(1941) 04 PAT CK 0011

In the Patna High Court

Debabrata Banerjee APPELLANT

Vs

Bank of Bihar Ltd. RESPONDENT

Date of Decision : 08-04-1941

Acts Referred:

Bihar Money Lenders Act, 1938 — Section 18
Civil Procedure Code, 1908 (CPC) — Section 47
Money Lenders Act — Section 8

Citation : AIR 1941 Patna 562

Hon'ble Judges : Varma, J;Shearer, J

Bench : Full Bench

Judgement

Varma, J.—This is an appeal on behalf of the judgment-debtor.

2. The respondent is the Bank of Bihar, Ltd., Patna. On 24tb February 1940, the bank obtained a mortgage decree for Rs. 8000. In the course of the execution proceedings the judgment debtor put in an application u/s 18, Bihar Money-lenders Act, and Section 47, Civil P.C., for settlement of the value of the property for sale. The opposite party, that is the bank, contended that the Moneylenders Act has no application to banking transactions and for this the bank relied upon the case in Sagarmal Marwari Vs. Bhuthu Ram and Others, .

3. The lower Court was of opinion that, although the case was u/s 8, Money-lenders Act, the principle laid down therein would cover the present case also and, therefore, it held that the Money-lenders Act had no application to the present case. But under Order 21, Rule 66, the Court proceeded to settle the value of the properties advertised for sale and ordered that the valuation fixed by both parties be put down in the sale proclamation. It is against this order that the appellant has moved this Court. Mr. S.N. Banerji, appearing on behalf of the appellant, has drawn our attention to Section 3, Bihar Money-lenders Act, and a notification in the Bihar Gazette published under that section. Section 3, Bihar Money-lenders Act, runs as follows:

The Provincial Government may, by notification, for any special reason or reasons to be stated in such notification, exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the Province of Bihar from the operation of all or any of the provisions of this Act.

4. The Local Government exercising its powers under this section, issued a notification which is No. 997-Vi A-7/39 Com., on 19th July 1939. This notification runs as follows:

In exercise of the power conferred by Section 3, Bihar Money-lenders (Regulation of Transactions) Act, 1939 (Bihar Act, 7 of 1939), the Governor of Bihar is pleased to exempli, in all areas of the Province other than the Santal Perganas and the Chota Nagpur Division, the money-lenders or class of money-lenders or class of loans specified in col. 1 of the Schedule below from the provisions of the said Act mentioned against them in col. 2 of the said Schedule for the reasons mentioned against them in col. 3 of the said Schedule.

5. The bank comes under the description of Joint Stock Companies registered under the Companies Act. It is exempted from the provisions of the Act mentioned in Sections 4, 7 Section 10, 11 and 12 from the Money-lenders Act, the reasons being as follows:

Unlike private money-lenders the working capitals of these institutions are made up mostly of contribution by a very large number of persons in the shape of shares, deposits, loans, etc. Irrespective of whether their debtors pay back the loans and interest these institutions have to repay deposits and interests, etc., as soon as they become repayable. The restrictions contemplated by these sections are likely to make their debtors negligent of their debts in due time which might lead to the freezing of the bank''s assets with all the evil consequences resulting there from detrimental to the business of these institutions as well as to their depositors. Both credit and trade of the province would suffer. Nothing should be done to shake the confidence of the public in the stability of these institutions.

6. Referring to these terms of the notification Mr. S.N. Banerji urges that banks have not been exempted from the operation of Section 18, Money-lenders Act, and to the extent that the Court has refused to act u/s 13 of the said Act the Court has acted erroneously. With regard to the case reported in Sagarmal Marwari Vs. Bhuthu Ram and Others, . Mr. Banerji urges that in that case the question was whether local legislation could restrict Sections 32 and 79, Negotiable Instruments Act. On the other hand, Mr. Section M. Mullick, appearing on behalf of the bank, urges that the real question is whether the Money-lenders Act applies to banking business. He has drawn our attention to Ch. 5, Government of India Act, 1935, and especially to Section 100 which runs as follows:

(1) Notwithstanding anything in the two next succeeding Sub-sections, the, Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule to this Act (hereinafter called the ''Federal Legislative List.'')

