Privy Council Appeal No. 25 *of* 1942
Bengal Appeal No. 46 *of* 1941

Srimati Renula Bose - - - . - - - *Appellant*

v.

Rai Manmatha Nath Bose and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH MARCH, 1945

Present at the Hearing:

LORD GODDARD
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD GODDARD]

The action out of which this appeal arises was brought by the plaintiffs, who are respondents 1-4, to obtain relief under the provisions of the Bengal Moneylenders Act, 1940, in respect of a mortgage dated 25th May, 1914, whereby all persons interested in certain properties mortgaged them to the Maharaja of Darbhanga to secure the sum of Rs. 6 lacs with interest at 6 per cent. per annum. The facts were not in dispute and it is unnecessary to set out the title of the various parties. It is enough to say that from time to time various amounts were paid to the mortgagee in respect of the sums due under the mortgage and that on 12th June, 1935, in an action which he instituted against the mortgagors, a decree by consent was made in the action for some Rs. 4,58,058 the balance due to him under the mortgage, which together with the amount already paid would exceed double the amount originally advanced. On 17th September, 1936, the Maharaja assigned the benefit of the decree and the benefit of the securities under the mortgage deed to the appellant who gave value therefor and on 2nd February, 1937, she obtained the leave of the Court to execute the decree. On 1st September, 1940, the Bengal Moneylenders Act, 1940, came into operation, and thereupon the respondents 1-4 instituted proceedings in the High Court of Calcutta claiming relief under that Act. By this time more than twice the sum advanced had been paid either to the Maharaja or the appellant, and the respondents claimed in the action a declaration that they were not liable to pay any more and also asked for repayment of money paid by them in excess of the amount allowed by the Act, though this latter claim was not pursued at the trial. The case was heard before Edgley J., who dismissed the action on grounds to which reference will be made hereafter. On appeal his decision was reversed by the Appellate Division of the High Court (Derbyshire C.J. and Nasim Ali J.), who granted a declaration that the plaintiffs in the action were not liable to make any further payments either under the mortgage or under the decree of 12th June, 1935, or otherwise. It is from this decree of the High Court that the present appeal is brought.

The question for decision was conveniently summarised by Sir Herbert Cunliffe in these terms: Does the Act of 1940 enable the Court to afford relief to a mortgagor under a mortgage executed before the Act in respect of a final decree made by consent before the Act for the payment of an agreed amount of principal interest and costs and assigned before the Act

to a *bona fide* assignee for value where the rate of interest is well within the limits allowed by the Act? Their Lordships would however observe that in their opinion the fact that the decree was made by consent is immaterial, as is also the fact that the amount was agreed. Nor do they think that the rate of interest in the present circumstances is material. It seems to them that the real question here is whether the Court can grant relief to a judgment debtor for money lent against a *bona fide* assignee for value of the decree where both the decree and the assignment took place before the Act came into operation.

The Act, No. X of 1940, was passed to regulate and control moneylenders and moneylending transactions in Bengal and applies to loans made by anyone and not only by professional moneylenders. Its main provisions so far as are material for present purposes are that maximum rates of interest are prescribed, and no borrower is to be liable to repay to a lender more than twice the amount of the principal advanced whatever the rate of interest may be. Provision had naturally to be made for cases where the lender assigned his rights, and Chapter V of the Act, sections 28 and 29, deal with the assignment of loans. These two sections were meticulously examined by both the trial Judge and the Court on appeal, but in the opinion of their Lordships these sections have no application to the present case. They deal with the assignment of loans, where the relation of lender and borrower still exists; while, that is, the contract is still executory. They do not apply where there has been a judgment. The contract is then merged in the judgment and the relationship between the parties is that of judgment creditor and judgment debtor and no longer that of lender and borrower. If authority be needed for this proposition, which is really elementary, it will be found in the case referred to by Edgley J. of *Kusum Kumari* v. *Debi Prosad Dhandhania* (63 I.A. 114, at page 124). The section which gives relief to the borrower is section 30. That section so far as is material is as follows:—

> Notwithstanding anything contained in any law for the time being in force, or in any agreement,
>
> (1) no borrower shall be liable to pay after the commencement of this Act
>
> (*a*) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan . . . whether such loan was advanced or such amount was paid or such decree passed or such interest accrued before or after the commencement of this Act:

The effect of this section is to afford a defence to a borrower as to the amount for which he is liable, and that is all that it does. It does not affect judgments already obtained, but merely provides that the amount of a judgment already obtained is to be taken into account in calculating the final amount for which a borrower may be liable. So if for instance the original loan were for Rs. 1,000 and the principal and interest were payable by instalments, and a decree had been obtained for Rs. 500, not more than Rs. 1,500 could be obtained under any subsequent decree. That section therefore cannot of itself avail a judgment debtor against whom a decree has been regularly obtained and remains unreversed.

