Supreme Court of India
Bank Of India vs Vijay Transport And Others on 11 November, 1987
Equivalent citations: 1988 AIR 151, 1988 SCR (1) 961
Author: M Dutt
Bench: Dutt, M.M. (J)

PETITIONER:
BANK OF INDIA

Vs.

RESPONDENT:
VIJAY TRANSPORT AND OTHERS

DATE OF JUDGMENT11/11/1987

BENCH:
DUTT, M.M. (J)
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DUTT, M.M. (J)
KANIA, M.H.

CITATION:
1988 AIR 151 1988 SCR (1) 961
1988 SCC Supl. 47 JT 1987 (4) 389
1987 SCALE (2)1028
CITATOR INFO :
F 1989 SC2105 (3,4)

ACT:
Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938: Sec. 4(e)-`Debt'-Due to Bank-Scaling down of debt-Whether permissible.
Banking Companies Act : Validity of-Act whether a special Indian law.
Statutory Interpretation: Duty of court-To look at the setting in which words are used and circumstances in which the law came to be passed.

HEADNOTE:
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The appellant-Bank filed a suit against respondents including respondent firm and its partners, who were agriculturists, for recovery of a sum of Rs.18,14,817.91 being balance of three principal amounts severally advanced by the Bank to the firm under cash-credit account on three different dates. The last loan was advanced by the Bank after its nationalisation on July 7, 1969. The Bank alleged that, to secure repayment of the aforesaid amount of loan, in addition to hypothecation made in its favour of the

properties in `A' and`B'Schedules of the plaint, equitable mortgage of properties in Schedule `C', `D' and `E' was also created in its favour by respondent No. 2, respondent No. 3 and his deceased father. The appellant-Bank prayed for the sale of the said properties for the recovery of the amounts claimed by it.

The respondents, including the firm, and Respondents No.4 to 12, who were alienees, denied creation of any equitable mortgage in favour of the appellant-Bank. The respondent firm and its partners, namely, third respondent's deceased father and the second respondent also filed counter claim against the appellant-Bank.

Dismissing the suit against respondent Nos. 4-12, the Subordinate Judge held that no equitable mortgage was created in favour of the appellant-Bank and that the claim of the appellant-Bank, except to the extent of Rs.1,00,418.55, was barred by limitation. The counter claim against the Bank was decreed.

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Setting aside the Judgment and decrees of the Subordinate Judge, the High Court, in appeal, decreed the suit instituted by the appellant, but held that the Bank was entitled to recover the amount claimed by it, only after scaling down the debt in accordance with the provisions of the Andhra Pradesh (Andhra Area) Agriculturists Relief Act IV of 1938.

In the appeal by special leave, it was submitted on behalf of the appellant-Bank that in view of s. 4(e) of the Act, the provisions of the Act were not applicable to the appellant-Bank and as such, it was entitled to recover the entire amount without the same being scaled down as provided in s. 13 of the Act, and that the words "special Indian Law" in s. 4(e) referred to and related to law made by an Indian Legislature.

On behalf of the respondents, it was contended that the words "special Indian law" meant a special Indian Law enacted by the Parliament of the United Kingdom, that even assuming that the expression "special Indian law" meant a law enacted by the Indian Legislature and that the Banking Act was such a law, still the provision of s. 4(e) of the Act did not apply inasmuch as the appellant-Bank was not formed in pursuance of "special Indian law", but by or under "special Indian law", that is, the Banking Companies Act, and as such, it was not a Corporation within the meaning of s. 4(e) of the Act, that as the appellant-Bank was nationalised and/or created under Ordinance VIII of 1969 promulgated on July 19, 1969 and the Banking Companies Act only ratified the already created bank under the said Ordinance, it was not formed or created under any `special Indian Law' and that since a major part of the loan was contracted before the nationalisation of the appellant Bank, the provision of s. 4(e) was not applicable.

