

Privy Council Appeal No. 4 of 1945.

The Lahore Central Co-operative Bank Limited - *Appellant*

v.

Qadir Bakhsh and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND APRIL, 1947

Present at the Hearing:

LORD THANKERTON
LORD UTHWATT
SIR MADHAVAN NAIR

[*Delivered by LORD UTHWATT*]

This is an appeal from a judgment and decree of the High Court at Lahore made on the hearing of a Letters Patent appeal reversing in part a judgment and decree of the Single Bench of that Court.

The facts bearing upon the only point now at issue are as follow:—

By a registered deed of mortgage dated the 6th July, 1927, immoveable property of Qadir Bakhsh, a member of a Co-operative Society, was mortgaged to the Appellant Bank, which was also a member of the same Society, to secure a loan with interest at the rate of Rs.8.8.0 per annum. Umar Din and Allah Ditta stood as sureties for the loan. They were not members of the Society but agreed to be bound by the provisions of The Co-operative Societies Act in regard to the settlement of disputes arising out of the mortgage. Following on failure to comply with a demand for payment, the matter was referred by the Registrar to Abdul Hafiz Bey for arbitration. There was not apparently in the arbitration any dispute as to figures or the relevant facts. After making some general observations to which reference will be made later the arbitrator quantified the principal sum at Rs.21,612.14 and he ordered Qadir Bakhsh and the sureties to pay that amount together with interest at Rs.8.8.0 per annum.

Clause 6 of the award then provided as follows:—

“ The above sum shall be paid at the rate of Rs.1,500 (one thousand and five hundred only) excluding interest after every six months, the first instalment as above being paid on or before 1st May, 1938. If it is not so paid or if the Doctor or his sureties fail to pay even one single instalment on or before the due date the entire amount of the loan together with the interest to date shall be payable at once. The amount may then be realised through a Civil Court either by the sale of all the property of the Doctor and his sureties

which has specially been mortgaged for the satisfaction of this debt and which is shown in detail in resolution No. 4, dated 29th December, 1937, of the Managing Committee of the Bank attached to this award or of any property belonging to the debtor or both or by arrest of the debtor."

The Appellant Bank in due course made an application to the Subordinate Judge at Lahore for the filing of the award under the provisions of Schedule 2, Paragraph 20, of the Civil Procedure Code. The Judge decided that the award could not be so filed, but could be executed as a decree. That decision has become final and binding on the parties.

The Appellant Bank then filed an application for execution of the award treating it as a decree in accordance with the decision of the Subordinate Judge. The application was opposed on many grounds, of which three only need be referred to:—

- (1) that the sureties had been discharged by a compromise;
- (2) that the sureties not being members of the Co-operative Society, the award could not be executed as a decree; and
- (3) that the award was, for want of registration, not admissible in evidence.

The execution Court rejected the last two objections but accepted the first objection and the application was dismissed.

The Respondents were not satisfied with this order and appealed to a Single Judge of the High Court. The whole matter was treated as open. The learned Single Judge decided all three points in favour of the Appellant Bank. Against that decision the Respondents appealed under the Letters Patent to the Full Court. That Court agreed with the learned Single Judge on the first two points.

With respect to the third point—the only matter in issue before their Lordships—the Single Judge decided in favour of the Appellant Bank on the ground that where an award was executable as a decree, it was for that reason exempt from registration. This reason was not accepted by the Full Court and was not relied upon before their Lordships. The Full Court held that the award contained a declaration of a right to or in immoveable property. Such a declaration was in their opinion to be found in the direction contained in the award that the amount due might be realised by a sale. The right to a sale though in existence impliedly by virtue of Section 58 of the Transfer of Property Act, was by the award declared expressly for the first time as a right in immoveable property in addition to what had been created by the mortgage and the award therefore required registration under Section 17 (1) (b) of the Registration Act. In the end the provision relating to sale was held detachable from the rest of the award with the result that the award was held executable as a decree but the property comprised in the mortgage, although liable to be sold in the execution proceedings, could not be sold as mortgaged property.

The conclusion of the Full Court is based upon a construction of the award with which their Lordships are unable to agree. The award is discursive in character. In it the arbitrator enlarged upon the position of the Bank and upon Qadir Bakhsh's position. It was not apparent to him why in light of the sufficiency of the Bank's security, the Bank should be at pains to enforce payment. The mortgaged property was worth one lakh and the debt including interest was less than Rs.23,000. Why should the Bank trouble about their money? It was safe. Qadir Bakhsh on the other hand, in the arbitrator's view, might be put in difficulties if the mortgaged property was sold. But nevertheless the arbitrator was of opinion that Qadir Bakhsh must be made to realise his responsibilities. The arbitrator thereupon (Clause 5) ascertained the principal of the debt at Rs.21,612.14 carrying interest at the rate agreed by the mortgage. Clause 6, it will be observed, opens by providing for payment by instalments and directs that on failure to pay any one instalment

the whole sum is to be immediately payable. The provision dealing with realisation follows and it is to be read in light of the whole award, and the word "then" appearing in it closely connects it with the preceding part of the clause. So regarded the provision appears to their Lordships to be pointed only to stating as an existing fact the general consequences which by law were attached to non-payment of the secured debt. It has no operative effect in creating any interest in any immoveable property. In truth the statement is little else than a warning.

Taking this view of the construction of the award, it would be inconsistent with the decision in *Bageshwari's case* (59 I.A. 130) to hold that Section 17 (1) (b) of the Registration Act has any application to the award.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed and that the execution Court should proceed with the execution in light of their Lordship's decision upon the only matter raised before the Board, namely, the want of registration, but otherwise in conformity with the views expressed by the Full Court.

Qadir Bakhsh will pay the Appellant's costs of the appeal and of the proceedings before the Full Court.

THE LAHORE CENTRAL CO-OPERATIVE
BANK LIMITED

vs.

QADIR BAKISH AND OTHERS

DELIVERED BY LORD UTHWATT

Printed by His Majesty's STATIONERY Office Press,
DRURY LANE, W.C.2.

1947