

1951
Jan. 12

RAMNANDAN PRASAD NARAYAN SINGH

v.

MAHANTH KAPILDEO RAM JEE AND
ANOTHER

(and 3 other appeals)

[SHRI HARILAL KANIA C.], PATANJALI SASTRI
and CHANDRASEKHARA AIYAR JJ.]

Bihar Money-lenders (Regulation of Transactions) Act (VII of 1939), s. 7—Execution of fresh document for amount remaining due on loan under earlier document—Suit on later document—Interest before date of suit—Maximum amount that could be decreed—Whether to be calculated on basis of earlier or later document—“Amount of loan mentioned in, or evidenced by, such document” meaning of.

Where a fresh document is executed for the amount remaining due on account of principal and interest under a loan advanced on a prior document, and a suit is brought for recovery of the amount due under the later document with interest due thereunder, “the amount of loan mentioned in, or evidenced by, such document” for the purposes of s. 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, is the amount mentioned or evidenced by the later document and not that mentioned in the original document which was renewed and the court can pass a decree for an amount of interest for the period preceding the institution of the suit, which together with any amount realised as interest after the date of the later document, is not greater than the amount of loan mentioned in the later document. The maximum amount that can be so decreed is not the amount which together with the interest realised from the date of the original loan does not exceed the original loan.

Singheswar Singh and Others v. Nadni Prasad Singh and Others (A.I.R. 1940 Pat. 65). Lal Singh v. Ramnarain Ram and Others (A.I.R. 1942 Pat. 138), Madho Prasad Singh v. Mukutdheri Singh and Others (193 I. C. 661), Deo Nandan Prasad v. Ram Prasad (I.L.R. 23 Pat. 618), Ram Nandan Prasad Narain Singh v. Kulpati Shri Mahanth Goswami Madhwanand Ramji ([1940] F.C.R. 1). Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate and Others ([1940] F.C.R. 39) referred to.

APPELLATE JURISDICTION : Civil Appeals Nos. 98,
99, 100 and 101 of 1950.

Appeals from the orders of the High Court of Judicature at Patna (Manohar Lall and Imam JJ.) in Miscellaneous Appeals Nos. 108 to 111 of 1948.

Shambhu Barmeswar Prasad and *Ramanugraih Prasad* for the appellants.

H. J. Umrigar for the respondents.

1951. January 12. The Judgment of the Court was delivered by

CHANDRASEKHARA AIYAR J.—The decision of these four appeals, which are connected with each other and which have arisen out of orders made by the High Court of Patna in four Miscellaneous Appeals, depends on the interpretation of section 7 of the Bihar Money-lenders (Regulation of Transactions) Act, 1939.

The facts which have led to the appeals are found briefly stated in the petition filed by the Present appellants in the 3rd Court of Sub-Judge, Patna, and may be re-stated here for convenient reference:—

“The father of the petitioners borrowed Rs. 40,000 from the guru (ancestor) of the decree-holder under mortgage bond, dated 11-1-1893.

Out of Rs. 40,370-7-6 interest and compound interest up to 4-1-1910, Rs. 32,370-7-6 was paid in cash and for the balance Rs. 8,000 interest and Rs. 40,000 principal, *i.e.*, for Rs. 48,000 a Mortgage Suit No. 14 of 1910 was filed in 1st Court of the Sub-Judge, Patna, and in lieu of the claim and cost of the said suit two fresh mortgage bonds were executed on 11-7-1910, *viz.*, one for Rs. 40,000 and the other for Rs. 9,488 and the latter bond was satisfied by payment of Rs. 15,835 in cash.

With respect to the above bond of Rs. 40,000 dated 11-7-1910 the petitioners paid Rs. 38,530-13-6. Mortgage Suit No. 110 of 1927 was brought in the 3rd Court of the Sub-Judge, Patna, and a decree for Rs. 58,012-2-0 was passed on 9-7-1929. Out of this Rs. 5,000 was paid in cash and for the balance of Rs. 53,012-12-0 one mortgage bond dated 6-10-1931 was executed for Rs. 42,000 and on the same date two

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hand-notes were executed, *viz.*, one for Rs. 5,000 and one for Rs. 6,012-2-0.

One Suit No. 14 of 1933 for both the hand-notes was brought in 3rd Court of the Sub-Judge and a decree for Rs. 15,008-2-0 was passed on 28-2-1935.

This decree is under execution."

