

(2001) 10 SC CK 0114
In the Supreme Court Of India
Case No : Civil Appeal No: 927 of 1991

Bansilal and Others

APPELLANT

Vs

Mohammad Israil and Others

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Central Provinces and Berar Relief of Indebtedness Act, 1939 — Section 11(1), 12, 13, 13(3), 14

Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : AIR 2001 SC 3878 : (2001) AIRSCW 4330 : (2002) 50 BLJR 157 : (2001) 9 JT 179 : (2001) 7 SCALE 383 : (2001) 9 SCC 425 : (2001) 7 Supreme 863

Hon'ble Judges : K. G. Balakrishnan, J;D. P. Mohapatra, J

Bench : Division Bench

Advocate : Gaurav Aggarwal and Uday Umesh Lalit, for the Appellant; A.K. Sanghi and Rayindra Bana, for the Respondent

Final Decision : Disposed Of

Judgement

D.P. Mohapatra, J.—One Sheikh Ibrahim executed two mortgage deeds on 30.4.1923 and 9.4.1924 in respect of 4.00 acres and 8.00 acres of his land respectively in favour of Sunderbai wife of Latulal. On 11.4.1939 the said Sunderbai transferred her rights as a mortgagee to Sundersa Gulabsa Jain. Sundersa Gulabsa Jain filed two Regular Civil Suits for recovery of the mortgage dues and in the alternative for foreclosure of the right of redemption. The mortgages were described as "Lahan Gahan mortgages" During the pendency of the suits the Central Provinces and Berar Relief of Indebtedness Act, 1939 (C.P. Berar Act No. XIV of 1939) (for short "the Act") came into force and the suits were transferred to the Debt Relief Court established under the said Act. On the application made by the defendant-mortgagor a scheme for repayment of the loan was framed under the Act and the mortgage dues were made payable by installments falling due on 1st March every year as per the order the Debt Relief Court. The installment which fell due on 1.3.1948 was not paid by the mortgagor.

The next installment was due on 1.3.1949. On account of temporary legislation titled Central Provinces Berar Relief of Agriculturist Debtors (Temporary measures) Act, 1949 (No. XXIV of 1949) enforced under the provisions of the Act whereby the date of installment was postponed by one year from 1.3.1949 to 1.3.1950. The installment which was due on 1.3.1950 was also not paid by the original mortgagor. Thus he committed two consecutive defaults in payment of installments. The creditor-plaintiff filed an application u/s 13(3) of the Act on 31.8.1949 for a certificate as provided in the said section. Finally, the Deputy Commissioner ordered issuance of the certificate u/s 13(3) of the Act on 24.9.1962 which was confirmed by the High Court in Special Civil Application No. 716 of 1964 by order dated 4th April, 1966. In the meantime the debtor deposited the entire mortgage dues in the Court on 30.5.1964.

2. Thereafter, on 17.1.1967 the creditors filed an execution petition with the prayer for delivery of possession of the mortgage properties from the debtors on the ground that the certificate issued by the Dy. Commissioner u/s 13(3) of the Act operates as a final decree for foreclosure, and therefore, they were entitled to possession of the mortgage properties. In the said proceeding judgment-debtors filed an application u/s 47 of the CPC read with section 151 of the Code contending inter alia, that possession of the mortgaged property should not be delivered to the creditors. They contended that the final decree as referred to in section 13(3) of the Act should be treated as a final decree for sale and not a final decree for foreclosure of the mortgaged property.

3. The Executing Court accepted the execution petition filed by the creditors holding that the certificate operated as a final decree for foreclosure. Consequentially the objections filed by the debtors were rejected. The Court directed issuance of the warrant of delivery of possession. The said order was confirmed by the Extra Assistant Judge, Amravati in Civil Appeal No. 55 of 1969.

4. Feeling aggrieved by the said order the judgment debtors preferred second appeal No. 277 of 1971 in the Bombay High Court which was decided in their favour vide judgment dated 2.2.1983 in which the learned single Judge of the High Court held, inter alia, that the effect of the certificate u/s 13(3) of the Act was that it gave to the creditors only the right to recover the entire amount due in one lump-sum as if it were a final decree for recovery of money and it could not operate as a final decree for foreclosure. Consequently, the second appeal was allowed, the orders of the trial court and the appellate court were set aside and the warrant of delivery of possession was quashed. The execution petition (original darkhast) was sent to the trial court for disposal in accordance with the law. The said judgment is under challenge in this appeal filed by the successors of the original plaintiff (assignee mortgagee-creditor). The respondents in the appeal are the successors of the original defendant (mortgagor-debtor).

