Sudhangshu Mohan Chakraborty Vs Life Insurance Corporation of India and Another

Court: Calcutta High Court

Date of Decision: March 14, 1988

Acts Referred: Bengal Money Lenders Act, 1933 â€" Section 1(2)
Bengal Money Lenders Act, 1940 â€" Section 2, 2(12)(d)(ii), 45, 45A, 45A(2)
Civil Procedure Code, 1908 (CPC) â€" Section 2(2), 97
Constitution of India, 1950 â€" Article 12, 36, 37, 38
Usurious Loans Act, 1918 â€" Section 3, 3(1)

Citation: (1988) 2 CALLT 281 : 92 CWN 1092

Hon'ble Judges: Ajit Kumar Nayak, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Nirmala Kumari Chaturvedi and Mr. Pradip Chakraborty, for the Appellant;P.K. Ghose and Mr. M. Bose, for the Respondent

Final Decision: Allowed

Judgement

A.M. Bhattacharjee, J.
A preliminary mortgage decree for sale was passed against the defendant-appellant which has thereafter been

made final and the aggrieved defendant has filed this appeal. The defendant-appellant, having preferred no appeal against the preliminary decree,

cannot obviously challenge the correctness of the said preliminary decree in this appeal against the final decree in view of the provisions of Section

97 of the Code of Civil Procedure. The learned Counsel for the defendant-appellant has not also attempted to do so. All that she has urged in

support of the appeal is that the Trial Judge was wrong in making the preliminary decree final rejecting the defendant-appellant''s application u/s 3

of the Usurious Loans Act, 1918 on the erroneous impression that the provisions of that Act can not be invoked after the passage of the

preliminary decree.

2. The defendant-appellant attempted to resist the passing of the final decree by an application invoking the provisions of the Usurious Loans Act

of 1918, the Bengal Money-Lenders Act of 1933 and the Bengal Money Lenders Act of 1940 and he urged that the interest claimed was

excessive and the transaction was substantially unfair and the transaction was, therefore, to be reopened under the appropriate provisions of the

aforementioned enactments, notwithstanding the preliminary decree passed against him. As already noted, the application was rejected and the

preliminary decree was made final

3. The Trial Judge was right in holding that the provisions of the Bengal Money-Lenders Act, 1940 could not be invoked by the defendant-

appellant as the mortgage loan sued upon was not a "loan" within the meaning of the said Act. The plaintiff-respondent was the Life Insurance

Corporation of India and Section 2(12) (d) (ii) of the Bengal Money-Lenders Act of 1940 clearly provides that the expression "loan" for the

purpose of the Act ""does not include. ...a loan advanced. ...by Insurance Company, Life Insurance Corporation of India. ...". It is not disputed that

the loan in this case was advanced by the National Insurance Company Limited which was an Insurance Company and that the interest therein has

now devolved on the Life Insurance Corporation of India under the Life Insurance Corporation Act, 1956.

4. The Trial Judge was equally right in holding that the provisions of the Bengal Money Lenders Act of 1933 also could not apply to the case at

hand. It is true that because of Section 45 of the Act of 1940, the provisions of the Act of 1933 could otherwise have applied this "loan" sued

upon as the Act of 1940 has outweighed the provisions of the Act of 1933 only in respect of "loan" to which the Act of 1940 would be applicable.

But, as already noted, since because of Section 2(12) (d) (ii) of the Act of 1940, the said Act was not to apply to the loan in suit advanced by an

Insurance Company or by the Life Insurance Corporation of India, the loan in suit, not thus being governed by the Act of 1940, could have

otherwise attracted the provisions of the Act of 1933. But as clearly provided in the Proviso to Section 1(2) of the Act of 1933, ""nothing in this

Act shall apply to any loan made within the limits of the ordinary original jurisdiction of the High Court, or under a contract made within those

limits"" and it has not been disputed that the contract of loan and the loan were made within those limits.

5. But we are, however, afraid that the Trial Judge was wrong in holding that the provisions of the Usurious Loans Act, 1918 also could not

operate in this case. Section 45A of the Bengal Money-Lenders Act, 1940 has no doubt sought to repeal the said Act of 1918, but the repealment

is not wholesale or total. Section 45A(2) of the Act of 1940, in repealing the Usurious Loans Act of 1918, has clearly provided that the repeal

would take effect ""except in cases relating to matters enumerated in sub-clauses (d), (e), (f), (h) and (i) of Clause (12) of Section 2 "" of the Act of

1940 and, as already noted, the loan sued upon, being a loan advanced by an Insurance Company, now succeeded by the Life Insurance

Corporation, is covered by Section 2(12) (d) (ii) of the Bengal Money-lenders Act of 1940. The loan in suit was, therefore, not a loan within the

meaning of the Bengal Money-Lenders Act of 1940 and was not thus brought outside the purview of the Usurious Loans Act of 1918 by the

provisions of Section 45A of the Bengal Money-Lenders Act of 1940. We, therefore, cannot but reject the contention made by the learned

Counsel for the plaintiff-respondent that the Usurious Loans Act of 1918 has stood repealed in its entirety and is not available for the loan in suit.

