

## **Zainuddin Hossain Mirza And Ors. vs Satyendra Nath Bose And Ors. on 25 February, 1965**

**Equivalent citations: AIR1966SC213, 1965(0)BLJR951, AIR 1966 SUPREME COURT 213**

**Author: K. Subba Rao**

**Bench: K. Subba Rao, J.C. Shah, R.S. Bachawat**

### **JUDGMENT**

K. Subba Rao, J.

1. One Kumar Pramatha Nath Roy advanced 5 loans to the predecessors-in-interest of the appellants and the opposite parties 1 to 5 before the Claims Officer on the mortgages of Khagra Estate which was jointly owned by them. Out of the said mortgages, the appellants' predecessors-in-interest executed 3 mortgages, Exs. 1-B, 1-C and 1-D, dated September 30, 1927, June 30, 1932, and June 23, 1935, respectively. The said Kumar Pramatha Nath Roy filed Title Mortgage Suit No. 3/13 of 1937 in the Court of the Subordinate Judge, Dinajpur, to enforce the mortgages and obtained a decree therein. The mortgagee and some of the mortgagors filed appeals in the Dacca High Court against the said decree. On August 18, 1949, by a common judgment a mortgage decree was made by the High Court in favour of the mortgagee whereunder the appellants were made liable to pay a sum of Rs. 10,27,594-9-6. Subsequently the said Estate was notified under Section 3 of the Bihar Land Reforms Act, 1950, hereinafter called the Act. Thereafter, on October 27, 1952, the mortgagee filed a petition under Section 14 (1) of the Act in the Court of the Subordinate Judge, Claims Officer, Bhagalpur Division, Purnea Camp, setting up his claim to the amount due to him from the appellants in terms of Section 16 of the Act. To that petition he made the legal representatives of the original mortgagors of all the five mortgages as parties. Opposite parties 6 to 12 are the appellants, who represent the mortgagors under Exs. 1-B, 1-C and 1-D; and opposite parties 1 to 5 represent the mortgagors under other mortgages with which we are not now concerned. Respondents 1 to 5, though they filed a written-statement, remained ex parte. Respondents 6 to 12 contested the petition. They not only questioned the correctness of the amount claimed due from them but also pleaded that the claim under the mortgages was barred by limitation.

2. The learned Subordinate Judge held that the claimant had proved his claim ex parte against the opposite parties Nos. 1 to 5; so far as the appellants were concerned he held that a sum of Rs. 8,50,253 towards principal and Rs. 1,17,625 towards interest were due from them under Exs. 1-B, 1-C and 1-D. But he held that the claim in respect of the said 3 mortgages was barred by limitation. In that view, he dismissed the claim so far as opposite parties 6 to 12 were concerned and allowed it

against opposite parties 1 to 5. Kumar Pramatha Nath Roy, i.e., the claimant, and the Trustees of Kumar Pramatha Nath Roy Public Charitable Trust --presumably the Trust was created by the said Roy in respect of the mortgages--preferred an appeal, Claim Appeal No. 61 of 1956, to the High Court of Judicature at Patna, which was the Board appointed under Section 17 of the Act and to which appeal lay against an order of the Claims Officer under the Act. The High Court, on a construction of the pleadings, came to the conclusion that the claim was based on the mortgage decree of the Pakistan High Court and, therefore, it was within time under Article 117 of the Limitation Act. As regards the amount claimed, observing that the learned counsel for the parties had not challenged the correctness of the finding of the learned Claims Officer so far as the amount payable to the claimant was concerned, it affirmed the amount declared by the said Officer as due from the appellants.

3. This appeal is filed against that order by the opposite parties 6 to 12 after obtaining the special leave of this Court. We are not concerned in this appeal with the rights of opposite parties 1 to 5 as they are not parties in this appeal.

4. Mr. A.V. Viswanatha Sastri, learned counsel for the appellants raised before us the following 2 points: (1) The respondents made a claim only on the basis of the mortgage deeds and, therefore, the High Court went wrong in giving them a relief on a new cause of action, namely, the foreign judgment of the Pakistan High Court; and (2) even if the High Court was right in that regard, it went wrong in accepting the finding of the Subordinate Judge as regards the amount due from them on a misapprehension that the appellants had not challenged the correctness of the finding of the learned Subordinate Judge in that regard.

