

Calcutta High Court

Purna Chandra Adhicary vs Joy Chand Lall Babu And Ors. on 11 December, 1942

Equivalent citations: AIR 1943 Cal 179

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JUDGMENT Biwas, J.

1. This rule arises out of an application by a borrower for relief under Section 36, Bengal Money-Lenders Act. The application has been refused by the learned Subordinate Judge of Burdwan on the ground that it is not maintainable, and it is the propriety of this order which is challenged before us by the petitioner. The petitioner admittedly owned the business of an aratdar which consisted primarily in selling and buying certain classes of goods. From the time of his father, he had had dealings with the plaintiff opposite party, from whom he used to borrow money from time to time for the purposes of the business. These borrowings were made on hatchittas and went on for a long series of years from 1331 B.S. onwards. Latterly, the petitioner was not in a position to make regular payments to the plaintiff on account of these loans, with the result that the plaintiff demanded security for the debt. There was an adjustment of accounts between the parties some time in the year 1338 B.s., when a sum of over Rs. 27,522 was found to be due to the plaintiff. It was arranged that the petitioner would execute a promissory note in favour of the plaintiff for a sum of Rupees 1000 odd, and for the balance of Rs. 26,000, he would execute a mortgage bond. The plaintiff thereafter instituted a suit to enforce the mortgage, and in due course recovered a preliminary decree on 20th December 1934, and later obtained a final decree on 21st January 1985. It is these two decrees which the petitioner sought to re-open by his application under Section 36, Bengal Money-Lenders Act. The application was resisted on behalf of the decree-holder mainly on the ground that the loan in respect of which the decrees had been made was a "commercial loan" which was exempted from the operation of the Act. The only question in the case is whether or not the loan was really a "commercial loan". It is not disputed that the loans for the purpose of repayment of which the mortgage was executed had been contracted for the purposes of the petitioner's business. It is contended however that though that was so, the mortgage itself would not constitute a commercial loan within the definition as contained in Section 2(4) of the Act. In other words, it is said that a loan raised for the purpose of paying off a commercial loan is not itself a commercial loan. The definition as contained in Section 2(4) is in these terms:

'Commercial loan' means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, etc.

2. It is conceded that the Act will have no application if the loan is a commercial loan, as this is expressly excluded from the definition of a "loan" under Clause (f) of Section 2(12). It is also admitted that under Section 40(5), the burden lies on the decree-holder to prove that a loan is a commercial loan. Mr. Mukherjea in support of his contention that the mortgage here was not a commercial loan laid special stress on the words "to be used by such person solely for the purpose of any business" occurring in the definition. His argument, if we have been able to follow him aright, amounted to saying that these words indicated that to be a commercial loan, the money advanced must be shown to have been applied, or intended to have been applied, for the primary purpose of the business. As the business in this case consisted in the selling and buying of goods, it was argued

that the loan could not possibly come within the definition unless it was shown by the opposite party that the amount raised on the mortgage was meant to be used for the actual purpose of buying and selling. We are afraid, we cannot accept this strained interpretation of the words referred to. The expression "to be used by such person" was obviously inserted in the definition only to make it clear that what had to be looked at was the intention of the parties as to how the money was to be used, and not the actual application of the money. But for this, the omission of these words, in our opinion, would not make any difference whatsoever. The real question which requires to be considered is whether or not the purposes for which the loan had been taken came within the expression "for the purposes of any business or concern relating to trade, etc."

3. As already stated, Mr. Mukherjea concedes that the original loans which were incurred by the petitioner were loans for the purposes of his business; in other words, they were commercial loans. But it is said that because the money raised on the mortgage went to repay these old loans, and was not required for the direct purposes of the business itself, the mortgage could not be said to have been for the purposes of the business. It is difficult to follow the nice distinction which is sought to be drawn in this way. It seems to us that the expression "for the purposes of any business" must include purposes incidental to the carrying on of the business. It cannot be said that it is only where the money is applied or sought to be applied to the primary purposes of the business that it will satisfy the requirements of the definition. It need hardly be pointed out that although the primary object of the business may be the selling and buying of goods, many things may have to be done for the successful carrying on of the business, and it would be an undue restriction on the meaning of the words "purposes of the business" to hold that such other things were excluded therefrom. To take an illustration, if for the purposes of the business it is necessary to hire a room, or to maintain a staff, or to engage some means of transport, and if money has to be borrowed for the purposes of paying the hire of the room, or the salary of the staff, or the cost of the transport, it is absurd to suggest that the money would not be money spent for the purposes of the business. Here the money raised on the mortgage was intended to be applied and was applied to the liquidation of pre-existing liabilities which were admittedly liabilities incurred for the purposes of the business, and we fail to see why the payment of such pre-existing liabilities could not equally be regarded as a legitimate purpose of the business itself, although it might not be a direct purpose. We are of opinion, therefore, that in the present case the mortgage would come within the definition of a commercial loan, in so far as the money borrowed was raised for the purpose of discharging the previous debts of the business.

4. There is yet another answer to the petitioner's case. The mortgage might be regarded as nothing more than the substitution of a security for the previous hatchittas. As pointed out above, the creditor was no longer willing to leave the debts unsecured, and that is why he demanded security, and the mortgage was executed in consequence. There was no new loan in fact, but the old loan was merely secured by the mortgage. If, therefore, it was a commercial loan before, it still remained so, notwithstanding the security. The offering of the security did not and could not alter the purposes for which the money was originally borrowed. From that point of view, the mortgage would undoubtedly amount to a commercial loan. The result is that in our opinion the order made by the Subordinate Judge must stand, and the rule discharged with costs hearing fee 2 gold mohurs.

B.K. Mukheriea, J.

5. I agree.