When the decree-holder sought to execute the money decree by attachment and sale of the judgment-debtors' properties stating that they were subject to a mortgage lien of Rs. 62,272-13-0 under the mortgage bond dated 6-10-1931, the two judgment-debtors, who are brothers, filed objections under sections 11 and 16 of the earlier Bihar Money-lenders Act III of 1938 and section 47 of the Civil Procedure Code. The petitions (two by each of them) were filed separately by the brothers. They urged that on a proper calculation under section 11 no lien was subsisting on the properties owing to payments made towards the mortgage debt amounting to Rs. 92,394-2-0. The Subordinate Judge held that this plea of the judgment-debtors could not be entertained in the Miscellaneous case before him relating to the execution and all that could be done was to notify the mortgage incumbrance without deciding anything as to the correctness of the amount claimed to be due under it; and this conclusion was partly based on the fact that section 16 of the Act had been declared by the High Court void. Appeals taken to the High Court were dismissed. The judgment-debtors thereupon preferred an appeal to the Federal Court, contending that section 7 and 13 of the new Act (corresponding to sections 7 and 11 of the old Act) were applicable and that it was the duty of the court to estimate the value of the property after making the necessary calculations under section 7 with reference to the lien. The decision of the Federal Court is reported in *Ramnandan Prasad Narain Singh and Another v. Kulpati Shri Mahanth Goshwami Madhwanand Ramji*⁽¹⁾. The case was remitted back to the High

(1) [1940] F.C.R. 1.

Court, giving liberty to the appellants to file an application under section 13.

In answer to a fresh application for execution dated 2-7-1942, the two brothers filed the same objections as before. Miscellaneous Cases Nos. 45 and 46 of 1942 related to sections 7 and 13 of the Bihar Money-lenders Act and Miscellaneous Cases Nos. 50 and 52 of 1942 related to the objections under section 47 of the Code of Civil Procedure. The Subordinate Judge held that the amount of the loan should be taken as the amount mentioned in the mortgage deed of 1931 and not the amount advanced in 1893 and that a sum of Rs. 70,840 was still due on the bond. He determined the market value of the several properties given as security, adopting 16 times the net income as the basis.

Appeals to the High Court were numbered as M. A. 108 to 111 of 1943 and they were heard by Manohar Lall and Imam JJ. They modified the order of the lower Court in certain respects. Even according to them the amount of the loan was what was mentioned in the mortgage bond of 6-10-1931, but as a sum of Rs. 11,855-3-0 had been repaid expressly towards the principal amount after the date of the bond, that amount became reduced to Rs. 28,150. Adding an equal sum by way of interest which according to them was the maximum amount, permitted to be allowed under section 7 of the Act, the total liability was stated to be Rs. 56,300 and a charge was declared on the property for this amount. They also directed that the valuation of the property should be fixed at twenty times the net income and not sixteen times. It is from this order that the present appeals have been preferred.

Two points were urged on behalf of the appellants, namely (a) that the decree-holder was barred by constructive *res-judicata* from contending that the construction placed upon section 7 by the judgment-debtors was wrong; and (b) that in applying section 7, we must consider the original amount of loan of Rs. 40,000 given in the year 1893 and allow the claim

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of interest only for that maximum sum, after taking into account all sums paid by the appellants and their predecessors towards interest since 1893.

The first point is entirely without substance. When the decree-holder contended that section 11 of the Bihar Money-lenders Act, 1938, was declared void and *ultra vires* and that therefore section 7 of the new Act which corresponded to section 11 was also inapplicable, the judgment-debtors pleaded that they were entitled to the benefit of section 7 of the new Act. The Federal Court held in *Ramnandan Prasad Narain Singh and Another v. Kulpathi Shri Mahanth Goshwami Madhwanand Ramji*⁽¹⁾ that the judgment-debtors (present appellants) were entitled to claim the benefit of the provisions of the new Act when the executing court proceeded under section 13 to determine the value of the properties to be sold. The correct interpretation of section 7 was not in question between the parties. To say that the appellants were entitled to take advantage of the provisions of section 7 is entirely different from the contention that the interpretation sought to be put by them on section 7 was the right one. The Federal Court was not dealing with any question of interpretation at all. It is impossible to see where the doctrine of constructive *res-judicata* comes in, so as to be of help to the appellants.

The second question raised on their behalf relates to the true meaning of section 7 of the Bihar Money-lenders (Regulation of Transactions) Act VII of 1939, which is in these terms :—

“7. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any agreement, no Court shall, in any suit brought by a money-lender before or after the commencement of this Act in respect of a loan advanced before or after the commencement of this Act or in any appeal or proceedings in revision arising out of such suit, pass a decree for an amount of interest for the period preceding the institution of the suit,

(1) [1940] F.C.R. 1.

which together with any amount already realised as interest through the court or otherwise, is greater than the amount of loan advanced, or, if the loan is based on a document, the amount of loan mentioned in, or evidenced by, such document.”