(2) Notwithstanding anything in the next succeeding Sub-section, the Federal Legislature, and, subject to the preceding Sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List 8 in the said Schedule (hereinafter called the ''Concurrent Legislative List.'')

(3) Subject to the two preceding Sub-sections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List 2 in the said Schedule (hereinafter called the ''Provincial Legislative list.'')

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

7. Now referring to Schedule 7, Mr. Mullick says that the legislation about banking is mentioned as Item 38. That item has been mentioned as banking that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on "business only within that State. It may be noted here that Sagarmal Marwari Vs. Bhuthu Ram and Others, was dealing with Item 28 which dealt with cheques, bills of exchange, promissory notes and other like instruments. Mr. Mullick''s argument is that in so far as any Provincial Legislature attempts to touch a transaction entered into by a Bank in the conduct of banking business that would be ultra vires in view. of the fact that the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to those matters. Any law that restricts the right of a bank to realise its debt is an encroachment which relates to banking as mentioned in Item 88 of the List l. Section 107, Government of India Act, 1935, lays down:

(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty''s pleasure, has received the ascent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which having been so reserved, has received the assent of the

Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3)If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State, shall to the extent of the repugnancy, be void.

8. In Sagarmal Marwari Vs. Bhuthu Ram and Others, on which reliance has been placed by the learned advocate for the respondent it was held that a promissory note is specifically included in item 28 of List 1 of Schedule 7, Government of India Act, 1935. Therefore, according to Section 100 of the Act the Federal Legislature has the exclusive right to legislate with regard to promissory notes. If the Provincial Legislature while purporting to legislate upon a subject in List 2 has trespassed upon a field defined in List 1 and reserved u/s 100(i) for the Federal Legislature, then nothing can make that legislation valid and what could not be done directly by the Provincial Legislature could not be done incidentally or indirectly. It could not nullify, by implication any more than expressly, a statute like the Negotiable Instruments Act, which it could not enact and, therefore, it was held that the provisions of Section 8, Money-lenders Act, though directly dealing with money lending, trespassed indirectly upon the forbidden field, and nullified rights which existed in that field and Section 8, Money-lenders Act, could not confer jurisdiction on a Court to pass an order contravening the provisions of the Negotiable Instruments Act in respect of promissory notes or debarring the holder of a promissory note from recovering the full amount of principal and interest due according to the apparent tenor of the note. This case came to be noticed by the Federal Court only with regard to one portion of the judgment where observations were made on the "pith and substance" theory which were not accepted by the Federal Court. But the real question in the case before us is whether the Money lenders Act is an enactment which trespasses upon an enactment connected with Item 38 of Schedule 7 of List 1:

Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

9. I have not come across any decided case on the point; but on looking at item 38 of List 1 it seems that the legislation contemplated there under is of the type which is to be found in the Imperial Bank of India Act, 1920, or the Reserve Bank of India Act, 1934, which deal with the establishment of the bank, the nature of the business carried on by the Bank and the way in which a bank can be wound up.

10. In the case of the former, a look at the enactment shows that Ch. 1 deals with the establishment and incorporation of the Imperial Bank, and Ch. 2, deals with the transfer of the undertakings of Presidency Banks to the Imperial Bank.

In Ch 3, Section 8 gives the nature of business which the bank may transact and which have been specified in Schedule 1 of the limitations mentioned therein; Section 10 authorizes the bank to do Government business; Section 12 deals with the establishment of branches and agencies; Section 18 authorizes the bank to take over business of certain other banks and for that purpose to increase its capital; and Section 13A gives power to the bank to grant loans to certain other banks. Chapter-4 deals with shares, contracts and regulations of the bank, Oh. 5 deals with management and Ch. 6 gives power to the Central Board to make bye-laws. Schedule 1, Part 1, again authorizes the bank (a) to advance and lend money, and open cash credits for certain securities (It is not necessary to mention the nature of the securities under this Act), (b) to sell and realize the proceeds of sale of any such promissory notes, debentures, etc., (c) to advance and lend money to Courts of "Wards upon certain conditions...(o) to borrow money for the purposes of the bank''s business, and to give security for money so borrowed by pledging assets or otherwise...and (q) generally, to do all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business including foreign exchange business, hereinbefore specified. Part 2 of the enactment points out the nature of the business that the Bank shall not transact.

