

Calcutta High Court

Sm. Annapurna Ray vs Srish Chandra Dutt on 3 February, 1941

Equivalent citations: AIR 1941 Cal 539

Author: Panckridge

ORDER Panckridge, J.

1. This is an application by the defendant to have a preliminary mortgage decree dated 7th June 1940, set aside under Section 36, Bengal Money-lenders Act. There is also a prayer that a new decree may be passed in accordance with the provisions of the Act. The suit was filed in March 1940, and the mortgage which it sought to enforce was dated 27th January 1939. The amount advanced on the mortgage was Rs. 15,000 and the provision as to interest was that it should be payable at the rate of 7 per cent. per annum (to be reduced to 6 per cent. per annum in case of regular and punctual payment and before the same became due and payable) payable by equal monthly instalments and compound interest at the said rate in case of default in payment of any three successive instalments of simple interest. In the preliminary decree it was declared that the amount due was a sum of Rs. 15,000 for principal and a sum of Rs. 15 for interest making in all a sum of Rs. 15,015 and also that the plaintiff was entitled to further interest at the rate provided for in the mortgage up to the date of payment as mentioned in Clause 3 (1) of the decree and thereafter, at the rate of 6 per cent. per annum until realization. The remaining part of the decree is in the ordinary form in that it directs the defendant to pay into Court the sum of Rs. 15,015 with interest as aforesaid and the taxed, costs of the suit. The ordinary direction for reconveyance follows, and Clause 4 provides that in default of payment the plaintiff may apply to the Court for a final decree for sale of the mortgaged properties. It is admitted that the provisions as regards interest in the mortgage and in the preliminary decree do not offend against Section 30, Bengal Money-lenders Act. It is said that the plaintiff is entitled to relief by reason of the provisions of Section 31 of the Act. The relevant portion of that section is as follows:

Notwithstanding anything contained in any law for the time being in force, no Court shall, in any decree passed in any suit to which this Act applies: (a) If the loan to which the decree relates was advanced before the commencement of this Act allow any interest on the decretal amount.

2. The defendant claims that this section entitles him to relief and, if so, he says that he may claim the benefit of the provisions of Section 36 of the Act, that is to say, he may have the transaction reopened and a new decree passed providing, among other things, for payment by instalments. The identical question of the effect of Section 31 and its application to preliminary decrees passed before the commencement of the Act has been considered by Sen J. in two reported cases. They are Sailendra M. Dey v. Accowrie Mukherjee ('41) 45 CWN 11 and Ratan Chunder Gupta v. Nirmal Chunder Neogy ('41) 45 CWN 13. The learned Judge has come to the conclusion that Section 31 has no application in the circumstances I have indicated. At page 12 of the report dealing with Section 31 he says:

This section prohibits the Court in certain circumstances from allowing any interest when it is about to pass a decree. It has no application to a case where the decree has already been passed before the operation of the Money-lenders Act has come into force. There is no section in the Act which says

that where in a decree already passed before the Act has come into operation the Court has allowed interest on the decretal amount, the Court may upon an application brought subsequent to the decree vary its order granting interest on the decretal amount. The section merely prohibits the Court from granting interest on the decretal] amount at the time it passes the decree. The petitioner therefore cannot claim this relief in the present circumstances.

3. Again at page 14 he says:

All that Section 31 (a) says is that a Court shall not allow in a decree any interest on the decretal amount. Now when does a Court allow interest on the decretal amount? It allows it at the time of passing the decree. That being so, the only interpretation that can be put on Section 31 (a) is that it prohibits the Court from passing any decree in which interest on the decretal amount is allowed. That is all that section does and nothing more. In the present case, the decree was passed before the Act came into force. There was then nothing to prevent the Court from allowing interest on the decretal amount and as I have said before there is no provision in the Act which says that such a decree passed before the Act may be interfered with or varied because it allows interest on the decretal amount.

4. Those observations, if I may say so with respect, seem to express what I believe to be the true construction of the Act in the clearest manner. I am of the opinion that Section 31 does not entitle the applicant to any relief and he is therefore not in a position to claim the benefits of Section 36, Bengal Money-lenders Act. In these circumstances, the application is dismissed with costs. The injunction is dissolved.