5. On analysis of the facts and the findings recorded by the trial court, the appellate court and the High Court the question that arises for determination is what is the nature and effect of the certificate issued u/s 13(3) of the Act. To put

it differently, the question is whether the certificate amounts to a final decree for realisation of the mortgage dues by sale of the mortgaged property or it amounts to final decree of foreclosure of the right of redemption of the mortgaged properties.

6. The learned counsel appearing for the appellants reiterated the case of the party that the certificate amounts to a final decree of foreclosure of the mortgaged properties and in execution of such a decree the decree-holder was entitled to recover possession of the properties from the judgment-debtor.

7. Per contra learned counsel appearing on behalf of the respondent contended that the certificate was nothing more than a final decree for realisation of the mortgage dues in a lump-sum by sale of the mortgaged properties.

8. Since the answer to the question formulated earlier depends on the interpretation of section 13(3) of the Act and its interaction with other relevant provisions of the Act it will be helpful to quote sections 12 and 13 of the Act in extenso:

"12. Provisions governing payment of installments - (1) Every installment shall be payable on or before the date fixed by the order of the Debt Relief Court, and this may, at the option of the debtor, be paid either to the Deputy Commissioner or to such other Revenue Officer as he may authorize in this behalf or to the creditor who shall pass a receipt therefore in such form as may be prescribed.

(2) When the land revenue or rent, as the case may be, due by the debtor is suspended or remitted, in whole or part, the installment shall be suspended and shall become payable one year after the last of the remaining installments. No interest shall be charged on such suspended installment.

13. Provisions when default made in payment of installment (1) If any installment is not paid on or before the due date, the creditor may apply, within eighteen months from the date of default, to the Deputy Commissioner within those jurisdiction the debtor ordinarily resides or earns his livelihood or to such other Revenue Officer as may be appointed in this behalf by the State Government, for the recovery of such installment as an arrear of land revenue, and thereupon the Deputy Commissioner or such other revenue Officer shall recover such installment an arrear revenue.

(2) If the installment or part thereof is irrecoverable, the Deputy Commissioner or other Revenue Officer may certify accordingly.

(3) If an installment or part thereof is certified as irrecoverable under sub-section (2) or if two consecutive installments remain in arrears, the Deputy Commissioner, on the application of the creditor, shall pass an order that the order of the Debt Relief Court fixing installments shall cease to have effect and the balance remaining due shall be recoverable as if a decree and in the case of a mortgage lien or charge as if a final decree had been passed by a court of civil jurisdiction.

(3-A) Revisions of order under sub-section(3). The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, the Deputy Commissioner under sub-section (3) call for and examine the record of any case pending before, or disposed of by the Deputy Commissioner and may pass such order in reference thereto as it thinks fit:

Provided that it shall not vary or reverse any order affecting any question of right between private person without having given to the parties interested notice to appear and be heard in support of such order.

(4) If an installment is recoverable as an arrear of land revenue, the Deputy Commissioner or Revenue Officer appointed under sub-section (1) shall, as far as may be, follow the procedure laid down in the Central Provinces Land Revenue Act, 1917 (11 of 1917) or the Berar Land Revenue Code, 1928 as the case may be, for the recovery of Government dues as arrears of land revenue."

(emphasis supplied)

9. The other provisions of the Act which may be of assistance in interpreting the aforementioned sections are sections 14, 15 and 27. The said sections are also quoted for the sake of convenience:

"14. Application of sums recovered u/s 13(1) - When the Deputy Commissioner or other Revenue Officer recovers any sums under sub-section (1) of Section 13, he shall, in the first instance, apply the sum realized from the sale of any immovable property to the amount payable on amount of the debt which is secured by a mortgage or lien on such property in accordance with the scheme drawn up by the Debt Relief Court, or if the sum is insufficient towards such repayment rateably. If there is any surplus, such surplus shall be applied for rateable repayment of further installments, if any, under the scheme and the balance, if any, returned to the debtor.

15. Invalidity of transfer made by debtor in certain circumstances - (1) No transfer of immovable property shall be valid if made by a debtor, in respect of whose debts proceedings are pending u/s 5 or 6, unless made with the sanction of the Debt Relief Court.

(2) Every transfer of immovable property made by a debtor in respect of whose debts a scheme has been prepared under sub-section 91) of Section 11, shall be void unless made with the sanction of the deputy Commissioner within whose jurisdiction the debtor ordinarily resides or earns his livelihood. The Deputy Commissioner shall not sanction any transfer such property unless he is satisfied that such transfer will not defeat the claims of any creditor the payment of whose claims has been ordered by such scheme.