Section 36 however provides for the reopening of past transactions. It is a long section containing a number of provisions and there is no need to quote it *in extenso*. By subsection 1 the Court is given power to reopen any transaction and take an account between the parties, reopen any account already taken following on an agreement between them, release the borrower from liability in excess of the limits specified in section 30 and give other consequential relief. This may be done either in an action brought by the lender or in one brought by the borrower to obtain relief under the section. It will be observed that the subsection does not specifically mention a judgment or decree as one of the matters which the Court may reopen, but it is abundantly clear that it is intended to give the Court that power. The drafting of the section is unfortunate and obscure, but in as much as by the second proviso to subsection 1 it is enacted that in the exercise of its powers the Court shall not do anything which affects any decree other than a decree in a suit to which the

Act applies, which was not fully satisfied by the 1st January, 1939, and as subsection 2 contains a variety of provisions as to what the Court may and may not do on reopening a decree it is clear that the Legislature intended that the power of reopening a transaction should extend to reopening a decree obtained by a lender which had not been fully satisfied by 1st January, 1939. Subsection (5) however provides that nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment was *bona fide* and that he had not received the notice referred to in clause (*a*) of section 28, subsection 1. That is a notice which it is made obligatory on the lender to give to any one to whom he assigns his debt. In their Lordships' opinion the only right which the plaintiffs in this action had of reopening the decree of 12th June, 1935, was under this section. Had the decree not been assigned they could have instituted an action for relief against the judgment creditor; but as it had been assigned to one who took it *bona fide* and for value and who *ex hypothesi* had not received the notice referred to in the section they cannot maintain any claim for relief against the assignee. The learned trial Judge thought that the subsection did not protect the assignee because it referred to a notice which could not have been given, as the Act was not in force at the time of the assignment; he based his judgment on the ground that section 30 could not affect a decree retrospectively. Their Lordships cannot agree with either of these grounds. With regard to the first the assignee fulfils all the requirements of the section, and to hold otherwise is equivalent to saying that an assignee to whom notice could not be given is to be in as bad a position as one who had received notice. Mr. Le Quesne's main argument for the respondents was that " the rights of any assignee " referred to in the subsection must be construed as meaning the rights given to an assignee under the Act, for instance the right of indemnity given by section 28, subsection 2. This means that the Court must read into the subsection the words " conferred by this Act " immediately after the words " holder for value." If that is what the legislature meant it would have been quite easy to say so. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so, whereas here the section as it stands is apt in its language to afford protection to the rights of *bona fide* purchasers for value as is nearly always given in legislation of this description. Their Lordships are also unable to agree with the opinion of the learned Judge as to section 30 having no restrospective effect. In one sense this is true, because as already pointed out in this judgment all that the section by itself does is to give the borrower a defence as to quantum when sued. But when that section is read with section 36 it appears to their Lordships to be clear that the relief given by the section can be granted where relief under the Act is sought by a judgment debtor in respect of a decree which had not been fully satisfied by 1st January, 1939, and which must therefore have been obtained before the Act came into force. It remains to say a word with regard to the judgment of the High Court on appeal. As their Lordships understand the judgment of the Chief Justice, he thought that it was unnecessary to invoke section 36, but that he could give a declaratory judgment in favour of the plaintiffs, under section 42 of the Specific Relief Act or under the provisions of the Code of Civil Procedure, declaring that they need pay no more. In whatever form such a declaration might be expressed it would have the effect of restraining a judgment creditor who has obtained a regular and final decree from proceeding to execution. Such a result could only be reached by re-opening the decree under the provisions of section 36 of the Act of 1940 which for the reasons given in this judgment does not apply to this case.

Their Lordships will humbly advise His Majesty that this appeal should be allowed and the decree of the High Court made in its Civil Appellate Jurisdiction be set aside and the decree of the Court made in its Ordinary Original Civil Jurisdiction be restored, though on different grounds. The first four respondents should pay the cost of the appeal to the High Court in its Appellate Jurisdiction and to His Majesty in Council.

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In the Privy Council

SRIMATI RENULA BOSE

v.

RAI MANMATHA NATH BOSE
AND OTHERS

DELIVERED BY LORD GODDARD

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