Allowing the appeal,

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HELD: 1. The provisions of the Act are not applicable to the appellant Bank, and there is no question of scaling down the debt due to the Bank by the respondents. [972E]

In the instant case, the amounts of loan were advanced by the Bank to the firm under the cash-credit account opened in favour of the firm. Normally, the advances that are made from the cash-credit account are repaid and thereafter fresh advances are made. It is not known what was the actual balance on the date the Bank was nationalised, and whether the first two amounts were repaid by the firm and, thereafter fresh advances were taken on the cash credit account. [971B-D]

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2.4 The Banking Companies Act is a special Indian law and the provision of s. 4(e) Andhra Pradesh (Andhra Area) Act IV of 1938 is applicable to the appellant Bank.[969G]

2.2 In interpreting the words of the provision of a statute, while it may sometimes be necessary to take into consideration the setting in which such words are placed, that is not the only and the surest method of interpretation, and when such words convey a clear meaning, a different interpretation or meaning need not be given to them because of the setting. [968D]

R.L. Arora v. State of Uttar Pradesh, [1964] 6 SCR 784, referred to.

In the instant case the expression `special Indian law' has a clear and unambiguous meaning. There is no reasonable justification to think that the expression must be an enactment of the British Parliament since there were in existence Indian Legislatures, including a Legislatures at the Centre. [968E]

Section 3(27)(a) of the General Clauses Act, as it stood on the day the Act was passed, defines `Indian Law' as meaning any Indian law enacted by the Indian Legislature. The expression `special Indian law' therefore, means a special Indian law enacted by the Indian Legislature. [968F-G]

Indian Bank, Alamuru v. Krishna Murthy, AIR 1983 Andhra Pradesh 347,over-ruled.

2.3 Inasmuch as the words `any special Indian law' in s. 4(e) of the Act refer and relate to a law made by the Indian Legislature and not by the British Parliament, the Banking Companies Act is quite legal and valid. [972C-D]

2.4 Theoretically, there may be a distinction between the words `in pursuance of' and the words `by or under' but by using the expression `in pursuance of' in s. 4(e), the Legislature has not meant that the corporation, in question, should be formed by a third party in pursuance of the law and not by the law itself in order to come within the purview of s. 4(e) of the Act. The intention of the Legislature is very clear in that the provision of s. 4(e) would apply to a corporation which is the creature of a

special Indian law, whether it is created in pursuance of or by or under the special Indian law. There is no difference 964

Or distinction whatsoever between the corporation formed in pursuance of,and a corporation by or under a special Indian law. [969E-F]

2.5 An Ordinance is as much a law as an enactment of Parliament or Legislature. Therefore, it must be held that the bank was created under a special Indian law even assuming that the bank was created under the Ordinance VIII of 1969 and not under the Banking Companies Act. It is also manifestly clear from sub-section (1) of section 3 of the Banking Companies Act which provides that on the commencement of the Banking Companies Act there shall be constituted such corresponding new Banks as are specified in the first Schedule, that the appellantBank, which is mentioned in the first Schedule, has been created under the provisions of the Banking Companies Act with effect from July 19, 1969.[970C,E-F]

R.C. Cooper v. Union of India, AIR 1970 SC 564 and Life Insurance Corporation of India v. Kota Ramabrahmam, AIR 1977 SC 1704, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 465 of 1985.

From the Judgment and Order dated 20.9.1983 of the Andhra Pradesh High Court in Appeal No. 858 of 1976.

G. Ramaswamy, Additional Solicitor-General and P. H.Parekh for the Appellant.

T.V.S.N. Chari, Ms. Vrinda Grover, Charanjeet, V.D. Miracee and B.P. Maheshwari for the Respondents.

The Judgment of the Court was delivered by DUTT, J. This appeal by special leave is at the instance of the appellant, the Bank of India, a nationalised Bank, and is directed against the judgment and decree of the Andhra Pradesh High Court in so far as they direct that the appellant is entitled to recover the amounts claimed by it against the respondent firm only after the scaling down of the debt in accordance with the provisions of the Madras Agriculturists Relief Act IV of 1938 which, after the creation of the State of Andhra Pradesh, was made applicable to that State as the Andhra Pradesh (Andhra Area) Agriculturists Relief Act IV of 1938, hereinafter referred to as `the Act'.

