

(1942) 02 CAL CK 0018
In the Calcutta High Court

Kumud Behari Sen and Others

APPELLANT

Vs

Satyabrata Sen

RESPONDENT

Date of Decision : 27-02-1942

Acts Referred:

Letters Patent Act, 1865 — Clause 15

Citation : AIR 1943 Cal 169

Hon'ble Judges : Derbyshire, C.J.;Panckridge, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—This is an appeal from a decision of Sen J., whereby he dismissed an application by the defendants in the original suit which was a mortgage suit for relief under the Bengal Money-Lenders Act of 1940. It has been contended at great length that no appeal lies from the decision of Sen J., dismissing the appellants' application. I am of the opinion that this is an original application for relief under the Bengal Money-Lenders Act which has been refused by the learned Judge, who in such refusal has delivered a judgment within the meaning of Clause 15, Letters Patent. From that judgment, in my opinion, an appeal lies to this Court under Clause 15, Letters Patent. The debt is one of old standing and apparently it was consolidated on 6th October 1918, and thereafter the interest payable exceeded the maximum permitted under the Bengal Money-Lenders Act, that is to say, eight per cent, simple interest. Counsel for the respondent in the application contended that there was no need for the Court to reopen the preliminary decree in the mortgage suit inasmuch as the respondent in the application, that is the plaintiff in the original suit, did not claim any more interest than that permissible under the Bengal Money-Lenders Act.

2. The learned Judge agreed with that contention and said that in his opinion there was no necessity to exercise any of the powers which the Court has u/s 36 of the Act and therefore there was no necessity to reopen the decree. The learned Judge in so holding appears to have decided that the respondent to the

application for relief can by making certain concessions bar the applicants from the relief that they claim. I should not be prepared to assent to that proposition. It seems to me that once the applicants for relief establish that the interest which has been claimed and ordered "under the preliminary decree exceeds the rate permitted by the Bengal Money-Lenders Act then they are entitled to have the transaction reopened, and if the transaction is (reopened then the applicants are entitled to. such relief as the Court ought to grant under the provisions of the Bengal Money-Lenders Act. In this case that would mean that in "addition to the limitation of the amount to which the respondent to the application, that is the plaintiff in the suit, has agreed the applicants for relief would be entitled to have an order for payments of the sum found due by instalments which is a thing they are anxious to get.

3. We have no evidence before us as to the means and position of the applicants or of the respondent in this matter. In my opinion the only way in which we can satisfactorily dispose of it is to send it back to the learned Judge to deal with it in the light of the observations that have just been made. We give the further direction that he give such relief as the Act provides that he should give on ascertainment of the true relationship between the parties and their circumstances. The matter is therefore remanded to the learned Judge for him to dispose of it in accordance with our directions. The appellants will have the costs of this appeal, but the costs of the first and the second applications will be in the discretion of the learned Judge to whom this matter goes back.

Panckridge, J.

4. I agree.