5. Mr. B. Sen, appearing for the respondents, while supporting the findings of the High Court, contended that in case a remand to the Claims Officer was necessary it should be made clear that the question whether and to what extent the findings of the High Court of Pakistan would be binding on the Claims Officer should be left open to the decision of the said Officer.

6. The first question turns upon the pleadings in the case, having regard to the relevant provisions of the Act. At the outset it would be convenient to notice the relevant provisions of the Act.

Section 14 (1).--Every creditor, whose debt is secured by the mortgage of, or is a charge on, any estate or tenure or part thereof vested in the State under Section 3 or 3A may, within six months of date of such vesting or the date on which such creditor is dispossessed under the provisions of Clause (g) of Section 4, or within three months from the date of appointment of the Claims Officer, whichever date is later, notify in the prescribed manner his claim in writing to a Claims Officer to be appointed by the State Government for the purpose of determining the amount of debt legally and justly payable to each creditor in respect of his claim.

Section 15.--Every creditor submitting his claim in compliance with the provisions of Section 14 shall furnish, along with his written statement of claims full particulars thereof; and shall, within such time as the Claims Officer may appoint, produce all documents which are in his possession, power or control (including entries in books of accounts) on which he relies to support his claim,

together with a true copy of every such document.

Section 16. (1) The Claims Officer shall in accordance with the rules to be made under this Act, determine the principal amount justly due to each creditor and the interest (if any) due at the date of such determination in respect of such principal amount.

2. In determining the principal amount and interest under Sub-section (1), the Claims Officer shall proceed in the following manner:--

(a) he shall ascertain the amount of the principal originally advanced in each case, irrespective of the closing of accounts, execution of fresh bonds, of decree or order of a Court.

The gist of the said provisions relevant to the present enquiry may be stated thus: Every creditor whose debt is secured by a mortgage of any estate may file a claim within 6 months of the date of the vesting of the said estate in the State. He shall furnish along with his claim the full particulars thereof. He shall produce all his documents on which he relies to support his claim within time appointed by the Claims Officer. The Claims Officer then in accordance with the rules prescribed determines the principal amount due on the mortgage irrespective of the closing of accounts, execution of fresh bonds, of decree or order of a Court. It will be noticed that under the scheme of the said provisions the claimant shall give the particulars of the mortgage; and the Claims Officer for the purpose of ascertaining the amount due thereon under the provisions of the Act and the rules made thereunder is empowered to reopen even a decree made on the basis of the said mortgage. Section 14 fixes the period of limitation of 6 months from the date prescribed thereunder for making such a claim. It is no doubt implicit in the provisions that the claim to recover the amount under the mortgage should be subsisting; that is to say, it should not have become barred. But whether the claim on the mortgage is barred or not may also depend upon another question whether a decree has been obtained on the said mortgage or not. If no suit has been filed, the Claims Officer will have to ascertain whether on the date the claim is made a suit to enforce that mortgage is barred. If a decree has been obtained, the Claims Officer will have to ascertain whether on the date the claim is made the decree has become barred. If this distinction between the limitation prescribed under the Act for making a claim under Section 14 of the Act and the bar of the claim outside the Act is borne in mind, much of the confusion raised in this case would disappear. To put it differently, when a claim is made before the Claims Officer, he has to consider two questions, namely, (i) whether the claim is made within 6 months from the prescribed date; and (ii) if it is so made whether the claim to recover the amount is barred by limitation. If he is satisfied that it is in time either because the mortgage claim is within the prescribed time or because the decree is not barred by limitation, he proceeds to ascertain the amount due under the mortgage in the manner prescribed by the Act and the Rules made thereunder and, if a decree is made, even by reopening it.

7. With this background let us look at the claim petition. In the claim petition the particulars of the mortgages were given, the amounts payable under each of the mortgages were stated, the fact that a suit was filed in the Court of the Subordinate Judge, Dinajpur, and that it finally ended in a decree by the Dacca High Court was mentioned. It is true that the mortgage decree made by the Pakistan

High Court was not filed before the Claims Officer, but the respondents 8 to 12 in their written statement gave all the particulars of the amounts payable by them under the mortgage debts, referred to the suit and the appeal in the Subordinate Judge's Court and the Pakistan High Court, relied upon the findings of the High Court in support of their case and even filed the decree of the High Court before the Claims Officer. If the decree was not filed by the opposite party, the claimant might have filed it within such time as the Claims Officer might appoint under Section 15 of the Act. In the circumstances we are satisfied that the particulars given in the claim petition satisfy the provisions of the Act and the Claims Officer could entertain that claim and reopen the decree to ascertain the amount in terms of the provisions of the Act.

