

Himachal Pradesh Debt Reduction Act, 1976

31 of 1976

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SCHEDULE 1 :- SCHEDULE I

Himachal Pradesh Debt Reduction Act, 1976

31 of 1976

[Received the assent of the President of India, on the 2nd August, 1976 and was published in R. H. P. Extra., dated the 13 th August, 1976 at page 1544-1554.] An Act to provide for the Reduction of Debt in Himachal Pradesh. Amended, repealed or otherwise affected by :- (i) Act No 25 of 1978 2 assented to by the Governor on 9th May, 1978 and published in R.H.P. Extra, dated 18-5-1978, P. 563. BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-seventh Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Himachal Pradesh Debt Reduction Act, 1976.
- (2) This Chapter and Chapters III to V shall extend to the whole of Himachal Pradesh and Chapter II to such areas as the State Government may, from time to time by notification, direct.
- (3) This Act shall come into force on such date 1 as the State Government may, by notification, appoint in this behalf.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(i) "bank" means,-

- (a) a banking company as defined in the Banking Regulation Act, 1949 (10 of 1949);
- (b) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);
- (c) a subsidiary bank as defined in the State Bank of India

(Subsidiary Banks) Act, 1959 (38 of 1959);

(d) a Regional Rural Bank established under the Regional Rural Banks Act, 1976 (21 of 1976);

(e) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(f) any banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949);

(g) the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963 (10 of 1963);

(h) the Agro-Industries Corporation as defined in sub-section (c) of section 2 of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act 1972 (7 of 1973);

(i) the Agricultural Finance Corporation Limited a company incorporated under the Companies Act, 1956 (1 of 1956); and

(j) any other financial institution notified by the State Government in the Official Gazette as a bank for the purpose of this Act;]

(ii) "Collector" means the Collector of the District or any officer specially empowered by the State Government to discharge the functions of a Collector for the purposes of this Act;

(iii) "co-operative society" means a society registered or deemed to be registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969);

(iv) "court" means a civil court;

(v) "creditor" in Chapter V means a person who, in the regular course of business, advances a loan as defined in this Act and includes the legal representative and the successors in interests whether by inheritance, assignment or otherwise, of a creditor;

(vi) "decree to which this Act applies" means a decree passed either before or after the commencement of this Act in a suit to which this Act applies;

(vii) "interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specially by way of interest or usufruct or services to be rendered or otherwise;

(viii) "Financial Commissioner" means the Financial Commissioner of Himachal Pradesh for the time being and includes any officer specially empowered by the State Government to exercise the powers of the Financial commissioner under this Act;

(ix) "loan" means an advance in cash or kind and includes any transaction which in substance amounts to such advance but does

not include an advance by the Central or State Government or by a local authority authorised by the State Government to make advance, by a cooperative society or by a bank or by the Life Insurance Corporation of India or a loan taken or used for the purposes of trade;

(x) "prescribed" means prescribed by rules made under this Act;

(xi) "principal" means the amount originally advanced;

(xii) "State Government" means the Government of Himachal Pradesh; 5

(xiii) "suit to which this Act applies" means any suit or proceedings relating to loan;

(xiv) "debtor" means person who receives a loan as defined under this Act;

(xv) "Commissioner" means the Commissioner, Revenue of Himachal Pradesh or any officer specially empowered by the State Government to exercise the powers of the Commissioner under this Act;

(xvi) "notification" means notification published under proper authority in the Rajpatra, Himachal Pradesh.

CHAPTER 2 INSOLVENCY PROCEDURE

3. Amendment Of Section 10 Of The Provincial Insolvency Act, 1920 :-

In sub-section (1) of section 10 of the Provincial Insolvency Act, 1920 (5 of 1920), after the existing clause (a) the following clause shall be inserted:-

"(aa) his debts amount to two hundred and fifty rupees and he satisfies the court that he is entitled to summary administration of his estate under section 74 of this Act; or".