6. We must, however, note that the Trial Judge did not hold, as urged by the learned Counsel for the plaintiff-respondent, that the Usurious. Loans

Act has ceased to operate in respect of the suit loan in view of Section 45A of the Bengal Money-Lenders Act of 1940. The Trial Judge declined

to invoke the provisions of the Usurious Loans Act solely on the ground that ""as preliminary decree has already been passed in the suit, the court

can not do anything which affects the decree"" as the Proviso (11) to Section 3(1) of the Usurious Loans Act, 1918 mandates that "" the court shall

not .....do anything which affects any decree of a court"". We are of opinion that the learned Judge went wrong and arrived at an erroneous

conclusion. We would reproduce hereinbelow "the relevant portions of Section 3 (1) of the Usurious Loans Act of 1918 material for our present

purpose :-

3. Re-opening of transactions :- (1) Notwithstanding anything in the Usury Laws Repeal Act, 1985, where, in any suit to which this Act applies,

whether heard ex parte or otherwise, the Court has reason to believe-

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely,

may ,-

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii)

(iii)

Provided that, in the exercise of these powers, the Court shall not-

(i)

(ii) do anything which affects any decree of a Court.

7. The only question which, therefore, arises for our consideration is whether a preliminary decree is also a decree for the.purpose of Proviso (ii) to

Section 3 (1) which cannot be affected by the court in the exercise of its powers u/s 3(1). Having given the matter our best consideration we

.propose to return a negative answer, namely, the passage of a preliminary decree does not debar a court from exercising its powers u/s 3(1) of

the Usurious Loans Act of 1918. Here are our reasons.

8. It is axiomatic that an enactment must be construed so as to further its objects and not to circumscribe them. The avowed object of the Usurious

Loans Act being to give reliefs to the borrowers from substantially unfair transactions subjecting them to payment of excessive interest, its

provisions must be so interpreted as to,enlarge, and not to limit, the scope of the reliefs awardable and the stages where these may be awarded,

whosoever a wider interpretation in favour of the borrowers would be reasonably possible. This principle alone would justify our construing the

expression ""decree"" in Proviso (ii) to Section 3(1) to mean a final decree only, even though the expression may otherwise include, as provided in

Section 2 (2) and Order 34 of the Code of Civil Procedure, a preliminary decree also. Literally and Lexically the expression ""decree"" would

include a preliminary decree also. But gone are the days of rule of the letters and literal construction and we do no longer interpret statutes only

with grammar and lexicon. A purposive approach to statutes has now become the order of the day and such a approach would obviously lead us

to construe the expression ""decree"" in the relevant context to mean a final decree only.

9. That apart, the relevant expression used in Section 3(1), as extracted hereinbefore, would also support, rather warrant, such a conclusion, The

Section empowers the court to exercise its powers in any suit, whether that suit is, heard ex parte or otherwise. The powers u/s 3(1) are, therefore,

conterminous and co-extensive with the hearing of the suit and must be available for exercise so long the suit does not terminate and may still be

heard on one point or the other. As has been explained in the Explanation to Section 2(2) of the Code of Civil Procedure, ""a decree is preliminary

when further proceeding have to be taken before the suit can be completely disposed of "" and the relevant provisions of Order 34 make it

abundantly clear that applications are still to be made by the parties and matters are still to be heard after the passage of the preliminary decree till

the suit is finally disposed of by a final decree. A mortgage suit, notwithstanding a preliminary decree, remains pending for further hearing and final

determination and, in our view, powers can always be exercised by the Court u/s 3 (1) of the Usurious Loans Act, so long the suit is pending for

further hearing and final determination and that the expression ""decree"" in Section 3 (1) would mean a final executable decree disposing of the suit.

10. The decision of the Supreme Court in Smt. Dayawati and Another Vs. Inderjit and Others, , to which our attention has been drawn by the

learned Counsel for the defendant-appellant, may not be directly on the point because the question that arose for determination in that case was

whether a suit, which winded up in appeal, was still to be regarded as pending during the pendency of the appeal for the purpose of the Usurious

Loans Act, 1918, as amended by the Punjab Relief of Indebtedness Act, 1934. Section 6 of the Punjab Act made the Usurious Loans Act, as

amended by Section 5 of the Punjab Act, applicable to all suits pending on or instituted after the commencement of the Punjab Act. And the

Supreme Court observed (at 1421) that since the preliminary decree in a mortgage suit does not terminate the suit, the expression, ""suits pending

in Section 6 of the Punjab- Act ""only excludes those suits in which nothing further needs to be done in relation to the rights or claims litigated

because an executable decree, which may not be reopened is already in existence"". According to the ratio of the Supreme Court decision,

therefore, what would debar a Court from exercising its powers u/s 3 (1) of the Usurious Loans Act is only a ""final executable"" decree and that

being so, a preliminary mortgage decree can not stand in the way of the Court''s granting reliefs to a borrower against whom such a decree has

been passed.