11. A reference to Schedule 2 in detail is not necessary, because it deals with transfer of shares and alteration of capital. Again, a reference to the Reserve Bank of India Act (Act 2 of 1934) shows that under Ch. 2 it deals with incorporation, share capital, management and business, Section 17, for example, showing the business which the bank may transact and Section 19 showing the business which the bank may not transact. Chapter 3 describes the central banking functions, and Ch. 4 deals with general provisions and also with liquidation of the bank (Section 57). I am of opinion that these are the type of enactments contemplated by Item 38 of List 1 of Schedule 7, Government of India Act, 1935.

12. "Money lending" has been mentioned in these two enactments as a part of the business of the bank. These two enactments do not show the terms and conditions on which the money lending business has to be transacted. The Bihar Money-lenders Act does not enact anything in the nature of the enactments mentioned above. Money-lending by itself comes clearly under Item 27 of List 2 of Schedule 7. Section 13, Bihar Money-lenders Act, cannot be said to be legislation connected with "the conduct of banking business by corporations, etc.," and, therefore, it cannot be said to have trespassed upon the rights of the Central Legislature. Money-lending is only a part of the business of the Bank, and, therefore, any legislation with regard to money-lending cannot be said to be enactment in connexion with the conduct of banking business.

13. An argument has been advanced that the exemptions in the Government notification show that the Local Government realized that they were encroaching upon the rights of the Central Legislature; but it is not necessary to go behind

the reasons given against those items. Our attention has been drawn by the learned advocate for the appellant to two cases (civil Revn. No. 667 of 1940, decided on 28th January Gopal Prasad v. Ram Prasad Since reported in AIR 1914 Pat. 377 and Misc. Appeal No. 276 of 1939, decided on 26th July Chota Nagpur Banking Association Ltd. Vs. Radha Gobinda Singh and Others, decided by this Court; but these cases do not help us in coming to any conclusion with regard to the facts of this case.

14. In civil Revn. No. 667 of Gopal Prasad v. Ram Prasad Since reported in AIR 1914 Pat. 377 the decree in which relief u/s 11, Moneylenders Act, was sought was passed before the enactment of the Money-lenders Act, 1989. This decision does not help the appellant very much. In Misc. Appeal No. 276 of Chota Nagpur Banking Association Ltd. Vs. Radha Gobinda Singh and Others, the Chota Nagpur Banking Association raised the question of its exemption from the operation of Section 11, Money-lenders Act, but referring to the notification of 19th July 1939, it was pointed out that the appellant in that case, the Chota Nagpur Banking Association was not registered under the Companies Act, 1913, but under the old Act, 6 of 1882, and, therefore, it was held that this exemption could not be claimed. But this decision is important for this case, inasmuch as it was not argued on behalf of the appellant that Section 11, Money-lenders Act, trespassed upon Item 38 of List 1 of Schedule 7, Government of India Act, 1935.1 am of opinion that Section 13, Bihar Money-lenders Act, does not legislate either directly or indirectly with regard to the conduct of banking business.

15. Under the circumstances I would set aside the order of the Court below and send back the case for disposing of the application of the appellant u/s 13, Bihar Money-lenders Act, in accordance with the observations made above. The appellant is entitled to the costs of this Court.

Shearer J.

16. I entirely agree. Section 13, Bihar Money-lenders (Regulation of Transactions) Act, 1939, requires a Court, executing a decree {or the recovery of money advanced by a money-lender as a loan, to estimate the value of any property that may be attached, and prohibits it, except under certain conditions, from selling the property for less than the amount at which it is so valued. Quite clearly such an enactment is not an enactment relating to the conduct of banking business by a corporation. The mere fact that such a decree may, in the ordinary course of its business, be obtained by a bank registered under the Companies Act, cannot make it so. In order to succeed on this point it was incumbent on the decree-holder to point to some provision in the law relating to banking and to show that there was a conflict between it and this enactment of the Provincial Legislature. No attempt was, however, made to do this.