The appellant Bank filed a suit being O.S. No. 12 of 1979 in the Sub-Court, Eluru, on February 10, 1975 against the respondents including the respondent firm and its partners to recover a sum of Rs.18,14,817.91 being the balance (inclusive of interest) of three principal amounts of Rs.3.00,000, Rs.7,00,000 and Rs.80,000 severally advanced by the Bank to the firm under cash credit account

on 28-11- 1967, 3-4-1968 and 17-2-1972 respectively. It may be noticed here that the Bank was nationalised on July 7, 1969 under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970, hereinafter referred to as `the Banking Companies Act'. The sum of Rs.80,000 was admittedly advanced by way of loan by the Bank after its nationalisation.

The respondent firm owns certain motor vehicles which are mentioned in A and Schedules to the plaint of the said suit. The firm was carrying on its business at Madras as fleet owners and gasolene carriers. It had two partners, namely, one S. Doranna Choudhury, since deceased, the father of the respondent No. 3 and the respondent No. 2, Sunkavali Rajlaxmi. The case of the Bank was that in addition to the hypothecation of the A and Schedule properties made in its favour to secure the repayment of the aforesaid amounts of loan, the other partner, the respondent No. 2, created an equitable mortgage in favour of the Bank on December 22, 1969 in respect of C-Schedule properties of the plaint. S. Doranna Choudhury, since deceased, also created an equitable mortgage in favour of the Bank on February 28, 1970 in respect of D-Schedule properties of the plaint. The respondent No.3 also created another equitable mortgage on September 6, 1974 in respect of E-Schedule properties of the plaint. The respondents No. 4 to 12 are alienees of the mortgaged properties. In the suit the Bank prayed for the sale of the said properties for the recovery of the amounts claimed by it on account of the loan together with interest due thereon.

The respondents including the firm contested the suit by filing written statements, inter alia, denying the creation of any equitable mortgage by the deceased partner and the respondents Nos. 2 & 3 in favour of the Bank. The respondents Nos. 4 to 12, the alienees, while denying the creation of the mortgages contended that they were bona fide purchasers for valuable consideration and the Bank was bound by the alienations and transfers made in their favour of the properties alleged to be under mortgage. The firm and its partners, namely, the said S. Doranna and the respondent No. 2 also filed a counter-claim against the Bank for a sum of Rs.34,48,799. It is not necessary for us to state in details the respective cases of the parties including the case of the firm and its partners in making the counter claim against the Bank, inasmuch as the scope of this appeal is limited to the consideration of the question as to whether the High Court was justified in decreeing the Bank's claim only after the scaling down of the debt in accordance with the provisions of the Act.

Be that as it may, the learned Subordinate Judge held that no equitable mortgage was created in favour of the Bank and, accordingly, dismissed the suit against the respondents Nos. 4 to 12 and refused to direct sale of the properties alleged to have been mortgaged to the Bank. The learned Subordinate Judge also found that the claim of the Bank, except to the extent of Rs.1,00,418.55, was barred by limitation. The counter-claim of the firm and its partners for the sum of Rs.34,48,799 was decreed and the Bank was directed to pay the same to the firm and its partners.

Being dissatisfied with the judgment and decree of the learned Subordinate Judge, the Bank preferred an appeal to the High Court. The High Court, after elaborately considering the facts and circumstances of the case and the evidence adduced by the parties, set aside the judgment and decree of the learned Subordinate Judge including the decree allowing the counter-claim of the firm and its partners and decreed the suit instituted by the Bank. In decreeing the suit, the High Court held that the Bank was entitled to recover the amount claimed by it only after the scaling down of

the debt in accordance with the provisions of the Act. Hence this appeal.

The Act contains provisions granting reliefs to indebted agriculturists. One of such reliefs is that as contained in section 13 of the Act providing for the scaling down of the debt of an agriculturist. It is not disputed that the partners of the respondent firm are agriculturists.

Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the appellant Bank, submits that in view of section 4(e) of the Act, the provisions of the Act were not applicable to the Bank and, as such, the Bank was entitled to recover the entire amount without the same being scaled down as provided in section 13 of the Act. Before the High Court also the Bank placed reliance on the provision of section 4(e) of the Act, but the High Court negatived the contention relying upon a Division Bench decision in Indian Bank, Alamuru v. Krishna Murthy, AIR 1983 Andhra Pradesh

347. We shall presently refer to that decision, but before we do that it is necessary to refer to the provision of section 4(e) of the Act, which is extracted below:-

> "S.4. Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:-
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> ....
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> (e) any liability in respect of any sum due to any cooperative society, including a land mortgage bank, registered or deemed to be registered under the Andhra Pradesh (Andhra Area) Co-operative Societies Act, 1932, or any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian law or Royal Charter or Letters Patent."
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> In view of section 4(e), the provisions of the Act will be inapplicable to any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or any special Indian law or Royal Charter or Letters Patent.The question is whether the Banking Companies Act by or under which the appellant Bank was constituted, is a `special Indian law' or not. It is submitted on behalf of the Bank that the words `special Indian law' in section 4(e) of the Act refers and relates to law made by an Indian Legislature. It is not disputed that the Banking Companies Act is a special law enacted by the Indian Parliament.

It has, however, been urged by Mr. Mirasee, learned Counsel appearing on behalf of the respondents, that the said words mean a special Indian law enacted by the Parliament of the United Kingdom. Indeed, in Krishna Murthy's case (supra), it has been held by the Andhra Pradesh High Court that section 4(e) while speaking of any special Indian law, is only speaking of special Indian law made by the British Parliament as different from any Act enacted by the British Parliament that might have application to India also in common with the rest of the British colonies. The learned Counsel, while placing strong reliance upon the said interpretation of the words `special Indian law' as made in Krishna Murthy's case (supra), also submits that the expression should be interpreted in

the light of the setting of the same in the words of the provision of section 4(e). In support of the contention, the learned Counsel has drawn our attention to an obser-

vation made by this Court in R.L. Arora v. State of Uttar Pradesh, [1964] 6 SCR 784 that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. Accordingly, it is submitted by the learned Counsel that as the words `special Indian law' are placed after the words `an Act of Parliament of the United Kingdom' and before the words `Royal Charter or Letters Patent', it must be held in view of the setting that the expression`special Indian law' refers or relates to a special law enacted by an Act of British Parliament for India.

We are unable to accept the contention. It may be that interpreting the words of the provision of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting. In other words, while the setting of the words may sometimes be necessary for the interpretation of the words of the statute, but that has not been ruled by this Court to be the only and the surest method of interpretation. In the instant case, the expression `special Indian law' has a clear and unambiguous meaning and there is no need for its interpretation. There is no reasonable justification to think that the expression `special Indian law' must be an enactment of the British Parliament. If, on the date the Act was passed, there was no Indian Legislature, such an interpretation might be justified, but when there were existence of Indian Legislatures including a Legislature at the Centre, it would be quite unreasonable to think that `special Indian Law' must be a law enacted by the British Parliament. In this connection, we may refer to section 3(27)(a) of the General Clauses Act, 1897, which defined `Indian law' as meaning any Indian law enacted by the Indian Legislature. In view of the said definition, the expression `special Indian law' means a special Indian law enacted by the Indian Legislature. In the face of the provision of section 3(27)(a) of the General Clauses Act, as it stood on the day the Act was passed, we do not think that there is any justification for laying down that the expression `special Indian law' in section 4(e) of the Act means a law enacted by the British Parliament specially for India. We are, therefore, unable to accept the view of the Andhra Pradesh High Court in Krishna Murthy's case (supra) and also the contention of the respondents made in that regard, which is rejected.