10A. Strong reliance has been placed by the learned Counsel for the plaintiff-respondent on the decision of the Madras High Court in N.N. Rajalu

Iyer vs. Ambalam Shanmugham (A.I.R. 1951 Mad 107) and he has argued that some observations of Subba Rao, J. (as his Lordship then was),

speaking for the Division Bench (at 115, after the disposal by the Full Bench of the question referred to it), support the view that Section 3(1) of

the Usurious Loans Act is rendered inoperative even after a preliminary, decree is passed. We have not been able to find any such clear ruling in

the decision of the Division Bench and we rather find that in that case ""the preliminary decree had become final "". The further observations therein

to the effect that relief under the Usurious Loans Act ""should be claimed and obtained before the decree was passed "" and the ""suit ended in a

decree"" would rather go to support our view that power exercisable u/s 3(1) of the Usurious Loans Act are available to the trial court in any suit to

which the Act applies before the suit ends and terminates by a final executable decree.

11. There is yet another way of looking into the matter. About four decades ago we have resolved in the Preamble to our Constitution to secure

Social and Economic Justice to all and in Article 38 of the Constitution we have mandated ''the State'' to ""strive to promote the welfare of the

people by securing and protecting, as effectively as it may, a ''Social Order'' in which Justice, Social, Economic and Political, shall inform all the

institutions of the national life "". In the class-ridden society that we live in and in the context of object poverty and the grave socio-economic

inequalities still prevailing in our society, social and Economic justice would obviously mean justice to the weaker or the poorer sections of the

society. In the light or our further resolve in the Preamble to secure to all ""Equality of Status and Opportunity"", securing justice would mean

securing that to the weaker or the poorer which would go to make them equal with rest of the society.

12. In view of the mandate in Article 38 commanding the State to secure and protect Social and Economic Justice and in view of the definition of

the expression ""State"" in Article 36 read with Article 12, all the organs of the State, including the Judiciary, are under the Constitutional obligations,

to secure, protect and administer Social and Economic justice. That is also what has been pointed by Mathew, J. in His Holiness Kesavananda

Bharati Sripadagalvaru Vs. State of Kerala, . This principle, like all other Directive Principles in the Part IV of our Constitution, is, as declared in

the Article 37, ""fundamental in the governance of the country"" and the Judiciary having been assigned by the Constitution the role to ensure

governance of the country according to the Constitution and the laws, this principle in Article 38 must also be taken to be fundamental in the

administration of justice and the Judiciary must have to evolve a new jurisprudence, a new juristic principle to govern our adjudicatory process to

ensure administration and advancement of Social and Economic justice.

13. Is the Proletariat equal in the contest to the Proprietorist in presenting, proving and pressing rival cases right up to the forensic apex ? Is the

poor debtor as against the Money lenders, the prisoner as against the jailor, the handicapped as against the hefty, the deserted wife as against the

brutal husband, the low-caste Pariah as against the high-caste Patrician, equal ?"" (Justice Krishna Iyer - Adversarial Praxis vis-a-vis Social Justice

- A Constitutional Miscellany page 194). We have also raised these questions in a recent Division Bench decision in State Bank of India vs. Amal

Kumar Sen (1988 1 CLJ 83) where we have said (at 85-86) that "" in this set-up, I therefore, the new juristic principle that is to be evolved to

enable our forensic machinery to rise up to the challenge for ''Social Justice'' is that whenever the weaker or the poorer section is pitted in forensic

combat against the stronger or the richer section, then, if two interpretations are reasonably possible whether of the facts or the laws involved, the

interpretation in favour of the former is to be adopted so that ''Social Justice'', i.e., the justice to the weaker or the poorer section of the society, is

ensured.

14. As already stated, for the reasons noted earlier, we are: of the view that the expression "decree" in the Proviso (ii) to r Section 3 (1) of the

Usurious Loans Act would mean the final - executable decree which terminates the suit, the terminous ad quem of the lis. But assuming arguendo

that the said expression ''decree'' may also be reasonably construed to include a preliminary decree and that both the interpretations are thus

reasonably possible, we would still have to reject the latter construction and adopt the former one, because such a construction would advance the

cause of Social and Economic justice, as that would enable the debtor to get the protection of and the reliefs under the Act at a later stage also..

We would accordingly over-rule the decision of the Trial Judge on this ground also.

15. It has been urged by the Counsel for both the parties that as the defendant''s application u/s 3(1) of the Usurious Loans Act was rejected as

not maintainable in law at that stage, the parties could not get sufficient opportunity to agitate the question on merits and to adduce evidence as to

whether or not the interest was excessive and the transaction was substantially unfair within the meaning of Section 3(1) of the Usurious Loans Act

and that if we now hold the application to maintainable, we should send the case back on remand for consideration of the application on merits in

accordance with law. We agree.

16. We, therefore, allow the appeal, set aside the final decree passed in the suit and send the case back to the court below with a direction to

dispose of the application u/s 3 of the Usurious Loans Act, 1918 in accordance with law on the materials on record and such further evidence as

the parties may choose to adduce. We also direct the parties to appear before the trial court on the 18th April, 1988 for the purpose of receiving

the directions of that court as to further proceedings in the matter. No costs.

17. Let the records be sent down immediately.

Ajit Kumar Nayak, J.

18. I agree.