4. Amendment Of Section 74 Of The Provincial Insolvency Act. 1920 :-

In section 74 of the Provincial Insolvency Act, 1920 (5 of 1920) for the words "five hundred rupees" the words "two thousand rupees" shall be substituted.

CHAPTER 3 SUITS AND DECREES

5. Forum Of Suits :-

Notwithstanding anything contained in any other law for the time being in force, every suit to which this Act applies, shall be instituted in a court within the local limits of the jurisdiction of which,-

- (a) the defendant or, if there are more than one, any of the defendants resides; or
- (b) in case the defendant or, if there are more than one, all the defendants, reside outside the limits of Himachal Pradesh,-
- (i) the holding or the land of the defendant or, if there are more than one, or any of the defendants is situate, or 6
- (ii) the defendant or, if there are more than one, any of the defendants carries on trade or profession.

6. Debtors Right To Sue :-

Notwithstanding the terms of any contract regarding the date or dates on which a debt shall become due, a suit to which this Act applies for the redemption of a mortgage or for accounts may be instituted by a debtor at any time after the commencement of this Act.

7. Amendment Of Decree :-

(1) Notwithstanding the provisions of any decree or of any law for the time being in force, a person liable to pay the amount due under a decree to which this Act applies, may apply to civil court, which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree by reduction, according to the provisions of this Act, of the amount due under it, and on receipt, of such application the court shall after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of sections 8 and 9 and shall amend the decree accordingly.

(2) A decree amended under the provisions of sub-section (1) shall be deemed to bear the date of the original decree.

(3) In amending a decree under the provisions of this Act the court shall accept the findings of which the decree was passed except in so far as they are inconsistent with the provisions of sections 8 and 9.

8. Accounting And Determination Of The Amount Due :-

(1) In a suit to which this Act applies or in an application made in a suit to which this Act applies or in amending a decree under the provisions of section 7, the court shall, notwithstanding anything to the contrary in any law, decree or contract or in any agreement purporting to close past transactions, determine the principal and take into account all sums paid by or on behalf of the debtor and in

the case of a mortgage with possession, the net profits realised by the mortgagee or which with the exercise of ordinary diligence might have been realised by him and shall determine the amount, if any, due by the debtor in accordance with the provisions of sub-sections (2) and (3);

Provided that for the purpose of determining the principal, the court shall treat as principal any accumulated interest which has been converted into principal at any statement, settlement of account or any contract in the course of transaction made before the first day of January, 1917 but shall treat as interest any accumulated interest which has been converted as aforesaid at any such statement settlement, or contract made on or after that date.

(2) The amount due by the debtor shall not exceed the amount that could have been due if the rate of interest has been, in the case of a secured loan 6 per cent per annum simple interest, and in the case of unsecured loan, 12 per cent per annum simple interest.

(3) The total amount due by the debtor as interest and principal shall not in any case, exceed-

(a) in respect of a loan advanced before the commencement of this Act, twice the amount of the principal less any amount already received by the creditor in excess of the amount due under sub-section (2);

(b) in respect of loan advanced after the commencement of this Act, twice the amount of principal less any amount already received by the creditor.

(4) Nothing in this section shall entitle the debtor to a refund of any sum already paid by him.

9. Rate Of Interest On Decrees :-

(1) Notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908 (5 of 1908), the court shall not order further interest on the aggregate sum adjudged in a decree to which this Act applies or any decree amended under the provisions of this Act, at a rate exceeding three percent per annum simple interest:

Provided that where future interest has not been allowed in the original decree it shall not be allowed in the decree amended under the provisions of this Act.

(2) If in a decree to be amended under the provisions of this Act, a higher rate of future interest has been allowed by the court passing the decree, such rate shall, with effect from the date of the decree,

be reduced to a rate permitted by the provisions of sub-section (1) and the decree shall be amended accordingly.

(3) When a decree executed by the grant of mortgage under the second proviso to sub-section (1) of section 11 then, notwithstanding a different rate in the decree, the rate of interest shall, from the date when such mortgage is granted, be deemed to be three per cent per annum.

