

## **PRIVY COUNCIL**

Srimati Renula Bose

Vs.

Rai Manmatha Nath Bose

P.C.A No.25 of 1942

(Lord Goddard, Sir Madhavan Nair and Sir John Beaumont JJ.)

07.03.1945

### **JUDGMENT**

#### **LORD GODDARD J.**

1. The action out of which this appeal arises was brought by the plaintiffs, who are respondents 1-4, to obtain relief under the provisions of the Bengal Money-Lenders Act, 1940, in respect of a mortgage dated 25th May 1914, whereby all persons interested in certain properties mortgaged them to the Maharaja of Darbhanga to secure the sum of Rs. 6 lacs with interest at 6 per cent. per annum. The facts were not in dispute and it is unnecessary to set out the title of the various parties. It is enough to say that from time to time various amounts were paid to the mortgagee in respect of the sums due under the mortgage and that on 12th June 1935, in an action which be instituted against the mortgagors, a decree by consent was made in the action for some Rs. 4,58,058, the balance due to him under the mortgage, which together with the amount already paid would exceed double the amount originally advanced. On 17th September 1936, the Maharaja assigned the benefit of the decree and the benefit of the securities under the mortgage deed to the appellant who gave value therefore and on 2nd February 1937, she obtained the leave of the Court to execute the decree. On 1st September 1940, the Bengal Money-Lenders Act, 1940, came into operation, and thereupon respondents 1-4 instituted proceedings in the High Court of Calcutta claiming relief under that Act. By this time more than twice the sum advanced had been paid either to the Maharaja or the appellant, and the respondents claimed in the action a declaration that they were not liable to pay any more and also asked for repayment of money paid by them in excess of the amount allowed by the Act, though this latter claim was not pursued at the trial. The case was heard before Edgley J., who dismissed the action on grounds to which reference will be made hereafter. On appeal

his decision was reversed by the Appellate Division of the High Court (Derbyshire C. J. and Nasim Ali J.), who granted a declaration that the plaintiffs in the action were not liable to make any further payments either under the mortgage or under the decree of 12th June 1935, or otherwise. It is from this decree of the High Court that the present appeal is brought.

2. The question for decision was conveniently summarized by Sir Herbert Cunliffe in these terms: Does the Act of 1940 enable the Court to afford relief to a mortgagor under a mortgage executed before the Act in respect of a final decree made by consent, before the Act for the payment of an agreed amount of principal, interest and costs and assigned before the Act to a *bona fide* assignee for value where the rate of interest is well within the limits allowed by the Act ? Their Lordships would, however, observe that in their opinion the fact that the decree was made by consent is immaterial, as is also the fact that the amount was agreed. Nor do they think that the rate of interest in the present circumstances is material. It seems to them that the real question bare is whether the Court can grant relief to a judgment-debtor for money lent against a *bona fide* assignee for value of the decree where both the decree and the assignment took place before the Act came into operation.

3. The Act No. 10 of 1940, was passed to regulate and control money-lenders and money-lending transactions in Bengal and applies to loans made by anyone and not only by professional money-lenders. Its main provisions so far as are material for present purposes are that maximum rates of interest are prescribed, and no borrower is to be liable to re-pay to a lender more than twice the amount of the principal advanced whatever the rate of interest may be. Provision had naturally to be made for cases where the lender assigned his rights, and Chap. 5 of the Act, Sections 28 and 29, deal with the assignment of loans. These two sections were meticulously examined by both the trial Judge and the Court on appeal, but, in the opinion of their Lordships, these sections have no application to the present case. They deal with the assignment of loans, where the relation of lender and borrower still exists; while, that is, the contract is still executory. They do not apply where there has been a judgment. The contract is then merged in the judgment and the relationship between the parties is that of judgment-creditor and judgment-debtor and no longer that of lender and borrower. If authority be needed for this proposition, which is really elementary, it will be found in the case referred to by Edgley J. in, *Kusum Kumari v. Debt Prosad*.<sup>1</sup> The section which gives relief to the borrower is Section 30. That section so far as is material is as follows:

"Notwithstanding anything contained in any law for the time being in force, or in any agreement,

(1) no borrower shall be liable to pay after the commencement of this Act

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan ... whether such loan was advanced or such amount was paid or such decree passed or such interest accrued before or after the commencement of this Act."

