, without seeking any extension of time.

5. The learned counsel for the Petitioner places reliance on the decision of this Court in *A. Ganesa Nadar v. Jayalakshmi and others*, reported in 2009 (6) CTC 181, where this Court held that, in a suit based on a mortgage deed, applying Section 2(8) of the Tamil Nadu Money Lenders Act, a person who does money lending business would be amenable to the provisions of the Act and being a secured loan covered by a mortgage, interest cannot be claimed in excess of 9% per annum and further held that the interest charged can only be simple interest.

6. In *E. Velu v. P. Abusa and another*, in C.S.No.469 of 2019 by a judgment and decree dated 11.03.2024, this Court referring to Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 held



that insofar as any secured loan, interest cannot exceed 9% p.a., simple interest.

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7. In *T. Rajeshwari v. Dharmar, in A.S.No. 285 of 2021 by a judgment dated 31.03.2022*, this Court held that the mortgage deed fixing 24% per annum interest is very excessive, and beyond the maximum interest that can be charged for a secured loan and applying Section 7 of the Money Lenders Act and G.O.M.S. No.406 Co-operation dated 05.07.1979 held that, being a loan availed and secured by mortgaging the suit property, the maximum interest that can be charged is 9% per annum.

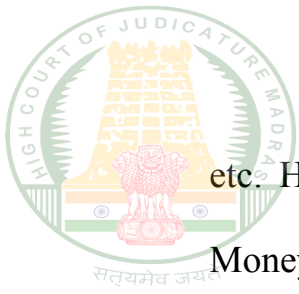
8. Per contra, the learned counsel appearing for the respondent, Mr.Kempuraj, would submit that the petitioner approached the respondent for availing a loan stating that he intended to improve his business under the name and style of '*M/s.Balaji Bricks Industries*'. The loan amount was released by way of a negotiable instrument, viz., Cheque dated 10.07.2017. The petitioner had agreed to repay the said amount in 30 equal monthly installments. According to Mr.Kempuraj, the mortgage of the property was only as a collateral security for the borrowing.



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9. The learned counsel would further contend that the petitioner was a chronic defaulter in payment of the installments and it is the specific contention of the learned counsel Mr.Kemprij, that the provisions of the Money Lenders Act will not apply to the facts of the present case and the Original Petition itself is not maintainable and would state that the petitioner has to file a suit invoking the provisions of the Code of Civil Procedure and not invoking the provisions Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, which is not even applicable to the facts of the present case.

10. The learned counsel would further state that the borrowing is covered by MOD and being a contract between the parties, the respondent is well within his right to seek for giving effect to contractual terms between the parties. It is also contended that the respondent is not a money lender as defined under the Tamil Nadu Money Lenders Act and the borrowing was only through NEFT/ Cheque transactions. Referring to the objects of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the learned counsel would further state that the Act was brought about only to safeguard helpless and poor borrowers from money lenders who charged exorbitant rates of interest by way of kandu vatti,



etc. He would also state that even in terms of Section 2(6)(vi) of the Money Lenders Act, 1957, any negotiable instrument above the value of Rs.10,000/- will not attract the provisions of the Money Lenders Act and therefore even from this angle when admittedly the cheque was for a sum of Rs.75 lakhs, the provisions of the Money Lenders Act cannot be invoked.

11. It is also brought to my notice that the respondent has filed a suit in O.S.No.141 of 2024 against the revision petitioner as well as Balaji Bricks Industries for which the loan was availed of. He would also point out to the fact that the petitioner has filed a memo in the said suit stating that the said concern Balaji Bricks Industries was closed in the year 2011, but while so, the borrowing was only by the said Balaji Bricks Industries in the year 2017 and the cheque was issued only in the name of the Company and not the individual. Further, there is also a mention about the said payment in the name of Balaji Bricks Industries, even in the mortgage deed as well.

12. It is also the contention of the respondent that Section 138 proceedings have been initiated under the Negotiable Instruments Act in



respect of dishonoured cheques and the petitioner has also been convicted. It is therefore contended that the petitioner cannot claim relief under two Acts which are not even applicable to the facts of the present case.

13. The learned counsel would also state that the Trial Court has rightly found that the petitioner cannot be entitled to any relief since he is liable to pay interest at the contractual rate and the order passed by the Trial Court does not warrant any interference in revision.

14. The learned counsel for the respondent places reliance on the decision of this Court in *Indiabulls Financial Services Limited and another vs Jubilee Plots and Housing Private Limited and others in (2010) 02 MAD CK 0015*, where this Court referring to Section 2(6)(vi), definition of loan, held that only charging of exorbitant interest by way of daily vatti, hourly vatti, meter vatti and thandal are falling within the ambit of the definition of loan under the said Act 2003 and an advance based on a negotiable instrument exceeding Rs.10,000/-, would not fall under the definition of loan and proceeded to hold that the Court had entertained the petition under Section 5(1) and 8 of Tamil Nadu



Prohibition of Charging Exorbitant Interest Act, 2003 without any jurisdiction.

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15. In the *Manager, Shriram City Union Finance Ltd and another vs G.Gopalakrishnan*, in CRP (PD) No.2846 of 2018, this Court referring to Section 2(1)(k) of the Tamil Nadu Money Lenders Act and also 2(6)(v)(vi) held that even under provisions of Tamil Nadu Money Lenders Act, an advance based on a negotiable instrument exceeding Rs.10,000/- would not fall within the definition of loan and in a case where a money lender advances money based on a negotiable instrument exceeding Rs.10,000/-, then he would not qualify to be a person referred to in Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003.