CHAPTER 4 EXECUTION OF DECREES

10. Attachment Of Agricultural Produce Restricted :-

Notwithstanding anything in the Code of Civil Procedure, 1908 (5 of 1908), not more than one-fourth of the agricultural produce of a judgement debtor shall be liable to attachment in execution of a decree to which this Act applies.

11. Protection Of Agricultural Land Of Debtor Form Sale Or Transfer :-

(1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, a final decree for foreclosure shall not be passed in respect of the agricultural land of a debtor in a suit to which this 8 Act applies. Nor shall such land be sold or otherwise transferred in execution of a decree to which this Act applies:

Provided that the court may execute a decree to which this Act applies by granting to the decree-holder a self liquidating usufructary mortgage of such land for such period as the Collector may decide under sub-section (4), subject to the provisions of sections 16 and 17:

Provided also that when a mortgage has been granted under the provisions of this section, the same land shall not be mortgaged in execution of any other decree to which this Act applies against the same debtor or his heir or successor if the term of the mortgage together with the term or terms of the previous mortgage or mortgages exceed twenty years.

(2) The form, terms and conditions of a mortgage granted under the proviso to sub-section (1) and the amount to be paid by the debtor at any time for the redemption of such mortgage shall be such as may be prescribed.

(3) Notwithstanding anything contained in the Code of Civil procedure, 1908 (5 of 1908), of any other law for the time being in force, whenever a civil court orders, that the land be attached and

alienated temporarily in the execution of a decree for the payment of money, the proceedings of such attachment and alienations shall be transferred to the Collector.

(4) On the proceedings being transferred to him by the civil court the Collector shall decide the period of alienation, which shall not exceed twenty years and shall inform the civil court of his decision as well as of the decision or order under sections 16 and 17.

12. Procedure Where Several Decrees Are Executed Simultaneously :-

(1) Where several persons holding decrees to which this Act applies, move the court before it has granted mortgage under section 11 of execution of their decrees by grant of a mortgage of agricultural land, the court shall, subject to the provisions of that section observe the following principal executing the decrees:-

(a) when any such decree is based on a loan, the payment of which is already secured by a mortgage of the whole or part of the agricultural land (hereinafter described as secured decree), the holder of such decree shall first be granted a mortgage of the agricultural land already mortgaged to him, and the holder of decree based on an unsecured loan (hereinafter described as an unsecured decree) shall be granted a mortgage of the remaining agricultural land, if any;

(b) when there are more than one secured decrees and also unsecured 9 decrees-

(i) if different portions of the agricultural land are mortgaged in the secured decrees, the holder of each such decree shall be granted a mortgage of the portion which is already mortgaged to him;

(ii) if the same agricultural land is mortgaged in more than one decree, mortgages shall be granted to the holder of such decree in order of their priority; and

(iii) if after the grant of mortgages under sub-clauses (i) and (ii) there remains any agricultural land free from such mortgages, the holders of the unsecured decree shall be granted mortgage thereof;

(c) as among persons holding unsecured decrees, such persons shall subject to the provisions of clause (b) each be granted simultaneously mortgages of rateable shares of the agricultural land in such manner as may be prescribed.

(2) Where a decree is executed by the grant of a mortgage under the provisions of the first proviso to sub-section (1) of section 11, the court shall grant a certificate or mortgage with such particulars

as may be prescribed and shall follow the procedure laid down in sub-section (2) of section 89 of the Indian Registration Act, 1908 (16 of 1908), as if such certificate was a certificate of the sale of immovable property and the registering officer shall file the copy of the certificate in his book No. 1. Such certificate of mortgage shall be exempted from stamp duty.

13. Trees Protected From Sale :-

No decree to which this Act applies shall be executed by the transfer of trees on agricultural land unless the land on which such trees stand is also transferred.

14. Application Of The Code Of Civil Procedure, 1908 :-

The provisions of the Code of Civil Procedure, 1908 (5 of 1908), save in so far as they are not inconsistent with the provisions of this Act, shall apply to all proceedings under this Act.