The next contention made on behalf of the respondents is that even assuming that the expression `special Indian law' means a law enacted by the Indian Legislature and that the Banking Companies Act is such a law, still the provision of section 4(e) of the Act will not apply inasmuch as the appellant Bank was not formed in pursuance of any `special Indian law', but by or under a `special Indian law', that is, the Banking Companies Act. It is submitted that there is a good deal of distinction between the formation of a corporation `in pursuance of' and `by or under', a special Indian law. It is urged as the appellant Bank has been formed by or under and not in pursuance of the Banking companies Act. it is not a corporation within the meaning of section 4(e) of the Act. In support of this contention, the respondents have placed reliance on Krishna Murthy's decision

where it has been observed that the words `in pursuance of' refer to the action taken under the law and not by the law itself, and that the phrase `formed in pursuance of' in section 4(e) signifies a process of formation of a corporation under the law and not by the law itself. Further, it has been observed that the words `in pursuance of' can be said to have been used appropriately by the Legislature only to signify the activity or formation of a corporation carried on by an intermediary third party acting under a law as different from an activity of formation carried on by that law itself. We are afraid, such a narrow and technical interpretation of the words `in pursuance of' is contrary to the intention of the Legislature. Although, theoretically, there may be a distinction between the words `in pursuance of' and the words `by or under', but by using the expression `in pursuance of' in section 4(e) the Legislature, in our opinion, has not meant that the corporation in question should be formed by a third party in pursuance of the law and not by the law itself in order to come within the purview of section 4(e) of the Act. The intention of the Legislature is very clear in that the provision of section 4(e) would apply to a corporation which is the creature of a special Indian law, whether it is created in pursuance of or by or under the special Indian law. There is no difference or distinction whatsoever between the corporation formed in pursuance of a special Indian law and a corporation formed by or under a special Indian law. It will be highly unreasonable and illogical to think that as a corporation has been formed by or under a special Indian law and not in pursuance of such a law, it will not come within the purview of section 4(e) of the Act. Accordingly, we hold that the Banking Companies Act is a special Indian law and the provision of section 4(e) is applicable to the appellant Bank.

The learned Counsel for the respondents has drawn our atten-

tion to the fact that the Banking Companies Act was first formed or created by the Ordinance VIII of 1969 promulgated on July 19, 1969. The Ordinance was replaced by an Act of Parliament being Act XXII of 1969 with certain modifications. This Court, however in R.C. Cooper v. Union of India, AIR 1970 SC 564 struck down the Act XXII of 1969 as unconstitutional. Thereafter, a fresh Ordinance being Ordinance No. III of 1970 was promulgated on February 14, 1970 with certain further modifications and, thereafter, replaced by the present Banking Companies Act. It is submitted that as the appellant Bank was nationalised and/or created under the Ordinance VIII of 1969 promulgated on July 19, 1969 and the present Banking Companies Act only ratifies the already created Bank under the said Ordinance, the appellant Bank was not, therefore, formed or created under any special Indian law. This contention is devoid of any merit and fit to be rejected on the face of it. Even assuming that the Bank was created under the Ordinance VIII of 1969 and not under the Banking Companies Act, still it must be held that it was created under a special Indian law, for an ordinance is as much a law as an enactment of Parliament or Legislature. In this connection, it may also be pointed out that under sub-section (2) of section 1 of the Banking Companies Act, the provisions of the Banking Companies Act (except section 21 which shall come into force on the appointed day) shall be deemed to have come into force on July 19, 1969. Sub-section (1) of section 3 of the Banking Companies Act provides that on the commencement of the Banking Companies Act, there shall be constituted such corresponding new Banks as are specified in the First Schedule. Therefore, it is manifestly clear that the appellant Bank, which is mentioned in the First Schedule, has been created under the provisions of the Banking Companies Act with effect from July 19, 1969. The contention of the respondents that the Bank has been nationalised or formed under the

Ordinance VIII of 1969 is without any substance whatsoever and is rejected.