8. That apart, even if the claim shall be specifically based upon the decree, we agree with the High Court that on a fair reading of the pleadings it can reasonably be held that the claim was also made on the basis of the decree. The mortgagee in the claim petition filed by him expressly stated in para, 9 thereof that a, decree was obtained on the mortgages. In the written-statements that fact was admitted. It is true that the High Court made a mistake when it stated that the appellants raised the question that the claim petition could not be allowed because the mortgage bonds had already been sued upon and a decree was passed in favour of the claimant. This statement was made in the written-statement of the opposite parties 1 to 5 and not in that of opposite parties 6 to 12. But before the Subordinate judge the opposite parties 6 to 12 argued that the claim was based on the judgment and decree of the High Court of Pakistan and as such the application was not maintainable. It is, therefore, clear that even the appellants understood the claim as based upon the judgment and decree of the said High Court. In the circumstances when all the necessary facts are alleged in the claim petition and when the opposite parties themselves understood the claim as based upon the decree, the High Court was quite justified in holding that the claim was also, in substance, based on the foreign decree.

9. In either view the question is whether the decree was barred by limitation. It is not disputed by Mr. Viswanatha Sastri that if the claim was based upon the foreign judgment, it would be within time under Article 117 of the Limitation Act.

10. The next question is whether the High Court was right in holding that the parties had not challenged the correctness of the finding of the Claims Officer so far as the amount payable was concerned. In the petition for special leave ground 13 reads:

"That in arguing the appeal, the advocate appearing on behalf of the appellants claimed that the appeal should be remanded so that the Claims Officer may pass an order allowing the claims based on the foreign judgment and, therefore, the petitioners did not advance any argument with regard to the consideration of the three mortgage bonds."

In paragraph 13 of the statement of case filed by the appellants the same contention was raised. It reads:

"While arguing the appeal before the Board, the learned Advocate for the respondents argued that the claim is not barred by limitation and proposed that the appeal be remanded to the Claims Officer to pass an order allowing the claim to be based on the foreign judgment and, thus, the appellants only argued the question of limitation and did not argue with respect to the consideration of the mortgage bonds." In paragraph 11 of the statement of case filed by the respondents this position was practically accepted. It is stated therein:

"It was also urged, alternatively, that if there was any difficulty felt in allowing the claim of the applicant on the ground that the opposite parties did not avail of the opportunity to contest the claim thoroughly under some misapprehension, then the Court, at best, could only remand the matter to the Claims Officer giving them fresh opportunity."

That apart, even in the earlier part of the judgment of the High Court, it observed:

"The only question for consideration is whether the present proceeding can be held to have taken place in a suit on a foreign judgment or this would be a proceeding on the basis of the original mortgage bonds themselves. Learned counsel for the parties accordingly have argued in support of their respective standpoint on this matter only."

This is also consistent with the contention of the appellants. In the circumstances we are satisfied that the High Court was under some misapprehension when it accepted the finding of the Claims Officer in regard to the amount payable to the claimant.

11. Mr. Viswanatha Sastri further contended that in working out the amounts due to the claimant from the appellants the Claims Officer is bound by the findings given by the Pakistan High Court. It was also brought to our notice that by reason of the Indian High Courts Order, 1947, the judgment of the Pakistan High Court had to be treated as the judgment of the Calcutta High Court. Mr. Sen, appearing for the respondents, did not concede the position in regard to the findings of the High Court. We do not propose to express any opinion on this question.

12. This question is left open for the decision by the Claims Officer when he determines the amount due to the claimant.

13. In the result, the appeal is allowed in part, the order of the High Court is set aside and the appeal is remanded to the Claims Officer for determining the amount due to the respondents under Section 16 of the Act. As the parties failed and succeeded in part, they will bear their own costs in this Court.