15. Collector Deemed To Be Acting Judicially :-

The Collector, when acting under section 11, shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the civil courts.

16. Appeal To The Commissioner Who Shall Be Deemed To Be Acting Judicially :-

Any party aggrieved by an order of the Collector, made under the provisions of this Act, shall have a right of appeal to the Commissioner who shall, when hearing appeals under this section, be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to 10 a civil court of appeal.

17. Powers Of The Financial Commissioner To Examine Legality Or Propriety Of The Orders Passed By The Collector Or Commissioner :-

The Financial Commissioner may at any time, call for and examine the record of any order passed, or proceedings taken by the Collector or the Commissioner under this Act, for the purpose of satisfying himself as to the legality or propriety of such order or such proceedings and may pass such order thereon as he may think fit.

18. Limitation For Appeals :-

The period of limitation for an appeal under section 16 shall run from the date of the order appealed against and shall be sixty days.

19. Exemption From Attachment Or Sale :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), no decree for the payment of money shall be executed by the sale without attachment, or by the appointment of a receiver of land or the produce of land or an interest in land, which under any law for the time being in force, is exempted for attachment or sale.

20. Immunity From Arrest :-

No debtor, as defined in section 2 of this Act shall be arrested or imprisoned in execution of a decree for money, whether passed before or after the commencement of this Act.

21. Amendment Of Section 60 Of The Code Of Civil Procedure, 1908 :-

In section 60 of the Code of Civil Procedure, 1908 (5 of 1908),-

(a) in sub-section (1) in the proviso,-

(i) in clause (c), for the words "occupied by him" the following words shall be deemed to be substituted namely:- "not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister, or other dependants of left vacant for a period of a year or more".

(ii) after clause (c), the following clauses shall be deemed to be inserted, namely:-

"(cc) milch animals whether in milk or in-calf, kids, animals used for the purposes of transport or draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure;

(ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgement-debtor other than an agriculturist and occupied by him :

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."

(b) after-sub-section (2) the following sub-sections shall be deemed to be inserted, namely:-

"(3) Notwithstanding any other law for the time being in force, an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void.

(4) For the purposes of this section the word "agriculturist" shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land.

(5) No order for attachment shall be made unless the court is satisfied that the property sought to be attached is not exempted from attachment or sale."

CHAPTER 5 MISCELLANEOUS

22. Suit For Account Of Money Lent :-

(1) A debtor may sue for an account of a loan.

(2) In such suit, the court shall allow only such interest as may be permissible under this Act. It shall after taking necessary accounts, declare the account which is still payable by the plaintiff to the defendant and shall on the application of the defendant, if the money is payable, pass a decree in favour of the defendant:

Provided that the court shall determine the value of the service rendered in lieu of interest in the prescribed manner.

(3) Notwithstanding anything in the Himachal Pradesh Court Fees Act, 1968, the court fee payable on a plaint in a suit under sub-section (1) shall be that prescribed by schedule and the fee payable on an application under sub-section (2) shall be the amount, if any, by which the fee payable on a plaint in suit for the recovery of the amount declared under that sub-section exceeds, the fee already paid by the plaintiff on the plaint.

23. Deposit In Court :-

(1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor.

(2) The court on receipt of this deposit shall give notice thereof to the creditor and shall on his application, pay the sum to him.

(3) From the date of such deposit interest shall cease to run on the sum so deposited.

24. Duty Of Creditor To Maintain And Furnish Accounts :-

(1) A creditor shall, after the date on which this Act comes into force,-

(a) regularly record and maintain a correct account for each debtor of all transactions relating to each loan advanced to that debtor, in the prescribed manner, and

(b) supply each debtor every six months with a full and correct statement of account signed by the creditor or his agent in such form and on such date as may be prescribed.

(2) A person to whom a statement of account has been submitted under sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of the correctness of the account.

