

Bhopal Debt Redemption Act, 1955

05 of 1956

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short Title, Extent And Commencement
2. Interpretation
3. Manner Of Constructing Certain Expressions
4. Cases In Which Provisions Of The Act Shall Not Apply

CHAPTER 2 :- APPOINTMENT AND ABOLITION OF TRIBUNAL

5. Appointment And Composition Of Tribunal
6. Abolition Of Tribunal
7. Filling Of Vacancies
8. Decision In Cases Heard By A Tribunal Having Two Or More Members
9. Procedure To Be Followed By A Tribunal

CHAPTER 3 :- SUITS AND DECREES ON LOANS

10. Separate Trials
11. Forum Of Suits
12. Debtors Right To Use
13. Amendment Of Decrees
14. Accounting And Determination Of The Amount Due
15. Rate Of Interest On Decrees
16. Fixation Of Instalments For Repayment Of Debt
17. Payment Of Instalments, Time And Manner Of Payment
18. Apportionment Of Loans
19. Suits Against Sureties

CHAPTER 4 :- EXECUTION OF DECREES

20. Exceptions And Extensions
21. Attachment Of Agricultural Produce Restricted
22. Limitation For Execution Of Decree Against Agricultural Produce
23. Execution Of Decree Against Land
24. Protection Of Certain Land From Sale Or Transfer
25. Procedure Where Several Decrees Are Executed Simultaneously
26. Tribunal To Grant Certificates Of Transfer Or Mortgage, As The Case May Be, Of Debtors Property In Execution Of Decree
27. Decree On Basis Of A First Mortgage To Be Satisfied By The Sale Of Mortgage Property

28. Trees Protected For Sale

29. Decrees Not To Be Executed By Arrest And Detention Of Judgment-Debtor

CHAPTER 5 :- MAINTENANCE OF ACCOUNTS

30. Duty Of Creditor To Maintain And Furnish Accounts

31. Penalty For Non-Compliance With The Provisions Of Sec. 30

32. Penalty For Entering In Books Of Accounts A Sum Larger Than That Actually Lent And For Not Giving Receipts

33. Saving In Cases Of Previous Loans

CHAPTER 6 :- REVISION

34. Finality Of Decrees And Orders Of Tribunal

35. Revision Of Decrees And Of Tribunal

SCHEDULE 1 :- THE SCHEDULE

Bhopal Debt Redemption Act, 1955

05 of 1956

An Act to provide for relief from indebtedness to agriculturists and workmen. Whereas it is expedient to provide for relief from indebtedness to agriculturists and workmen in the State of Bhopal; Be it enacted in the Sixth Year of the Republic of India as follows :-

-

CHAPTER 1

PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Bhopal Debt Redemption Act, 1955.

(2) It extends to the whole of the State of Bhopal.

(3) It shall come into force on such day as the State Government may, by notification in the Official Gazette, appoint in this behalf.

2. Interpretation :-

In this Act, unless the context otherwise requires,--

(1) "agricultural produce" means the agricultural produce of an agriculturist raised by him or by his servants or by labour hired by him and includes crops, whether standing or gathered, and the fruit and flowers of trees, plants, vegetables and grass.

(2) "agriculturist" means a holder or a joint holder and includes a muafidar but does not include a mortgagee in possession :

Provided that no holder shall be deemed to be an agriculturist, if--

- (a) the revenue or rent or the aggregate of revenue or rent, as the case may be, payable by him exceeds rupees five hundred; or
- (b) he is a Muafidar and the relinquishment of the land revenue to the extent of more than rupees five hundred has been made in his favour; or
- (c) he is assessed to Income-Tax under the Indian Income-tax Act, 1922 (XI of 1922) :

Provided further that no person shall be deemed to be a holder merely by reason of his having acquired a holding, otherwise than by inheritance or survivorship after the first day of June, 1955.

Explanation.-- Where a holder has a subsisting interest in land but by reason of a temporary transfer does not for the time being pay the land revenue payable in respect of that land, such revenue shall, for the purposes of this sub-section, be deemed to be payable by him.