We may refer to a decision of this Court in Life Insurance Corporation of India v. Kota Ramabrahmam, AIR 1977 SC 1704. Gupta J. while delivering the judgment of the Court, observes that there is no dispute that the corporation established under the Life Insurance Corporation Act, 1956 is a corporation as contemplated by section 4(e) of the Act. This decision has been strongly relied upon by the respondents in support of their contention that as the major part of the loan, that is to say, a sum of Rs. 10,00,000, was contracted before the nationalisation of the appellant Bank, the provision of section 4(e) is not applicable. In Life Insurance Corporation's case the loans were advanced by the Andhra Insurance Company of Masulipatanam and by Nagpur Pioneer Insurance Company Limited, Bombay, admittedly, before the creation of the Corporation under the Life Insurance Corporation Act, 1956 and it was held by this Court that the debts due to the insurers in these two cases were liable to be scaled down in accordance with the provisions of the Act.

In the instant case, the amounts of loan were advanced by the Bank to the firm under the cash credit account opened in favour of the firm. Normally, the advances that are made from the cash credit account are repaid and, thereafter, fresh advances are made. It is not known what was the actual balance on the date the Bank was nationalised. It is true that in the judgment of the High Court it has been stated that the principal amounts of Rs.3,00,000, Rs.7,00,000 and Rs.80,000 were severally advanced by the Bank to the firm under the cash credit account on 28-11-1967, 3-4-1968 and 17-2-1972 respectively. But, there is no further statement whether the first two amounts were repaid by the firm and, thereafter, fresh advances were taken out of the cash credit account. The respondents did not advance any such contention either in their written statements or in the arguments before the Trial Court and the High Court. It is for the first time before this Court that such a plea is raised in the argument of the learned Counsel for the respondents. The contention involves a question of fact which has to be pleaded and proved. In the absence of any such pleading, we are unable to allow the respondents to raise such a contention for the first time in argument before this Court.

At this stage, it may be stated that in Krishna Murthy's case (supra) it has been held by the Division Bench that the latter part of section 4(e) of the Act containing the words `any debt due to any Corporation formed in pursuance of an Act of Parliament of the United Kingdom or any special Indian law or Royal Charter or Letters Patent' is offensive to Article 14 of the Constitution and, accordingly, void. The learned Counsel for the respondents submits that in view of the decision in Krishna Murthy's case, this Court should declare the latter part of section 4(e) of the Act to be void as offending Article 14 of the Constitution, although no such point has ever been taken by the respondents up to this Court. On the other hand, it is submitted by the learned Additional Solicitor General that the said finding of the Division Bench in Krishna Murthy's case to the effect that the latter part of section 4(e) of the Act is void, is erroneous.

The reasons given by the Division Bench of the Andhra Pradesh High Court in Krishna Murthy's case for holding the latter part of section 4(e) of the Act as void, are that section 4(e) of the Act was enacted to protect the British economic interests and although such a law could permissibly be enacted under the Constitutional Scheme of the 1953 Government of India Act, that law after the

inauguration of our Sovereign Democratic Republic cannot but be held to have become void as making invidious discrimination in favour of the British Corporation offending against the equality clause under Article 14 of the Constitution. Before declaring the same as void, the Division Bench took the view that the words `any special Indian law' could not have been intended to refer to any law made by any Legislature of our country, but to a law made by the British Imperial Parliament as a piece of special legislation applicable to India. It has already been discussed by us that the words `any special Indian law' refers and relates to a law made by the Indian Legislature and not by the British Parliament. In that view of the matter, the reasons given by the Division Bench for holding the latter part of section 4(e) to be void as making a discrimination in favour of corporations created by British Parliament, will not apply to corporations formed or created by any special Indian law which, in the instant case, is the Banking Companies Act. In our opinion, therefore, the Banking Companies Act is quite legal and valid. No other point has been urged by either party in this appeal.

In view of the discussion made above, we hold that the provisions of the Act are not applicable to the appellant Bank and, therefore, there is no question of scaling down the debt due to the Bank by the respondents.

For the reasons aforesaid, the judgment and decree of the High Court in so far as the same direct the scaling down of the debts due to the Bank by the respondents, are set aside. The Bank will be entitled to realise the amount decreed in its favour by the High Court without any scaling down of the same under the provisions of the Act.

The appeal is allowed. There will, however, be no order as to costs in this Court.

N.P.V. Appeal allowed.