27. Readjustment of installment fixed under Central Provinces and Berar Debt Conciliation Act- (1) In any local area to which the State Government may, by notification, apply this section, a debtor whose debts did not exceed rupees

twenty-five thousand at the time of making an application under the Central Provinces and Berar Debt Conciliation Act, 1933 (hereinafter referred to as the said Act.), and the settlement of whose debts was effected under the said Act may, notwithstanding anything contained in the said Act or in this Act, apply to a Debt Relief Court to readjust the installment fixed in the agreement registered under the said Act.

(2) If on an application made under sub-section (1), the Debt Relief Court is satisfied that the installment are beyond the (paying) capacity of the debtor, it may readjust the installments so as to bring them within his (paying) capacity but not so as to reduce the total amount payable by him under the said agreement.

(3) The rights under the said agreement shall thereupon be extinguished and the installments so readjusted shall be deemed to be installments fixed under this Act.

(4) On an application being made under sub-section (1), the proceedings; if any, pending before a Revenue Officer u/s 13 of the Central Provinces and Berar Debt Conciliation Act, 1933 for the recovery of an amount due in accordance with the terms of the agreement to which the application relates shall, if so required by the Debt Relief Court, be stayed. The proceeding shall be, resumed, if the application is rejected.

(5) If an application made under sub-section (1) is rejected the debtor shall not be entitled to make another application to the Debt Relief Court."

10. The specific question for consideration relates to interpretation of section 13(3). What do the expressions "in the case of a mortgage, lien or charge as if a final decree had been passed by a court of civil jurisdiction" mean. Does it mean that a deemed decree for foreclosure of the mortgaged property comes into existence automatically when the order of the Debt Relief Court ceases to have effect and the creditor-mortgagee can straightaway proceed to any execution for recovery of possession of the mortgaged property or steps have to be taken for sale of mortgaged property or steps have to be taken for sale of mortgaged property in accordance with the provisions in Order 34 of the Civil Procedure Code. While deciding this question it has to be kept in mind that in the mortgage deed it is stipulated that in case the mortgagor does not pay the mortgage loan within the time stipulated then the property shall stand foreclosed. A further question in this connection is what is the effect of the Act on the mortgage transaction in the case. On perusal of the relevant provision of the Act it is clear to us that the Act, which was intended to make provision for relief of indebtedness of agriculturists, was in the nature of a temporary statute initially for a period of three years. In the Act various provisions have been made enabling the agriculturists to get relief from indebtedness by seeking intervention of the statutory authorities who are empowered to draw a schedule of time by providing reasonable installments and to further revise the schedule of payment

in an appropriate case. In case of default in payment of the debt by the debtor according to the schedules the creditor is required to apply to the Revenue Officer authorised by the State Government for recovery of such installment as arrear of land revenue and thereupon such revenue officer shall recover such installment as an arrear of land revenue. In sub-section (2) of the said section it is provided that if the installment or part thereof is irrecoverable the authorised officer may certify accordingly. In sub-section (3) of the section of consequences which follow in a case in which the authority has certified the installment or part thereof as irrecoverable under sub-section (2) or if two consecutive installments remain in arrear then the Dy. Commissioner on the application of the creditor shall pass an order that the order of the Debt Relief Court fixing installment shall cease to have effect and the balance remaining shall be recoverable as if a decree, and in the case of a mortgage, lien or charge as if a final decree has been made by a Court of Civil jurisdiction.

11. On a fair reading of the provisions of the Act referred to above, it is clear that the statute has only attempted to help the agriculturists by making it easier for them to pay the accumulated dues in installments and has further safeguarded their interest by providing for adjudication of the matters relating to recoverability or otherwise of the loan amount from the debtor. Only in extreme cases in which the debtor has not merely defaulted in payment of installment fixed by the authority but outstanding amount is found to be not recoverable as arrear of land revenue then in such a case the statute authorises the creditor to proceed for realisation of his dues as if the final has been passed in his favour by a court of civil jurisdiction.

12. What the provisions of the Act, as we read them, provide is that in a case where the debtor fails to utilise the benefits given to him under the statute and it is not possible to realise the amount from him according to the procedure prescribed under the Act then the creditor is to realise his dues by proceeding on the basis that there is a "deemed decree" in his favour. In such a case recourse has to be taken to the provision of Order 34 of the CPC for execution of a final decree which is made clear in the last part of section 13(3). The provisions of the Act neither specifically nor by reasonable inference can be said to lay down that in a case where conditions specified in section 13(3) are complied with a decree for foreclosure of the mortgage shall be deemed to have been passed and the creditor can straightaway, without taking any other step file an execution petition for delivery of possession of the mortgaged property. In that view of the matter the High Court in this case rightly interpreted the decree to be one for realisation of the entire amount due in lump-sum and rightly directed the executing court to proceed in the matter accordingly.

13. Thus, there being no merit in the appeal, it is dismissed but in the circumstances of the case without any order for costs.