- (i) by ones own labour; or
- (ii) by the labour of either spouse; or
- (iii) under the personal supervision of oneself or any member of ones family referred to in sub-clause (ii) above by hired labour or by servants on wages payable in cash or kind but not as crop share, but does not as crop share, but does not include a trader, commission agent, processor, broker, weighmen or hammal of agriculture produce although such trader, commission agent, processor, broker, weighmen or hammal may also be engaged in the production of agriculture produce. [State of M.P. v. Hardeo Shrinath, AIR 1994 SC 2538 sat 2539.]

(3) "bank" means any company which transacts the business of banking in any State.

Explanation.-- Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

(4) "co-operative society" means a society registered or deemed to be registered under the provisions of the Bhopal State Co-operative Societies Act, 1937 (Bhopal Act No. XI of 1937);

(5) "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;

(6) "holder" means a person who has a right to hold a Khasra number and includes an occupant, a Shikmi and Muafidar but does not include a mortgagee in possession;

(7) "interest" means the return to be made over and above what was actually advanced, whether the same is charged or sought to be recovered specifically by way of interest in cash or kind or usufruct or service to be rendered or otherwise;

(8) "land" means land used for agricultural purposes but does not include land occupied by buildings or appurtenant thereto or land within the limits of any municipality or notified area;

(9) "loan" means an advance in cash or kind made before the first day of June, 1955, recoverable from an agriculturist or a workman or from any such person and other persons jointly or from the property of an agriculturist or workman and includes any transaction which in substance amounts to such advance, but does not include an advance the liability for the repayment of which has, by a contract with the borrower or his heir or successor or by sale in execution of a decree, been transferred to another person or an advance made by the State Government or by a Co-operative Society or by a Scheduled Bank :

Provided that an advance recoverable from an agriculturist or from an agriculturist and other persons jointly shall not be deemed to be a loan for the purposes of this Act unless such advance was made to an agriculturist or to an agriculturist and other persons jointly;

(10) "prescribed" means prescribed by this Act or by rules made thereunder;

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

(12) "rent" has the same meaning as in the Bhopal State Land Revenue Act, 1932 (Bhopal Act No. IV of 1932) but when rent is paid in kind or service, it shall, for the purpose of this Act, mean the money value thereof;

(13) "Scheduled bank" means any bank included at the commencement of this Act in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934);

(14) "secured loan" means a loan the repayment of which has been secured by a mortgage of, or charge on specific property, or by a pledge;

1[(15) xxx]

(16) "suit to which this Act applies" means any suit or proceeding relating to a loan;

(17) "Tribunal" means a Tribunal appointed under Sec. 5 of this Act;

(18) "unsecured loan" means a loan which is not a secured loan;

(19) "workman" means a person who is not a holder and--

(a) who earned wages within the meaning of clause (vi) of Sec. 2

of the Payment of Wages Act, 1936, (IV of 1936), during the period of twelve months immediately preceding the first day of June, 1955 such wages not exceeding--

(i) in the aggregate during the said period of twelve months, six hundred rupees;

(ii) in any one month comprised in the said period of the twelve months, sixty rupees; or

(b) who does not ordinarily resides within the limits of a municipality of notified area and who belongs to any of the classes specified in the Schedule or notified thereunder;

(20) All other words and expressions used herein but not defined, and defined in the Bhopal State Land Revenue Act, 1932 (Bhopal Act No. IV of 1932) shall have the meanings respectively assigned to them in that Act.

1 Omitted by M.P.A.O.1956.

3. Manner Of Constructing Certain Expressions :-

For the purpose of this Act--

(a) in any proceeding relating to an advance, pending at the commencement of this Act or instituted after such commencement, the status of the debtor who is a party to such proceeding shall be deemed to be the status which he had, at the commencement of the Act, or on the date of the institution of the proceeding, as the case may be;

(b) revenue or rent which has been remitted or suspended either in whole or in part, on account of a failure of the crop shall be deemed to be payable in the year in which it was so remitted or suspended.