In the present case, the original loan of Rs. 40,000 was advanced as early as 11-1-1893. The appellants contend that for the purposes of calculating the interest to be decreed prior to the date of the suit the loan advanced must be taken to be the original sum and that if an account is taken of all the sums received by the creditor as interest from that date up to the date of the suit, there would be nothing due for interest. On the other hand, the decree-holder urges that having regard to the latter part of the section, the loan must be taken to be the amount mentioned in the mortgage bond dated 6-10-1931, namely Rs. 42,000. Whichever method of calculation is adopted, it must be remembered that it has to be made not for the purposes of passing any decree on the mortgage loan, but for estimating under section 13 of the Act the value of the properties to be brought to sale in execution of the money decree against the appellants.

As pointed out by Sir Maurice Gwyer C.J. in *Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate and Others*(¹), “Section 7 of the Act of 1937 is no doubt extremely obscure and ill-drawn.” The true intention of the framers of the Act is somewhat difficult to gather. But the Patna High Court has been consistently placing upon the section an interpretation which is opposed to the contention of the appellant in these proceedings.

The point came up expressly for decision in *Singheshwar Singh and Others v. Madni Prasad Singh and Others*(²) where a mortgage bond was executed on 31-8-1922 for a sum of Rs. 2,000 which was the balance of the principal and interest due under a mortgage bond of the 11th of October, 1912, for

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Rs. 1,391. The judgment-debtors raised the plea that the court should go back to the earlier bond of 1912 and that as a sum of Rs. 1,512 had been paid as and by way of interest towards that bond, no decree could be passed against them for more than the principal sum of Rs. 1,391. The learned Judges rejected this contention and took the amount stated in the document of 1922, namely Rs. 2,000, as the loan and they held that the plaintiffs were entitled to get a decree for interest for a sum not larger than Rs. 2,000 as no payment had been proved to have been made after the execution of the bond. The same view was taken in *Lal Singh v. Ramnarain Ram and Others*⁽¹⁾ and the plaintiffs were awarded a decree on the basis that the loan was to be taken as Rs. 2,909-8-0 which was the amount for which the hand-note sued upon was executed and not Rs. 1,000 which was the original amount advanced upon an earlier hand-note of the year 1924. The case reported in *Madho Prasad Singh v. Mukutdhari Singh and Others*⁽²⁾ lays down the same position. The Full Bench decision in *Deo Nandan Prasad v. Ram Prasad*⁽³⁾ reiterates the same view, pointing out the distinction between sections 7 and 8 of the Act and stating that while under section 8 we can go to the original loan in spite of a later document under section 7, the loan must relate to the document on which the suit is based, that is, the final document and not the original one. In each one of these cases, the question of the true meaning of section 7 was pointedly considered. This construction no doubt enables a creditor to circumvent the beneficent provisions of the Act by taking a document for the interest due and adding it to the principal amount. Gwyer C. J. points out this difficulty at page 59 in the case *Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate and Others*⁽⁴⁾. If the interpretation does not carry out the intentions of the framers of the Act by reason of unhappy or ambiguous phrasing, it is for the Legislature to intervene. But far from doing so, it has

(1) A.I.R. 1942 Pat. 138, 139.

(3) I.L.R. 23 Patna 618.

(2) (1941) 193 I.C. 661.

(4) [1940] F.C.R. 39.

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acquiesced, during all these years in the construction which the Patna High Court has been placing upon the section from the very next year after the enactment of the statute. Having regard to the great obscurity in the language employed in the relevant provisions and the inaction of the Legislature, it is, in our opinion, legitimate to infer that the view expressed by the Patna High Court is in accord with the intention of the Legislature.

The appeals fail and are dismissed with costs, only one set in all of them together.

Appeals dismissed

Agent for the appellants : *Tarachand Brij Mohanlal.*

Agent for the respondent : *R. C. Prasad.*

RAI BRIJ RAJ KRISHNA AND ANOTHER

v.

S. K. SHAW AND BROTHERS.

[SAIYID FAZL ALI, MEHER CHAND MAHAJAN,
MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

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Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947), s. 11—Order of Controller for eviction on the ground of non-payment of rent—Suit to set aside order—Jurisdiction of civil court—Question whether there was non-payment—Finality of Controller's decision.

Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is non-payment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if a Controller has wrongly decided the question whether there has been non-payment of rent, his order for eviction on the ground that there has been non-payment of rent cannot be questioned in a civil court.

Queen v. Commissioners for Special Purposes of Income-Tax (21 Q.B.D. 313) and *Colonial Bank of Australasia v. Willan* (L.R. 5 P.C. 417) relied on.