Brinda Bala Debi Vs Gour Mahato

Court: Calcutta High Court

Date of Decision: Aug. 26, 1977

Acts Referred: Bengal Money Lenders Act, 1940 â€" Section 2, 2(9), 28, 29, 33

Citation: 82 CWN 187

Hon'ble Judges: S.K. Datta, J

Bench: Single Bench

Advocate: Amiya Kumar Chatterjee and Abhiya Kumar Banerjee, for the Appellant;Tarak Nath Roy, for the Respondent

Judgement

Sunil Kumar Datta, J.
This Rule is direct against the order dated August 30, 1970 passed by the learned Munsif at (sic) rejecting the

petitioner"s application u/s 38 of the Bengal money Lenders Act, 1940. The facts, in short are as follows :--

The petitioner borrowed a sum of Rs. 1200/- by executing an usufructuary mortgage deed dated March 3, 1907 in favour of the lender late

Balaram Mahato in respect of 1 acre of kamali land. The said lender and on his death his heirs, the opposite parties had been in possession thereof

by cultivation. According to the petitioner, the lender and his successors had realised Rs. 2100/- for paddy and Rs. 700/- for straw in all Rs.

2800/- during 1967 to 1973 i.e. more than double the principal. As such the petitioner was entitled to a declaration that nothing is due on the

kotkobala (usufrucrtuary mortgage deed). The application was accordingly filed on April 16, 1974 for taking account of the said loan and for

declaration that nothing was due to the lender or his heirs. In case the Court found that the loan was not fully satisfied, there was not fully

alternative prayer for determination of the amount still payable by the borrower petitioner. The application was registered as Misc. Case No. 53 of

1974.

The opposite parties contested the application contending that the transaction was not a loan and consequently the application u/s 65 of the Act

was not maintainable. It was also contended that the opposite parties were not the tender under the Act and as such no relief was available against,

them on the said application, Further the annual income from the filed fees costs of production was Rs. 100/- for paddy and Rs. 5/- for straw,

which for six years amounted to Rs. 630/- only. The application accordingly was liable to be dismissed.

2. The learned Munsif by the impugned order held that though the application was otherwise maintainable, the definition ""lender"" defined in section

2 (9) does not include his heirs and successors-in-interest. The application u/s 33 of the Act accordingly not maintainable and as a result the Misc.

Case was dismissed. The present rule is against this order.

3. Mr. Amiya Kumar Chatterjee appearing with Mr. Abhijit Kumar Banerjee, learned Advocates for the petitioner contended that the learned

Munsif committed an error in the exercise of his jurisdiction in holding that no relief under the Act was available against the legal heirs and

successors-in-interest of the lender. He submitted that on correct interpretation, the word "lender" should have been held as including his legal heirs

and successor-in-interest who accordingly would be amenable to appropriate orders on the application u/s 66 of the Act.

4. Mr. Tarak Nath Roy learned Advocate for the opposite parties contended that the application for declaration that the lender and or his legal

heirs are indebted to the borrower on accounting is not maintainable in law. Further, the definition of ""lender"" in the Act does not include his heirs

or successors-in-interest, so that the application u/s 38 is not maintainable and the borrower may have his remedy under the ordinary law of the

land.

5. Mr. Roy referred to the decision in Srikanta Kumar vs. Atul Krishna, 49 C.W.N. 143, in which it was held that an application for settlement of

debts under the Bengal Agricultural Debtors Act, 1936 made by an applicant while denying the debt itself was not maintainable in law. Mr. Roy

referred to an earlier decision in Meherunnisa Bibi vs. Satis Chandra, 47 C.W.N. 894, wherein the Court held that in a proceeding u/s 38 of the

Act there can at most be a declaration that nothing is due under the loan but no declaration of any amount due from the lender to the borrower is

permissible under the Act.

6. In the case before us the borrower in his application has prayed for taking account of the loan, for declaration there is nothing due on the loan

and also for declaration of the amount due under the loan if it is found that the loan has not been satisfied. There is no illegality in such prayer, as

the Court is competent under the Act on an application u/s 38 which provides ""for taking accounts and for declaring the amount due to the lender"",

also to declare on accounting that no amount is due to the lender. The application for such alternative declarations is thus maintainable in law.

7. The formidable contention urged on behalf of the opposite parties, which found favour with the learned Munsif, is that the word ""lender"" in Sub-

section (9) of Section 2 of the Act ""means a person who advances a loan and includes a money lender"". It is said that while the word ""borrower"" in

sub-section (2) of Section 9 ""means a person to whom a loan is advanced and includes a successor-in-interest or surety"", these words are

excluded from the meaning of the word ""lender"" not without significance. We shall now examine the contention with reference to other relevant

provisions of the Act.

8. Section 28 of the Act in sub-section (1) provides that when a loan is ""assigned"" to any person by the lender or his assignee before such

assignment, notice is to be given that the debt, agreement or security is affected by the operation of the Act. In Sub-section (3) it is expressly

stated that the expression ""assigned"" in this section means an assignment inter vivos other than assignment by operation of law. In section 29 it is

also provided that the provisions of the Act shall continue to apply as respects any debt due to a lender or money lender in respect of loans

advanced by him, as also the benefit of agreement made or security taken in respect of such debt or interest, notwithstanding that the debt or the

benefit of the agreement or security may have been assigned to any assignee, and references in this Act to a lender or money lender shall

accordingly be construed as including such assignee, subject to certain limitations and except where the context otherwise requires. It is this

obvious that while Section 28 applies to assignment inter vivos and not to assignment by operation of law, there is no such prohibition in respect of

the provisions of section 29, so that its provisions will apply to assignments by operation of law. Assignment by operation of law includes inter alia

in voluntary sales in execution, assignments upon bankruptcy as also cases of succession which is assignment by devolution of interest. Accordingly

relief in respect of a debt by a lender in accordance with the provisions of the Bengal Money Lenders Act 1940 will be available to a borrower

against the legal representatives of a deceased lender on whom the estate of the deceased lender including the debt and its security devoloes by

operation of law. This interpretation is consistent with the beneficient objects the Act is intended to achieve.

9. Mr. Roy took a further objection contending that under Sub-section (3) of section 38 an appeal is provided against a declaration under Sub-

section (2), so that no application in revision lies against the impugned order. The contention, it appears, is unsustainable as an appeal lies against a

determination contemplated in Sub-section (2) which has the force and effect of a decree as provided in the section itself. A decision on the

maintainability of the application u/s 38 is not a decoration in respect of amounts paid and payable to the lender. As such a revision les against such

order as contended by Mr. Chatterjee. The application of the petitioner u/s 38 of the Act against the legal representatives of the deceased lender is

this maintainable in law. The Rule accordingly is made absolute and the impugned order of the learned Munsif is set aside. The application will now

be disposed by the learned Munsif in accordance with law. Let the records be sent down at once.

There will be no order for costs in the Rule.