16. In *Sri Kalpatharu Financiers vs V. Natarajan*, reported in (2012) 02 MAD CK 0035, the Hon'ble Division Bench of this Court again referring to Section 2(6)(vi) of the Tamil Nadu Money Lenders Act, 1957 and noticing the objects of Act 38 of 2003, held that a person referred to in Section 2(8) of the Money Lenders Act would not be a person defined under the Act, if the loan is based on a negotiable instrument exceeding



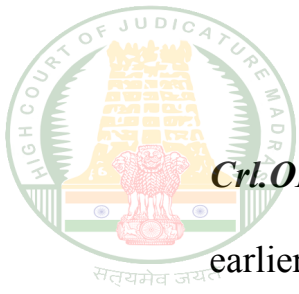
Rs.10,000/- and held that provisions of both the Acts would not apply to the facts of the case.

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17. In ***Sridhar vs State represented by Inspector of Police and another in Crl.OP.Nos.19170,19174 & 19222 of 2020 dated 25.10.2022***, this Court again reiterated that the object of Act 38 of 2003 is only to prohibit charging of exorbitant interest by a person defined under the Act and when such “ a person” does not fall within the definition under Section 2(8), then relief cannot be sought under these two Acts.

18. In ***S.Mohan Kumar vs State and another in Crl.OP.No. 6118 of 2017 dated 01.02.2022***, this Court again held that to apply provisions of Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 the prosecution should be able to show that the accused have collected exorbitant interest by way of daily interest, hourly interest, kandu vatti, meter vatti, thandal, etc and when the loan or advance was on the basis of a negotiable instrument exceeding Rs.10,000/- then the two enactments would not even apply.

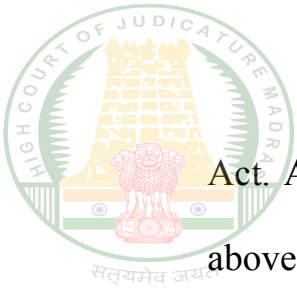
19. In ***N. Ramamurthy vs V. M. Chandrasekaran in***



Crl.OP.No.30923 of 2013 dated 27.06.2018, this Court referring to the earlier decisions on this point and referred herein above by me, held that the purpose of the Government fixing a cap on the interest would have to be understood in the context of definition of “person” in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 which conspicuously omits to define “money lender”. Finding that the suit was filed for recovery of money based on negotiable instrument exceeding Rs.10,000/-, this Court held that the transaction would not come within the purview of Act 38 of 2003.

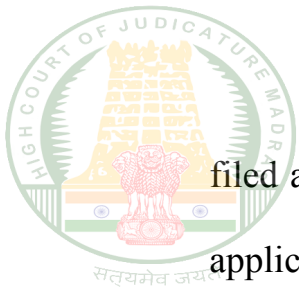
20. In ***Karthikeyan and others vs The Inspector of Police and another in Crl.OP. (MD) No.10086 of 2019 dated 06.07.2023***, this Court again reiterated that in respect of an advance made on the basis of negotiable instrument exceeding Rs.10,000/-, then it would not come within the purview of the Act 38 of 2003.

21. Keeping the ratio laid down by our Courts and discussed herein above in mind, firstly, I am able to notice that the transaction between the parties is a loan transaction. The loan has been disbursed by the respondent by way of a negotiable instrument for a sum of Rs.75 lakhs which is far in excess of the amount of Rs.10,000/- that is stated in the



Act. As held by this Court in several of the decisions discussed herein above, the object of the Act 38 of 2003 is only to protect innocent and helpless poor persons who are being taken for a ride by the money lenders and by charging exorbitant interest, under the guise of daily interest, hourly interest, kandu vatti, meter vatti, thandal, etc. Consciously the legislature has fixed a cap of only Rs.10,000/- in respect of an advance, for the provisions of the Act to apply. This is clearly in line with the objects of the Act, to protect innocent and poor people who are forced to borrow small amounts of money, but made to suffer at the hands of greedy creditors who charge ransom rates of interest.

22. Secondly, it is also noticed that already a suit has been filed based on the collateral security, viz., the mortgage deed executed by the respondent. If at all the petitioner has any grievance with regard to the rate of interest, then it is open to the petitioner only to contest all these issues in the pending suit. Order 34 of the CPC is a complete code by itself, taking care of the interest of not only the mortgagors but also mortgagees. Therefore when the said suit is pending, it is not open to the petitioners to have invoked provisions of Sections 3, 5, 8 and 12 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and



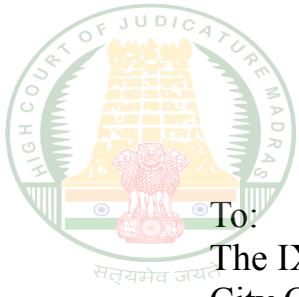
filed an Original Petition seeking relief under the Act, which is not even applicable to the petitioner.

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23. The Trial Court has rightly found that the plea of charging exorbitant interest cannot be raised by the petitioner by resorting to provisions of Act 38 of 2003. I do not find any infirmity or perversity in the findings of the Trial Court, warranting interference under Article 227 of the constitution of India. Accordingly, this Civil Revision Petition is **dismissed**. It is always open to the petitioner to canvass all his rights in the pending suit which is admittedly filed under Order 34 of CPC and is pending. The learned counsel for the petitioner would state that pending the suit in O.S. No.No.141 of 2024 on the file of Principal District Judge, Thiruvallur, pleadings are completed in the said suit and the party shall cooperate for expeditious trial and the learned Principal District Judge, Thiruvallur, shall dispose of the suit on merits in accordance with law on or before 31.12.2025, without being influenced by the observations that have been made in this revision. No costs.

14.08.2025

rkp
Index : Yes
Internet : Yes



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To:
The IX Assistant Judge,
City Civil Court, Chennai.

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P.B.BALAJI, J.,

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Pre-delivery order in
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