459180 - Setting Due Date For Loan After Conclusion Of Loan Agreement

the question

Someone gave me a sum of money a few years ago, on the basis that I would pay it back whenever I have the opportunity, without stipulating any conditions or a date for repayment, and without writing it down. Now he has come to me to change the conditions, and he is stipulating that it should be written down with a specific date for repayment, because I have not been able to pay it back in full until now. Is it permissible for him to force me to write it down now and set a date for repayment, contrary to our original agreement?

Detailed answer

Praise be to Allah.

When someone gives a loan to someone else, it is either open-ended, without specifying a date for repayment, or paying it off is deferred until a specific time.

There are two scholarly views about setting a time for repayment:

The first view:

It is not permissible to set a future date for paying back a loan, and even if a time is set, it is not binding and the lender can ask for it to be paid back at any time he wants. This is the view of the majority of Hanafi, Shafa`i and Hanbali scholars.

It says in *Fiqh al-Mu`amalat* by ad-Dubyan: The jurists differed regarding the validity of stipulating a specific date for repayment of a loan, and there are two views. The first view is that of the Hanafis, Shafa`is and Hanbalis, which is that the set date is not binding, even if it is stipulated in the contract, and the lender has the right to ask for the debt to be repaid before that date, because setting a date for repayment of the loan is invalid.

The Hanbalis said: That is because it is a contract in which it is not allowed to charge anything extra, therefore it is not allowed to set a date for the payment, and a future date cannot be set for payment of what is due, because it is just a promise to pay on that date, and fulfilling the promise is not binding. But the loan in their view is valid, whilst the stipulated date is invalid.

End quote from *Fiqh al-Mu`amalat*, 1/664.

Ibn Qudamah (may Allah have mercy on him) said: If there is a stipulation for the loan to be paid back on a certain date, it cannot be deferred and it remains due. Any debt that is due for payment on a certain date cannot be deferred by stipulating that it is deferred. This is the view of al-Harith al-`Akali, al-Awza`i, Ibn al-Mundhir and ash-Shafa`i.

End quote from *Al-Mughni*, 6/431.

The second view:

It is valid to stipulate a time for repayment, so if a person stipulates the time for repayment, the borrower does not have to pay back the loan before the stipulated time. This is the view of the Malikis and Zahiris (literalists), and of al-Layth ibn Sa`d; and it is the view favoured by Shaykh al-Islam Ibn Taymiyah, his student Ibn al-Qayyim, ash-Shawkani and Ibn `Uthaymin (may Allah have mercy on them).

Ash-Shawkani (may Allah have mercy on him) said: The borrower who received the money on the basis that he will pay it back at a certain time in the future does not have to pay it back except when the stipulated time comes. Allah, may He be Glorified, mentioned the stipulation of a certain time for repayment in His holy Book, where He says: {when you contract a debt for a specified term, write it down} [Al-Baqarah 2:282]. The purpose of writing it down is nothing but mentioning the amount of the debt and when it is due to be paid back. What proves that the agreed time of repayment is binding is the hadith: “The believers are bound by their conditions.” [Abu Dawud, 6594; Ahmad, 2/366]. And in the Quran, there are many verses which speak of the obligation to fulfil contracts, which are something that is reached by mutual consent, so the one who gave a loan to be paid back at a certain time does not have the right to ask for it to be paid before that

time comes.

End quote from *As-Sayl al-Jarrar*, p. 550.

It says in *Al-Ikhtiyarat al-Fiqhiyyah min Fatawa Ibn Taymiyah* (1/485): The debt that is due to be paid may be deferred by mutual consent, whether it is a loan or otherwise. This is the view of Malik, and it is one view in the madhhab of Ahmad.

Shaykh Ulaysh al-Maliki (may Allah have mercy on him) said: If one borrows with the stipulation of paying back at a certain time, then it is binding and there is no difference of opinion concerning that in our madhhab.

End quote from *Fat-h al-'Ali al-Malik*, 1/363.

