(1941) 12 CAL CK 0002

In the Calcutta High Court

Girish Chandra Das APPELLANT

Vs

Siba Prasad Jana and Another RESPONDENT

Date of Decision : 09-12-1941

Acts Referred:

Bengal Money Lenders Act, 1940 — Section 35, 86(b)

Citation : AIR 1942 Cal 472

Hon'ble Judges : Sen, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Sen, J.—This is an appeal from an order dismissing an application u/s 35, Bengal Money-Lenders Act, for default. The application was made by the judgment-debtor. On 19th April 1941, the parties were ready. On that date, however, there seems to have been some sort of understanding between the parties and the judgment-debtor undertook to pay Bs. 2000 within week. Upon this undertaking being given, the matter was adjourned to 26th April 1941 for further orders, and the case was directed to be taken off from the peremptory list. On 26th April 1941 the judgment-debtor filed a petition stating that he was unable to deposit the sum owing to the fact that a boat containing merchandise belonging to him had sunk. He prayed for further time to deposit this amount. The learned Subordinate Judge rejected the prayer Of the judgment, debtor and by the same order dismissed his petition u/s 35, Bengal Money-Lenders Act, for default.

2. It was argued on behalf of the appellant that this order of dismissal is bad, inasmuch as 26th April 1941 was not a date fixed for the hearing of the petition. We are of the opinion that this contention is sound. The learned Subordinate Judge should have fixed another date for hearing the petition. We would have been inclined to send the matter back for re-hearing but for the fact that we are of the opinion that the petition u/s 35, Bengal Money-Lenders Act, cannot succeed. The decree in this case was passed on 6th September 1937. The judgment-debtor took all possible steps for delaying the realisation of the decree. 18th August 1938 was fixed, by the Court for fixing the valuation of the property

to be sold. On that day the judgment-debtor put in no objection and the property was valued, we understand, at Bs. 19,000, and the sale proclamation was issued upon this valuation. Thereafter, the judgment-debtor obtained a stay order from the Debt Settlement Board and when the stay order exhausted itself he made an application u/s 86(b), Bengal Money-Lenders Act. That application having failed, the present application u/s 35, Bengal Money-Lenders Act, was made. Section 35, Bengal Money-Lenders Act, runs thus:

Notwithstanding anything contained in any other law for the time being in force, a proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be saleable at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation.

3. Then, there is a proviso with which we are not concerned. The contention oh behalf of the appellant is that the sale proclamation should now be amended; the property should be re-valued and only so much of the property of the judgment-debtor should be sold as would be sufficient to satisfy the decree. On behalf of the decree-holder, it was contended that Section 35, Bengal Money-Lenders Act, had no application to a case where the loan was taken before the Act, or, at any rate, to a case where the decree was passed before the Act. We are not impressed by this argument. There is nothing in Section 35, Bengal Money-Lenders Act, which would justify us in holding that it is restricted to oases of loans taken after the Act or to decrees passed after the Act. The section states that when property is sought to be sold in execution of a decree passed in respect of a loan, the proclamation shall be drawn up in a certain way and the property specified therein shall not be sold below a certain price. There is nothing in the section which says or implies that the decree must be one which was passed after the Act or that the loan must be one advanced after the Act. The section deals with all decrees passed in respect of loans when a sale is intended in execution of the decree. There are many sections in the Act which affect decrees passed before the Act and loans taken before the Act. There is no room for suggesting that the scope of the Act is limited to post Act decrees and post Act loans. In my opinion, there would have been no difficulty in the way of the judgment-debtor getting the proclamation framed and. the sale held in accordance with the provisions of Section 35 were it not for the fact that there has already been a proclamation issued. The section must be construed strictly. It lays down what should be done at the time of drawing up the sale proclamation and at a sale held pursuant to such proclamation. When the present sale proclamation was drawn up the Bengal Money-Lenders Act was not in force and Section 35 could not therefore affect such a proclamation.

4. The section nowhere says that a sale proclamation validly issued before the Act would cease to have effect after the Act nor does it say that such sale proclamation should be amended in accordance with its provisions. It merely

directs what should be done when a sale proclamation is about to be drawn up and at a sale held pursuant to such proclamation. Mr. Mookerjee for the appellant contends that there is a prohibition in the section against selling property at a price lower than the decretal amount and he argues that this provision should apply to the present sale. If the section be read carefully it will be found that it contains no such general prohibition. The relevant portion of the section says--"and the property so specified shall not be sold at a price which is less than the price specified in the sale proclamation." The prohibition is restricted to the sale of "property so specified," i.e., to the sale of property specified in a sale proclamation framed in accordance with Part 1 of Section 35. It has no application to a sale of property included in a sale proclamation drawn up before the Act came into operation. In my opinion, the section does not require the Court to set aside or amend a sale proclamation validly and duly drawn up. Section 35 has no application to this case. For these reasons the application of the judgment-debtor must fail. The appeal is dismissed. There will be no order for costs. No further order is necessary on the Rule.

B.K. Mukherjea, J.

5. I agree.