(c) a joint holder shall be deemed to be holder of so much of the joint holding not being the holding of a joint Hindu family, as appertains to his share;

(d) where the land revenue or rent or the aggregate of the land revenue or rent, as the case may be, payable by a joint Hindu family, or the land revenue relinquished in favour of its karta--

(i) does not exceed five hundred rupees, such family and every member of it shall be deemed to be an agriculturist.

(ii) exceeds five hundred rupees, a member of such family shall be deemed to be an agriculturist only if the land revenue or rent or the aggregate of the land revenue or rent payable or relinquished, as the case may be, in respect of his share in the joint family holding or holdings does not exceed five hundred rupees :

Provided if a member of a joint Hindu family is getting gazara only,

such gazara shall be treated as his share :

Provided further that no joint Hindu family or any member of it shall be deemed to be an agriculturist if such family or member assessed to income-tax;

(e) a loan shall not be deemed to be due jointly from an agriculturist or workman and another person if such other persons liability in connection with such loan is that of a surety and such person and such agriculturist or workman shall not be deemed to be joint debtors.

4. Cases In Which Provisions Of The Act Shall Not Apply :-

(1) The provisions of this Act shall not apply to a suit for the recovery of a loan from an agriculturist where the creditor declares in accordance with the provisions of sub-section (2) that if a decree is passed in his favour either for the whole or part of the claim such decree shall not be executed against the land, agricultural produce or person of such agriculturist.

(2) The declaration mentioned in sub-section (1) shall, in the case of a suit pending at the commencement of this Act, be made at any time before the decision of the suit and in the case of a suit instituted after the commencement of this Act, in the plaint.

(3) No decree passed against an agriculturist shall be amended under the provisions of this Act if the creditor declares that such decree shall not be executed against the land, agricultural produce or person of such agriculturist:

Provided that no such declaration shall be made in a suit or proceeding relating to a loan recoverable from an agriculturist who also belong to one of the classes specified in sub-clause (a) or sub-clause (b) of sub-section (19) of Sec. 2; Provided further that where in a suit decided after the commencement of this Act the creditor has had an opportunity of making the declaration required by sub-section (1) no declaration shall, in proceedings for the execution of a decree obtained by the creditor in such suit be made by the decree- holder under sub-section (3):

Provided also that no declaration shall be made under sub-section (3) where the creditor has already applied for execution against the land, agricultural produce or person of such agriculturist.

(4) Where a declaration has been made under the provisions of this section no order shall be made for the execution of the decree against the land, agricultural produce or person of the agriculturist in respect of whom the declaration was made or his heir or

successor-in-interest, and the court shall record a direction to this effect in the decree.

CHAPTER 2

APPOINTMENT AND ABOLITION OF TRIBUNAL

5. Appointment And Composition Of Tribunal :-

(1) The State Government shall, by notification in the Official Gazette, constitute such number of Tribunals as it may think necessary for trying all suits under this Act and shall define the local limits of their respective jurisdiction.

(2) A Tribunal shall consist of such number of members as the State Government may think fit to appoint and where a Tribunal consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A Tribunal, where if consists of two or more members, may act notwithstanding the temporary absence for any reason of the Chairman or any other member, and when the Chairman or other member rejoins his office after such absence the proceedings may be continued before the Tribunal from the stage at which he rejoins.

(4) No order of the State Government appointing any person as a member of a Tribunal shall be called in question in any manner.

6. Abolition Of Tribunal :-

The State Government may, at any time, by a notification in the Official Gazette, abolish a Tribunal constituted under Sec. 5.

7. Filling Of Vacancies :-

If, for any reason, a vacancy occurs in the office of the Chairman or any other member of a Tribunal the State Government shall, in the case of Chairman, and may, in the case of any other member, appoint another person, in accordance with the provisions of the preceding section to fill the vacancy and the proceeding may be continued before the Tribunal so reconstituted from the stage at which the vacancy is filled.

