
(1964) 04 PAT CK 0002
In the Patna High Court
Case No : A.F.A.O. No. 380 of 1961

Rajani Kant Sinha

APPELLANT

Vs

The Bank of Bihar Ltd.

RESPONDENT

Date of Decision : 22-04-1964

Acts Referred:

Bihar Money Lenders Act, 1938 — Section 13, 2

Citation : AIR 1964 Patna 507

Hon'ble Judges : U.N. Sinha, J; R.J. Bahadur, J

Bench : Division Bench

Advocate : Kumar Bahadur, for the Appellant; Ram Nandan Prasad, No. 1, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the judgment-debtor and it arises out of a miscellaneous case, registered on the judgment-debtor's application u/s 47 of the CPC and Section 13 of the Bihar Moneylenders Act, in Execution Case No. 46 of 1959.

2. The facts necessary for determination of this appeal are these. The respondent Bank had instituted a suit against the appellant for a certain amount of money, said to have been overdrawn by the appellant from his account. The suit was decreed and execution has been levied. The judgment-debtor appellant filed an objection contending, inter alia, that if the execution case can proceed at all, the property which is proceeded against should be valued under the Bihar Moneylenders Act. According to the judgment-debtor appellant, after the property has been valued, only such portion of it should be sold which may be sufficient to satisfy the decree. This objection was considered by the learned Munsif under point No. 2. According; to the learned Munsif, the money for which the decree-holder had obtained a decree did not amount to a loan within the definition of that expression given, in the Moneylenders Act. This point was, therefore., negatived. On appeal by the judgment-debtor, this point was also re-iterated

before the learned District Judge. The learned District Judge has also held that "the overdrawn amount" could not be said to be a loan within the meaning of that expression in the Bihar Moneylenders Act. This point has thus failed on appeal also.

3. Learned counsel for the appellant has argued that the overdrawn amount, for which the Bank had instituted the money suit, was a loan within the meaning of Section 2(1) of the Bihar Moneylenders Act, and therefore, it was obligatory on the part of the executing court to value the land, which is being proceeded with, u/s 13 of the Money-lenders Act, and (sic) of that portion, proceeds of the sale of which the Court may consider to be sufficient to satisfy the decree. We have heard learned counsel for the parties on the question raised on behalf of the appellant, but we do not find sufficient materials on" record to accept the contention of the learned counsel for the appellant that the overdrawn amount fulfils the condition of a loan within the meaning of Section 2(f) of the Act. Loan, as defined in the Bihar: Moneylenders Act, means an advance, whether of money or in kind, on interest made by a moneylender, and it includes any transaction which in substance, is a loan. But no materials have been brought before us to indicate the circumstances under which the appellant was permitted to overdraw from his account. That there was not a regular overdraft bond executed by the judgment-debtor is not in dispute. All that is submitted is that the judgment-debtor was permitted to "over-draw" from his account, and for this amount the Bank instituted the suit. On this meagre material, it is not possible to hold that the amount for which the Bank had instituted the money suit was a loan-within the definition of the expression given in the Moneylenders Act. If the judgment-debtor was merely permitted to draw certain amount of money, although he had not that amount of money to his credit the transaction may not have amounted to a loan unless something more is brought on the record. No doubt the overdrawn amount was due to the Bank, for which the suit had been decreed. Nevertheless, it is difficult to hold that the overdrawn amount was an advance of money on interest or that, in substance, it was such an advance. In the application filed by the appellant, upon which the miscellaneous case arose, no materials were supplied for any conclusion in his favour in this respect. No evidence has also been adduced on his behalf. Under the circumstances, it is not possible to interfere with the judgment and order passed in this case.

4. The appeal, therefore, fails and it is dismissed. Under the circumstances, however, there will be no order for costs of the appeal.