4. The effect of this section is to afford a defense to a borrower as to the amount for which he is liable, and that is all that it does. It does not affect judgments already obtained, but merely provides that the amount of a judgment already obtained is to be taken into account in calculating the final amount for which a borrower may be liable. So, if for instance the original loan were for Rs. 1000 and the principal and interest were payable by installments, and a decree had been obtained for Rs. 500, not more than Rs. 1500 could be obtained under any subsequent decree. That section therefore cannot of itself avail a judgment- debtor against whom a decree has been regularly obtained and remains unrehearsed.

5. Section 36 however provides for the reopening of past transactions. It is a long section containing a number of provisions and there is no need to quote it in extenso. By sub section (1) the Court is given power to reopen any transaction and take an account between the parties, reopen any account already taken following on an agreement between them, release the borrower from liability in excess of the limits specified in Section 30 and give other consequential relief. This may be done either in an action brought by the lender or in one brought by the borrower to obtain relief under the section. It will be observed that the sub-section does not specifically mention a judgment or decree as one of the matters which the Court may reopen, but it is abundantly clear that it is intended to give the Court that power. The drafting of the section is unfortunate and obscure, but inasmuch as by proviso 2 to sub section (1) it is enacted that in the exercise of its powers the Court shall not do anything which affects any decree other than a decree in a suit to which the Act applies, which was not fully satisfied by 1st January 1939, and as sub section (2) contains a variety of provisions as to what the Court may and may not do on re-opening a decree it is clear that the Legislature intended that the power of re-opening a transaction should extend to re opening a decree obtained by a lender which had not been fully satisfied by 1st January 1939. Sub-section (5) however provides that nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the

assignment was *bona fide* and that he had not received the notice referred to in clause (a) of Section 28 sub section (1). That is a notice which it is made obligatory on the lender to give to anyone to whom he assigns his debt. In their Lordships' opinion, the only right which the plaintiffs in this action had of re-opening the decree of 12th June 1935, was under this section. Had the decree not been assigned, they could have instituted an action for relief against the judgment creditor; but as it had been assigned to one who took it *bona fide* and for value and who ex hypothesi had not received the notice referred to in the section they cannot maintain any claim for relief against the assignee. The learned trial Judge thought that the sub-section did not protect the assignee because it referred to a notice which could not have been given, as the Act was not in force at the time of the assignment, he based his judgment on the ground that Section 30 could not affect a decree retrospectively. Their Lordships cannot agree with either of these grounds.

6. With regard to the first the assignee fulfils all the requirements of the section, and to hold otherwise is equivalent to saying that an assignee to whom notice could not be given is to be in as bad a position as one who had received notice. Mr. Le Quesne's main argument for the respondents was that "the rights of any assignee" referred to in the sub-section must be construed as meaning the rights given to an assignee under the Act, for instance, the right of indemnity given by Section 28, sub section (2). This means that the Court must read into the sub-section the words "conferred by this Act" immediately after the words "holder for value." If that is what the Legislature meant it would have been quite easy to say so. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so, whereas here the section as it stands is apt in its language to afford protection to the rights of *bona fide* purchasers for, value as is nearly always given in legislation of this description. Their Lordships are also unable to agree with the opinion of the learned Judge as to Section 30 having no retrospective effect. In one sense this is true, because as already pointed out in this judgment all that the section by itself does is to give the borrower a defense as to quantum when sued. But when that section is read with Section 36 it appears to their Lordships to be clear that the relief given by the section can be granted where relief under the Act is sought by a judgment-debtor in respect of a decree which had not been fully satisfied by 1st January 1939, and which must therefore have been obtained before the Act came into force. It remains to say a word with regard to the judgment of the High Court on appeal. As their Lordships understand the judgment of the Chief Justice, he thought that it was unnecessary to invoke Section 36, but that he could give a declaratory judgment in favor of the plaintiffs, under section 42, Specific

Relief Act, or under the provisions of the Civil Procedure Code, declaring that they need pay no more. In whatever form such a declaration might be expressed, it would have the effect of restraining a judgment creditor who has obtained a regular and final decree from proceeding to execution. Such a result could only be reached by re-opening the decree under the provisions of Section 36 of the Act of 1940 which for the reasons given in this judgment does not apply to this case.

7. Their Lordships will humbly advise His Majesty that this appeal should be allowed and the decree of the High Court made in its civil appellate jurisdiction be set aside and the decree of the Court made in its ordinary original civil jurisdiction be restored, though on different grounds. The first four respondents should pay the cost of the appeal to the High Court in its appellate jurisdiction and to His Majesty in Council.

Appeal allowed.

Cases Referred.

1. 23 AIR 1936 PC 63 : 15 Pat 210 : 63 IA 114 :160 IC 285 (PC)