8. Decision In Cases Heard By A Tribunal Having Two Or More Members :-

(1) If two or more members of a Tribunal differ as to a question of law or usage having the force of law or in construing a document

the construction of which may affect the merits of the case, they shall draw up and refer, for the decision of the Judicial Commissioner a statement of the facts of case and of the point on which they differ in opinion and the provisions of Order XLVI in the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) shall apply to the reference.

(2) If the members differ on any matter other than that specified in sub-section (1), the opinion of the majority shall prevail, and where there is no such majority, the decision of the Chairman shall prevail.

9. Procedure To Be Followed By A Tribunal :-

The Tribunal, in regard to the proceedings under this Act shall have the same powers as it would have if it were Court of original civil jurisdiction and shall follow the procedure under the Code of Civil Procedure, 1908 (V of 1908) for the Courts constituted under the Provincial Small Cause Courts Act, 1887 (IX of 1887).

CHAPTER 3

SUITS AND DECREES ON LOANS

10. Separate Trials :-

Where causes of action in respect of a loan and in respect of an advance in cash or kind made on or after the first day of June, 1955 have been joined in one suit, the Tribunal shall order separate trials in respect of the claim based on such loan and in respect of that based on such advance.

11. Forum Of Suits :-

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

- (a) the defendant or, if there are more than one, any of the defendants, ordinarily resides; or
- (b) in case the defendant or, if there are more than one, all the defendants reside without the territory of the State of Bhopal--
 - (i) the holding or the land of the defendant or, if there are more than one, any of the defendants, is situated; or
 - (ii) the defendant or, if there are more than one, any of the defendants, being a workman, carries on his trade or profession.

12. Debtors Right To Use :-

Notwithstanding anything contained in any law for the time being in force or the terms of any contract regarding the date or dates on which a loan 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.

13. Amendment Of Decrees :-

(1) Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to the Tribunal having jurisdiction for the amendment of the decree by reduction according to the provision of this Act of the amount due under it and on receipt of such application the Tribunal shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of Secs. 14 and 15, and shall amend the decree accordingly :

Provided that if the decree was passed by a court outside the State of Bhopal, it shall not be executed against the land or agricultural produce or person of the judgment-debtor unless the decree-holder agrees to an amendment of the decree in accordance with the provisions of this Act.

(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 section the Tribunal shall accept the findings on which the decree was based except in so far as they are inconsistent with the provisions of Sec. 14.

14. Accounting And Determination Of The Amount Due :-

(1) In a suit to which this Act applies or in amending a decree under the provisions of Sec. 13, the Tribunal shall, notwithstanding anything contrary in any law, decree or contract or in any agreement purporting to close past transaction, 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 the following sub-section :

15. Rate Of Interest On Decrees :-

(1) Notwithstanding anything contained in Sec. 34 of the Code of Civil Procedure, 1908 (V of 1908) the Tribunal shall not order future interest on the aggregate sum adjudged in a decree to which this Act applies or in a decree amended under the provisions of this Act, at a rate exceeding three per cent per annum simple interest.

(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 is executed by the grant of a mortgage under the first proviso to Sec. 24, 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 simple interest.

16. Fixation Of Instalments For Repayment Of Debt :-

When the amount due has been determined under Secs. 14 and 15, the Tribunal may fix instalments for the repayment of the debt in such manner as may be prescribed and may in case of default order payment of simple interest at a rate not exceeding six per cent, if the debt is unsecured and four and a half per cent, if it is secured :

Provided that in fixing instalments the Tribunal shall have regard to the extent of the transferable property of the debtor and his paying capacity to be determined by rules made by the State Government in this behalf.

17. Payment Of Instalments, Time And Manner Of Payment :-

(1) Every instalment fixed under Sec. 16 shall be payable on or before the date fixed by the order of the Tribunal, and this may, at the opinion of the debtor, be paid either to the Collector of the district in which he resides, or to the creditor who shall pass a receipt therefor in such form as may be prescribed.

(2) When the land revenue or rent, as the case may be, due by debtor is suspended or remitted, in whole or part, the instalment

shall be suspended and shall become payable one year after the last of the remaining instalments. No interest shall be charged on such suspended instalment.

