
(1945) 06 CAL CK 0027

In the Calcutta High Court

Case No : Appeal from Original Decree No. 237 of 1942

Bibhuti Bhusan Pal Choudhury and Others

APPELLANT

Vs

Srimati Mani Bala alias Manimala Dasi

RESPONDENT

Date of Decision : 29-06-1945

Acts Referred:

Citation : (1945) 06 CAL CK 0027

Final Decision : Dismissed

Judgement

1. This appeal is by the principal Defendants and it arises out of a suit upon a promissory note. The Plaintiff's case is that Defendant No. 1 and the predecessor-in-interest of the Defendants Nos. 2 and 5 executed a promissory note for the sum of Rs. 4,000 in favour of the pro forma Defendant No. 6, Hemangini Dassi, on the 9th August, 1926. Pro forma Defendant No. 6 by a deed of gift transferred her interest in the note to the Plaintiff. The interest payable on the amount was 9 per cent, per annum. The Defendants made payments towards interest totaling the sum of Rs. 1,735. The Plaintiff accordingly sues for the recovery of the principal with interest less Rs. 1,735.

2. The defence taken is as follows: No sum of money was advanced by Hemangini Dassi to the aforesaid Defendants at the time of the execution of the promissory note. On the 23rd December, 1919, the aforesaid Defendants borrowed the sum of Rs. 2,000 from Triguna Prosad Pal Choudhury, the Plaintiff's husband, and executed a promissory note in his favour for that sum. On the 13th August, 1920, they borrowed the sum of Rs. 1,000 from Srimati Hemangini Dassi, the mother of Triguna Prosad Pal Choudhury and executed a promissory note for Rs. 1,000 in her favour. On the 8th August, 1923, the aforesaid Defendants executed a promissory note this time in favour of Hemangini Dassi for the sum of Rs. 3,370. This was the amount due on the two previous promissory notes. On the 9th August, 1926, the promissory note in suit was executed in favour of Hemangini Dassi for the sum of Rs. 4,000 which represented the amount due for principal and interest on the promissory note for

Rs. 3,370 executed on the 8th August, 1923. Hemangini Dassi assigned this promissory note to the present Plaintiff Sm. Mani Bala Dassi. These are the facts stated by the Defendants.

3. On these facts the contention of the Defendants was that in passing a decree on this promissory note the Court was bound to re-open the transaction which took place on the 9th August, 1926, and ascertain the amounts which were originally advanced in favour of the Defendants or their predecessors. It was contended that in this case the original loan was represented by the sum of Rs. 3,000 which is the total of the sum advanced on promissory notes executed on the 23rd December, 1919, and 23rd August, 1920, respectively. The Defendants argued that they were not liable to pay under the Bengal Money-Lenders Act more than twice the principal advanced, that is, more than Rs. 6,000 less the amount paid by them during this period. They also prayed for installments.

4. The learned Judge relying on the provisions contained in the first proviso to sec. 36 (1) of the Bengal Money-Lenders Act has held that as the promissory note in suit was executed more than 12 years prior to the suit he could not re-open the transaction represented by that note. He has accordingly given the Plaintiff a decree for the amount claimed together with costs and has allowed the Defendant eight installments. Against this decision the Defendants appeal.

5. It was argued before us that the proviso to sec. 36 (1) of the Bengal Money-Lenders Act has no application and that the transaction which took place on the 9th August, 1926, should be re-opened. Secondly, it was contended that the number of installments are too few. We shall first take up the argument regarding the applicability of the above-mentioned first proviso to sec. 36 (1). The proviso runs as follows:

Provided that in the exercise of these powers the Court shall not (i) re-open any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim.