This is the view that was favoured by Imam al-Bukhari in his *Sahih*, where he (may Allah have mercy on him) said: Chapter: If one gives a loan to be paid back on a particular date, or sells something to be paid for on a particular date. Ibn`Umar said regarding a loan with the stipulation that it is to be paid back on a certain date: There is nothing wrong with that, and if he pays back with more than he borrowed, that is fine, so long as it was not stipulated beforehand. `Ata' and `Amr ibn Dinar said: The stipulation of paying back a loan at a certain time in the future is valid. Then he quoted the hadith of Abu Hurayrah (may Allah be pleased with him) from the Messenger of Allah (blessings and peace of Allah be upon him), in which he mentioned an Isrealite man whom one of the Israelites asked to lend him money, so he gave it to him with the stipulation that he pay it back on a certain date. (2274).

Shaykh Muhammad ibn `Uthaymin (may Allah have mercy on him) said:

The correct view is that if the borrower stipulates that he will pay back the debt at a certain time, and the lender agrees to that, then that stipulation is valid and binding, and it is not permissible for the lender to ask the borrower to pay back the debt until the stipulated time comes. This is the view that was favoured by Shaykh al-Islam, because this is not contrary to the nature of this type of contract; rather it is an essential part of such a contract, because the purpose of lending is to

give help and support. If you agree to set a date for paying back the debt, this will be a great help (to the borrower), so what is easier for the borrower is to set a date for paying back the debt. On the other hand, Allah, may He be Exalted, says: {O you who have believed, fulfill [all] contracts} [al-Ma'idah 5:1], And in this contract, it is stipulated that the debt will be paid back on a certain day, so it must be fulfilled, because Allah, may He be Exalted, has enjoined fulfilling contracts, which includes fulfilling what is stipulated in the contract and the way in which it is to be done. These are the conditions that are stipulated in it. And Allah, may He be Exalted, says: {and fulfil [all] covenants, for [every] covenant will be asked about} [al-Isra' 17:34]. The lender who has agreed to a set time for payment of the debt is promising that he will not demand payment until that date comes, and this is a promise or covenant about which he will be asked by Allah. Moreover, the Prophet (blessings and peace of Allah be upon him) said: "Any condition that is not in the Book of Allah is invalid." Thus it is known that the condition that does not contradict the Book of Allah is not invalid. Furthermore, asking for the debt to be paid back (before the agreed time) is breaking the promise, and breaking promises is one of the signs of the hypocrites... And, also, that may cause a great deal of harm to the borrower, so we may conclude that the evidence of the Quran and Sunnah, and common sense, is agreed that stipulating a date for payment when borrowing is permissible, and it is binding and essential.

End quote from *Ash-Sharh al-Mumti` `ala Zad al-Mustaqni`*, 9/101.

See also the answer to question no. 224816.

Based on that:

If no date for repayment was set for the debt that you owe to that man, he may ask for repayment right away. It is also permissible to agree with him on a time in the future, if you do not have the money to pay back what you owe him when he asks for it. Then when that time comes and you are able to pay back the debt, you must pay it and it is not permissible for you to delay it, because the Prophet (blessings and peace of Allah be upon him) said: "For one who is well off to delay repayment is wrongdoing." Narrated by al-Bukhari, 2400. What is meant by delaying payment is deferring fulfilling an obligatory duty with no excuse.

If you are in financial difficulty when the time for repayment comes and you are unable to pay back the debt, it is not permissible for him to take any action against you, whether financial or otherwise, because Allah, may He be exalted, says in the verse on debt: {And if someone is in hardship, then [let there be] postponement until [a time of] ease} [Al-Baqarah 2:280].

But if you are not experiencing financial difficulty and you have enough to pay the debt you owe, it is not permissible for you to delay paying it beyond the stipulated time for repayment, or to delay when the lender asks you to pay him. Rather delaying that is wrongdoing on your part towards your companion, because the Messenger of Allah (blessings and peace of Allah be upon him) said: “For one who is well off to delay repayment is wrongdoing” Narrated by al-Bukhari, 2287; and Muslim, 1564, from Abu Hurayrah (may Allah be pleased with him).

And Allah knows best.