18. Apportionment Of Loans :-

In any proceeding relating to a loan due jointly from several persons, any of whom is an agriculturist or a workman, the Tribunal shall apportion the loan between the joint debtors and the provisions of this Act shall apply only to that part of the loan which is apportioned to the joint debtor who is an agriculturist or a workman.

19. Suits Against Sureties :-

Nothing in this Act shall prevent the institution of a suit for the recovery of a loan against a surety jointly with the debtor or separately, as the case may be, but no decree shall be passed in such suit against a surety for an amount in excess of that for which a decree would have been passed against the agriculturist or workman from whom the loan is recoverable.

CHAPTER 4

EXECUTION OF DECREES

20. Exceptions And Extensions :-

The provisions of this chapter shall not apply to the execution of a decree based on a loan advanced by a bank.

21. Attachment Of Agricultural Produce Restricted :-

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

22. Limitation For Execution Of Decree Against Agricultural Produce :-

Notwithstanding anything in the Code of Civil Procedure, 1908 (V of 1908), no order shall be made for the execution of decree to which this Act applies against the agricultural produce of a judgment-debtor after the expiration of six years in the case of such decrees passed before the commencement of this Act, from the date of such

commencement, and in the case of such decrees passed after the commencement of this Act, from the date of decree, or where the decree directs any payment of money to be made at a certain date or at recurring intervals, from the date of default in making the payment in respect of which the decree-holder seeks to execute the decree.

(2) Nothing in this section shall be deemed to extend the period of limitation for an application for the execution of a decree.

23. Execution Of Decree Against Land :-

(1) Notwithstanding anything in the Code of Civil Procedure, 1908 (V of 1908), when the land of an agriculturist is sought to be sold in execution of decree to which this Act applies the Tribunal executing the decree shall proceed in accordance with the provisions of the following sub-section :

Provided that if any time before such land is transferred in accordance with the provisions of this section, such agriculturist applies in writing to the Tribunal executing the decree stating that he desires to have the land put to sale, the Tribunal shall sell it in accordance with the provisions of the Code of Civil Procedure, 1908 (IV of 1908)

(2) In the case of any decree to which this Act applies the Tribunal shall calculate the value of such land by multiplying the annual land revenue payable by or relinquished in favour of such agriculturist in respect of such land, as the case may be, by the prescribed multiple.

(3) If the value so determined is less than or equal to the amount of such decree together with the proportionate amount of any prior encumbrance, the Tribunal shall transfer such land to the decree-holder on condition that the decree-holder shall discharge the debts due to all persons claiming under a prior encumbrance:

Provided that all such claims shall be discharged in proportion to the ratio of the value of the land to be transferred bears to the decretal amount and the proportionate amount due on prior encumbrances payable by the debtor.

(4) If the value so determined is greater than the amount of such decree together with the proportionate amount of prior encumbrance, the Tribunal shall determine the portion of such land the value of which, determined in accordance with the provisions of sub-section (2), is equal to the amount of the decree together with the proportionate amount of such prior encumbrance and shall

transfer such portion of land to the decree-holder and order the decree-holder to pay to the persons claiming under such encumbrance the proportionate amount of such encumbrance.

(5) When land is transferred under the provisions of this section the decree shall be deemed to be satisfied up to the value of such land as determined under the provisions of this section and all the rights of the agriculturist in such land shall be deemed to have been sold to the decree-holder.

24. Protection Of Certain Land From Sale Or Transfer :-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force--

(a) the land of an agriculturist the land revenue or rent payable by whom or relinquished in whose favour does not exceed fifty rupees per annum, shall not be sold or otherwise transferred in execution of a decree to which this Act applies nor shall a final decree for foreclosure be passed in respect of such land, and

(b) in the case of any other agriculturist--

(i) only so much of his land may be sold or otherwise transferred in execution of a decree to which this Act applies; or

(ii) a final decree for foreclosure may be passed in respect of only so much of his land, as would, after such sale or transfer or foreclosure leave with him land the revenue or rent payable or relinquished in respect of which would be at least rupees fifty per annum :

Provided that the Tribunal may execute a decree to which this Act applies by granting to the decree-holder a self-liquidating usufructuary mortgage, for a period of not more than twenty years, of such land as is protected from sale, transfer or foreclosure by the provisions of this section:

Provided further 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-in-interest 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 mortgage granted under the first 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.

