

(1992) 04 PAT CK 0027
In the Patna High Court
Case No : A.F.A.D. No. 453 of 1983

Most. Sukhia and Another

APPELLANT

Vs

Took Narain Whish Wakarma and Others

RESPONDENT

Date of Decision : 17-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0027

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—This second appeal arises out of a suit filed by the plaintiff-respondent for recovery of Rs. 5001/- (Rs. 4000/- principal and Rs. 1001/- by way of interest). The suit was dismissed, on appeal the same was decreed, and thereafter this Second Appeal.

2. Shortly stated, the facts of this case are that the defendant-appellant No. 1 Most. Sukhia executed a usufructuary mortgage deed on the 7th of December, 1973 after receiving Rs. 4000/-. It was stated in the deed that in case the plaintiff did not get possession of the mortgage house, then the interest at the rate of Rs. 1 / - per month will be payable. It is said that possession of the house in question could not be taken by the plaintiff. Thereafter the suit was filed for realisation of Rs. 5001/-(including interest). The debtor Most. Sukhia was impleaded as defendant No. 1. Her son and daughter were also made defendants.

3. The suit was contested by defendant No. 1 mainly on the ground that she was a scheduled debtor, and as such the debt itself stood discharged u/s 3 of the Bihar Debt Relief Act, 1976 (Act No. 7 of 1977) (hereinafter to be called as "the Act"). The other defendants also filed their written statement, wherein they stated that they had-no concern with the debt. According to them, they could not be liable for any debt incurred by their mother.

4. The trial court held that the debt stood discharged u/s 3 of the said Act. It, therefore, dismissed the suit. On appeal the learned sixth Additional District Judge, Patna agreed with the finding of the trial court that defendant No. 1 was a

scheduled debtor within the meaning of Section 2(b) of the Act. But he held that the plaintiff was not a professional money-lender and as such the loan advanced by him to defendant No. 1 did not stand discharge u/s 3 of the Act.

5. The learned counsel in support of the appeal contended that the finding that the plaintiff was not a professional money-lender is erroneous in law. According to him, it was for the plaintiff to prove that he was not a professional money-lender, and in absence of any such pleading and evidence, the court below has erred in holding that the plaintiff was not a professional money-lender. In this connection learned counsel says that the decision reported in *Lakhi Narayan Sao Vs. Smt. Bhagwati Kuer and Others*, on which the court below has relied, has since been overruled by the decision reported in *Smt. Fula Devi Vs. Mangtu Maharaj and Others*, .

6. The learned counsel for the respondents, on the other hand, states that the finding that the plaintiff is not a professional money lender, is a pure finding of fact which cannot be interfered with in Second Appeal. He also urges that the finding that defendant No. 1 is a scheduled debtor is also erroneous in law. I agree with the learned counsel for the respondents that the finding that the plaintiff is not a professional money-lender is a finding of fact and cannot be interfered with in this Second Appeal, but I do not agree with him that the finding that defendant No. 1 is a scheduled debtor is erroneous. This finding also is a finding of fact which has been arrived at after due consideration of the evidence. The position therefore, is that both the findings, namely, that defendant No. 1 is a scheduled debtor and the plaintiff is not a money-lender are findings of fact and are binding on me in this Second Appeal.

7. The next question which arises in this case is as to whether the court below was right in holding that the debt did not stand discharge u/s 3 of the Act on the ground that the plaintiff was not a professional money-lender. In this connection it would be relevant to quote Section 3(1) of the Act, which runs as under:--

"3. Discharge of debts of Schedule debtors and consequences of such discharge
(1) Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force of law by virtue of any such law, and save as otherwise expressly provided by Section 5 of this Act, every debt incurred by a Scheduled debtor before the commencement of this Act including the amount of interest, if any, payable on such debt shall be deemed to have been wholly discharged....."

This section makes it abundantly clear that every debt incurred by a Scheduled debtor before the commencement of this Act shall be deemed to have been wholly discharged irrespective of the fact as to who advanced the loan. The debts which are expressly mentioned in Section 5 of the Act are the only debts which survive. 3 of the Act. Admittedly, the advance for mortgage by the plaintiff to defendant No. 1 does not fall under any of the heads mentioned in Section 5 of the Act. Therefore, Section 3 is fully applicable in this case and the debt stands

discharged. I may, however, mention here that Section 3 of the Act, which I have quoted above, says that notwithstanding anything contained in any other law for the time being, the debt shall be deemed to have been wholly discharged. Thus, notwithstanding the provision of the Money-Lenders Act, the advances made by non-professional money-lender also will be deemed to have been discharged under this section.

8. The suit also seems to have been decreed against the son and the daughter of defendant No. 1. Admittedly, they were not debtors. Therefore, no decree can be passed against them when the debt of defendant No. 1 itself stood discharged u/s 3 of the Act.

9. For the reasons mentioned above, I allow this appeal, set aside the judgment and decree passed by the appellate Court and dismiss the suit.