(3) The account prescribed in clause (a) of sub-section (1) shall be deemed to be regularly kept in the course of business for the purpose of section 34 of the Indian Evidence Act, 1872 (1 of 1872) and copies of entries in such accounts certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

25. Penalty For Non-Compliance With The Provisions Of Section 24 :-

Notwithstanding anything contained in any other enactment for the time being in force-

(a) in any suit or proceeding relating to a loan if the debtor objects that the creditor has not complied with the provisions of section 24, the court shall determine such objections before deciding the claim on the merits;

(b) if the court finds that the provisions of clause (a) of sub-section (1) of section 24 have not been complied with by the creditor, it may if the creditor's claim has been established in whole or in part, disallow the whole or a portion of the interest found due, as it may, deem reasonable in the circumstances of the case, and shall disallow the cost;

(c) if the court finds that the provisions of clause (b) of subsection(1) of section 24 have not been complied with by the creditor, the court shall in computing the amount of interest due on the loan exclude every period for which the creditor has failed to comply with such provisions :

Provided that if the creditor has, after the time prescribed in the said clause, furnished the account and satisfied the court that he had sufficient cause for not furnishing it earlier, that court, notwithstanding such omission, shall include any such period or periods for the purpose of computing the interest :

Provided further that if the creditor has submitted an account which is not full and correct, and satisfies the court that the omission or error was bonafide and due to inadvertence, the court shall, notwithstanding such omission or error, include any such period or

periods for purpose of computing interest.

Explanation.-A person who has kept his accounts and submitted his six monthly statement of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 24, he shall be held to have complied with the provisions of these clauses in respect of any errors or omissions if the court finds that the errors or omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

26. Penalty For Entering In Books Of Accounts A Sum Larger Than Actually Lent And For Not Giving Receipts :-

Any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to a debtor a sum larger than actually lent, whether by way of charges for expenses, inquiries, fines, bonuses, premia, renewals, or otherwise, shall be punished for the first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with regard to the same or any other debtor with fine which may extend to five hundred rupees.

(2) Where in any suit concerning a loan taken by a debtor, the court finds that the creditor has, without reasonable cause, refused or neglected to deliver to the debtor a receipt for any payment by him on account of such loan or to credit such payment on the written instrument securing such loan, it may award the debtor such compensation not exceeding double the amount of such payment as it may consider proper.

27. Saving In Cases Of Previous Loan :-

The provisions of sections 24 to 26 shall not, in the case of a loan advanced before the commencement of 14 this Act, apply to the period prior to the commencement of this Act.

28. Burden Of Proof Of Consideration :-

Notwithstanding anything to the contrary contained in other enactment for the time being in force the burden of proving that any consideration alleged to have been paid by a money lender actually passed, shall be on him, unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of section 58 of the Indian Registration Act, 1908 (16 of 1908), as having been paid in his presence.

29. Power To Make Rules :-

(1) The State Government may make rules consistent with this Act for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal And Savings :-

The Himachal Pradesh Debt Reduction Act, 1953 (10 of 1953), as in force in the areas comprised in Himachal Pradesh immediately, before 1 st November, 1966, the Punjab Relief of Indebtedness Act, 1934 (7 of 1934), and the Punjab Debtors Protection Act 1936, (2 of 1936), in their application to the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) are hereby repealed:

Provided that anything done or any action taken, notification issued or rules made under the provisions of the Acts so repealed to the extent of their being consistent with the provisions of this Act shall be deemed to have been done or taken, issued or made in exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing was done, action taken, notification issued or rules made.

SCHEDULE 1

SCHEDULE I

SCHEDULE OF COURT FEE PAYMENT ON PLAINT UNDER SECTION 22

If the principal amount of loan is less than Rs. 100 .. 5.00

If the principal amount of loan is not less than Rs. 100 but less than Rs. 250
7.50

If the principal amount of loan is not less than Rs. 250 but less than Rs. 500 ..
15.00

If the principal amount is not less than Rs. 500 but less than Rs. 1,000 30.00

If the principal amount of loan is Rs. 1,000 or above .. 50.00