25. Procedure Where Several Decrees Are Executed

Simultaneously :-

Where several persons holding decree to which this Act applies move the Tribunal, before it has granted a mortgage under sec. 24, for execution of their decrees by grant of a mortgage of land protected under that section, the Tribunal shall, subject to the provisions of that section, observe the following principles in executing the decrees--

(a) If 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 land so protected (hereinafter described as a secured decree), the holder of such decree shall first be granted a mortgage of the protected land already mortgaged to him and the holder of a decree based on an unsecured loan (hereinafter described as an unsecured decree) shall be granted a mortgage of the remaining protected land, if any.

(b) Where there are more than one secured decree and also unsecured decrees--

(i) and different portions of the protected 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) and the same protected land is mortgaged in more than one decree, mortgages shall be granted to the holders of such decrees in order of their priority.

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

(c) As among persons holding unsecured decrees, such persons shall each be granted simultaneously mortgages of rateable shares of the land in such manner as may be prescribed.

26. Tribunal To Grant Certificates Of Transfer Or Mortgage, As The Case May Be, Of Debtors Property In Execution Of Decree :-

(1) When a land is transferred in accordance with the provisions of Sec. 23 such transfer shall for the purposes of Sec. 89 of the Indian Registration Act, 1908 (XVI of 1908) be deemed to be a sale of immovable property. The Tribunal shall grant a certificate of transfer for which the decree holder shall pay stamp duty accordingly to the valuation of the land so transferred.

(2) When a decree is executed by the grant of a mortgage under the provisions of the first proviso to sub-section (1) of Sec. 24, the Tribunal shall grant a certificate of mortgage with such particulars as may be prescribed and shall follow the procedure laid down in sub-section (2) of Sec. 89 of the Indian Registration Act, 1908 (XVI of 1908) as if such certificate was a certificate of sale of immovable property and the registering officer shall file the copy of the certificate in the Register concerned. Such certificate of mortgage shall be exempted from stamp duty.

27. Decree On Basis Of A First Mortgage To Be Satisfied By The Sale Of Mortgage Property :-

Notwithstanding anything contained in rule 6 or rule 8-A of Order XXXIV of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), where in a suit based on a loan secured by a first mortgage a decree for sale has been executed and the net proceeds of the sale of the mortgaged property are found insufficient to pay the amount due to the plaintiff or to the defendant, as the case may be, no decree shall be passed for the balance due to such plaintiff or defendant, as the case may be, and if any decree for such balance has been passed before the commencement of this Act it shall be deemed to have been satisfied.

28. Trees Protected For Sale :-

No decree to which this Act applies shall be executed by the transfer of trees belonging to an agriculturist unless the land on which tree stand is also transferred.

29. Decrees Not To Be Executed By Arrest And Detention Of Judgment-Debtor :-

No decree to which this Act applies shall be executed by the arrest and detention of the judgment-debtor unless the Tribunal is satisfied that such debtor has alienated or removed or concealed any of his property with the intention to defeat or delay the execution of such decree.

CHAPTER 5

MAINTENANCE OF ACCOUNTS

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

(1) Where any person advances a loan to an agriculturist or a workman after the commencement of this Act, he shall--

(a) if the debtor ordinarily resides within the jurisdiction of a Gaon Sabha, established under the Bhopal Panchayat Raj Act, 1952 (Bhopal Act No. II of 1953), execute the agreement for the advance of a loan and make the payment in the presence of an educated or literate person a Pradhan or Up-Pradhan or a member of a Gaon Panchayat elected under Sec. 2 of the Bhopal State Panchayat Raj Act, 1952 (Act No. II of 1953), whose signature or thumb impression shall be obtained on the said agreement as one of the witnesses;