6. The learned Advocate appearing for the Appellants contends that the proviso can apply only when the adjustment or agreement creates new obligations and he contends that in the present case no new obligation was created on the 9th August, 1926, when the promissory note in suit was executed. He argued that this promissory note was merely a renewal of the old promissory notes and that the cause of action of the Plaintiff depended not on anything which took place on the 9th August, 1926, but rested on the loans which were advanced on the 23rd December, 1919, and the 23rd August, 1920. In our opinion, this Argument cannot be given effect to. The promissory notes executed on the above-mentioned two dates were in favour of two different persons, namely, Triguna Prosad Pal Choudhury and Hemangini Dassi. The promissory note executed on the 8th August, 1923, for the sum of Rs. 3,370 was in favour of Kemangini Dassi

alone. This fact alone shows that the transaction was different and that the cause of action was different. The learned Advocate for the Appellants then argued that even if it be conceded that the transaction of the 8th August, 1923, gave rise to a distinct cause of action from that which arose upon the earlier two promissory notes, at any rate the cause of action on the promissory note of the 9th August, 1926, was based on the transaction which took place on the 8th August, 1923, and therefore, the original loan should be taken to be that advanced on the 8th August, 1923. We are unable to accept the argument that no new obligation was created by the transaction of the 9th August, 1926, nor are we able to accept the argument that the Plaintiff's cause of action rested on the transaction of the 8th August, 1923, when the promissory note for Rs. 3,370 was executed. On the 9th August, 1926, the dues on the previous promissory note for principal and interest were consolidated and the Defendants agreed to pay interest on the consolidated sum of Rs. 4,000. This clearly gives rise to a new cause of action and there can be no doubt that the adjustment or agreement which took place on the 9th August, 1926, created new obligations. That being so, the adjustment or agreement cannot be reopened as it took place at a date more than twelve years prior to the institution of this suit. Our attention has been drawn by the learned Advocate for the Appellants to the case of *Jadu Nath Roy v. Jagat Prasanna Mukherjee* (1944) 42 C.W.N. 625 and it was argued that this case supported the contention of the Appellants that no new obligation was created by the transaction of the 9th August, 1926. We have been through the case and are of opinion that it does not support the contention urged on behalf of the Appellants. In that case the suit was upon a mortgage. The mortgage was kept alive but some of its terms were varied from time to time and it was held that in those circumstances a subsequent transaction (Ex. F) by which the terms were varied was not protected by the aforesaid proviso referred to above as it did not create new obligations.

7. In deciding this matter the learned Judges said this:

We hold that the phrase "purporting to create new obligations" used in the proviso covers only the case where the original obligation undertaken by the borrower at the time of the loan is completely superseded and a substituted obligation created. Any other interpretation would defeat the object of the Act. By Ex. F the past accounts were no doubt closed but the security and the obligation created by the mortgage Ex. A was continued. not extinguished and substituted. By that document a new obligation was not created.

8. The present case is of an entirely different nature. The obligation on the promissory note for Rs. 3,370 which was executed on the 8th August, 1923, has been completely superseded and substituted by the obligation created on the 9th August, 1926, when the promissory note for Rs. 4,000 was executed in favour of the Plaintiff.

9. Our attention was also drawn to the case of *Srce Srce Iswar Sridhar Jieu v. Jahore Lal Mukhopadhy*a (1944) 49 C.W.N. 37. All that we need say about this

case is that it has nothing to do with the matter under consideration. We are of opinion that the agreement of the 9th August, 1926, closed previous dealings and created a new obligation, namely, the obligation to pay the sum of Rs. 4.000 with interest at 9 per cent, per annum. That being so, the first proviso to sec. 36 (1) of the Bengal Money-Lenders Act applies and this transaction cannot be reopened. The next point relates to the question of instalments. The Defendants have been granted eight instalments. The learned Judge has considered the pecuniary circumstances of the parties and he has also considered the fact that the Plaintiff has been kept out of her dues for a very long time. The evidence discloses that the Defendants have valuable properties whereas the Plaintiff is in bad pecuniary circumstances. We are of opinion that the number of instalments is quite fair. We accordingly uphold the decision of the Court below and dismiss the appeal with costs,-hearing-fee, two gold mohurs.