(b) regularly record and maintain a correct account for each agriculturist or workman debtor of all transactions relating to each loan advanced to that debtor, in such manner as the State Government may prescribe; and

(c) supply each agriculturist or workman debtor every year with a full and correct statement of account signed by the creditor or his agent of any balance of amount that may be outstanding against such debtor on account of each separate loan on such date as the State Government may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates and shall contain such details and particulars as the State Government may prescribe. It shall be supplied to the debtor within one month of the aforesaid date in such form and in such manner as the State Government may prescribe :

Provided that where there is a current account, it shall be sufficient for the creditor for the purposes of clause (b) to keep one account of all transactions relating thereto and for the purposes of clause (c) to furnish particulars of the balance due on the whole account.

(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 object shall not by itself, be deemed to be an admission of the correctness of the account.

(3) The account prescribed under clause (b) of sub-section (1) shall be deemed to be regularly kept in the course of business for the purposes of Sec. 34 of the Indian Evidence Act, 1872 (I of 1872), and copies of entries in such account 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.

31. Penalty For Non-Compliance With The Provisions Of

Sec. 30 :-

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

(a) in any suit or proceeding relating to a loan against an agriculturist or a workman if the debtor objects that the creditor has not complied with the provisions of Sec. 30 the Tribunal shall determine such objection before deciding the claim on the merits;

(b) if the Tribunal finds that the provisions of the clause (b) of sub-section (1) of Sec. 30 have not been complied with by the creditor, it may, if the creditors claim is 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 refuse to allow costs to the creditor;

(c) if the Tribunal finds that the provisions of clause (c) of sub-section (1) of Sec. 30 have not been complied with by the creditor the Tribunal shall in computing the amount of interest due upon the loan exclude every period for which the creditor has failed to comply with the said provision :

Provided that if the creditor has, after the time prescribed in the said clause, furnished the account and satisfied the Tribunal that he had sufficient cause for not furnishing it earlier, the Tribunal shall, notwithstanding such omission, 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 satisfied the Tribunal that the omission or error was bona fide and due to inadvertence the Tribunal shall, notwithstanding such omission or error, include any such period or periods for the purpose of computing the interest.

Explanation.--

A person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in clauses (b) and (c) of sub-section (1) of Sec. 30 shall be held to have complied with the provisions of these clauses notwithstanding any errors or omissions, if the Tribunal find that the errors and 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 the said clauses.

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

(1) 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 an agriculturist or a workman a sum larger than that 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 agriculturist or workman, with fine which may extend to five hundred rupees.

(2) Where in any suit concerning a loan taken by an agriculturist or a workman the Tribunal 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.

33. Saving In Cases Of Previous Loans :-

The provisions of Secs. 30, 31 and 32 shall not, in the case of a loan advanced before the commencement of this Act, apply to the period prior to the commencement of this Act.

CHAPTER 6 **REVISION**

34. Finality Of Decrees And Orders Of Tribunal :-

Save as provided by this Act, a decree passed or an order made by a Tribunal under the provisions of the Act shall be final and shall not be called in question in any civil court.

35. Revision Of Decrees And Of Tribunal :-

The Judicial Commissioner may, either on his own motion or on an application from any party interested in any decree passed or order made by the Tribunal in any case call for and examine the records of any case and pass such order with respect thereto as he thinks fit :

Provided that no order prejudicial to any person shall be made under this section unless such person has been given a reasonable opportunity of being heard.

SCHEDULE 1

THE SCHEDULE

[See sub-section (19) of Section 2]

Agricultural labourers, bangle-makers, barbers, basket-makers, black-smiths, boatmen, carders, carpenters, copper-smiths, cowherdsmen, dairymen, fishermen, general labourers, goat-herdsmen, hunters, leather workers, masons, midwives, potters, scavengers, stone-cutters, tailors, tanners, washermen, watchmen, water-carriers, weavers, or other servants of the village community, or any similar class of persons which the State Government may, by notification in the Official Gazette, from time to time, include in this Schedule.