

CASE NO.:
Appeal (civil) 927 of 1991

PETITIONER:
BANSILAL & OTHERS

Vs.

RESPONDENT:
MOHAMMAD ISRAIL & ORS.

DATE OF JUDGMENT: 19/10/2001

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

D.P. Mohapatra, J.

One Sheikh Ibrahim executed two mortgage deeds on 30.4.1923 and 9.4.1924 in respect of 4.00 acres and 8.00 acres of his land respectively in favour of Sunderbai wife of Latulal. On 11.4.1939 the said Sunderbai transferred her rights as a mortgagee to Sundersa Gulabsa Jain. Sundersa Gulabsa Jain filed two Regular Civil Suits for recovery of the mortgage dues and in the alternative for foreclosure of the right of redemption. The mortgages were described as Lahan Gahan mortgages. During the pendency of the suits the Central Provinces and Berar Relief of Indebtedness Act, 1939 (C.P. Berar Act No. XIV of 1939) (for short the Act) came into force and the suits were transferred to the Debt Relief Court established under the said Act. On the application made by the defendant-mortgagor a scheme for repayment of the loan was framed under the Act and the mortgage dues were made payable by instalments falling due on 1st March every year as per the order of the Debt Relief Court. The instalment which fell due on 1.3.1948 was not paid by the mortgagor. The next instalment was due on 1.3.1949. On account of a temporary legislation titled Central Provinces Berar Relief of Agriculturist Debtors (Temporary measures) Act, 1949 (No. XXIV of 1949) enforced under the provisions of the Act whereby the date of instalment was postponed by one year from 1.3.1949 to 1.3.1950. The instalment which was due on 1.3.1950 was also not paid by the original mortgagor. Thus he committed two consecutive defaults in payment of instalments. The creditor-plaintiff filed an application under section 13(3) of the Act on 31.8.1949 for a certificate as provided in the said section. Finally, the Deputy Commissioner ordered issuance of the certificate under section 13(3) of the Act on 24.9.1962 which was confirmed by the High Court in Special Civil Application No.716 of 1964 by order dated 4th April, 1966. In the meantime the debtor deposited the entire mortgage dues in the Court on 30.5.1964.

Thereafter, on 17.1.1967 the creditors filed an execution petition with the prayer for delivery of possession of the mortgage properties from the debtors on the ground that the certificate issued by the Dy. Commissioner under section 13(3) of the Act operates as a final decree for foreclosure, and therefore, they were entitled to possession of the mortgage properties. In the said proceeding judgment-debtors filed an application under section 47 of the Code of Civil Procedure read with section 151 of the Code contending inter alia, that possession of the mortgaged property should not be delivered to the creditors. They contended that the final decree as referred to in section 13(3) of the Act should be treated as a final decree for sale and not a final decree for foreclosure of the mortgaged property.

The Executing Court accepted the execution petition filed by the creditors holding that the certificate operated as a final decree for foreclosure. Consequentially the objections filed by the debtors were rejected. The Court directed issuance of the warrant of delivery of possession. The said order was confirmed by the Extra Assistant Judge, Amravati in Civil Appeal No. 55 of 1969. Feeling aggrieved by the said order the judgment debtors preferred second appeal No.277 of 1971 in the Bombay High Court which was decided in their favour vide judgment dated 2.2.1983 in which the learned single Judge of the High Court held, inter alia, that the effect of the certificate under section 13(3) of the Act was that it gave to the creditors only the right to recover the entire amount due in one lump-sum as if it were a final decree for recovery of money and it could not operate as a final decree for foreclosure. Consequently, the second appeal was allowed, the orders of the trial court and the appellate court were set aside and the warrant of delivery of possession was quashed. The execution petition (original darkhast) was sent to the trial court for disposal in accordance with the law. The said judgment is under challenge in this appeal filed by the successors of the original plaintiff (assignee mortgagee creditor). The respondents in the appeal are the successors of the original defendant (mortgager debtor).

On analysis of the facts and the findings recorded by the trial court, the appellate court and the High Court the question that arises for determination is what is the nature and effect of the certificate issued under section 13(3) of the Act. To put it differently, the question is whether the certificate amounts to a final decree for realisation of the mortgage dues by sale of the mortgaged property or it amounts to final decree of foreclosure of the right of redemption of the mortgaged properties.

The learned counsel appearing for the appellants reiterated the case of the party that the certificate amounts to a final decree of foreclosure of the mortgaged properties and in execution of such a decree the decree-holder was entitled to recover possession of the properties from the judgment-debtor.

Per contra learned counsel appearing on behalf of the respondent contended that the certificate was nothing more than a final decree for realisation of the mortgage dues in a lump-sum by sale of the mortgaged properties.

Since the answer to the question formulated

earlier depends on the interpretation of section 13(3) of the Act and its interaction with other relevant provisions of the Act it will be helpful to quote sections 12 and 13 of the Act in extenso :

12. Provisions governing payment of instalments (1) Every instalment shall be payable on or before the date fixed by the order of the Debt Relief Court, and this may, at the option of the debtor, be paid either to the Deputy Commissioner or to such other Revenue Officer as he may authorize in this behalf or to the creditor who shall pass a receipt therefor in such form as may be prescribed.

(2) When the land revenue or rent, as the case may be, due by the debtor is suspended or remitted, in whole or part, the instalment shall be suspended and shall become payable one year after the last of the remaining instalments. No interest shall be charged on such suspended instalment.

13. Provisions when default made in payment of instalments (1) If any instalment is not paid on or before the due date, the creditor may apply, within eighteen months from the date of default, to the Deputy Commissioner within whose jurisdiction the debtor ordinarily resides or earns his livelihood or to such other Revenue Officer as may be appointed in this behalf by the State Government, for the recovery of such instalment as an arrear of land revenue, and thereupon the Deputy Commissioner or such other revenue Officer shall recover such instalment as an arrear of land revenue.

(2) If the instalment or part thereof is irrecoverable, the Deputy Commissioner or other Revenue Officer may certify accordingly.

(3) If an instalment or part thereof is certified as irrecoverable under sub-section (2) or if two consecutive instalments remain in arrears, the Deputy Commissioner, on the application of the creditor, shall pass an order that the order of the Debt Relief Court fixing instalments shall cease to have effect, and the balance remaining due shall be recoverable as if a decree, and in the case of a mortgage, lien or charge as if a final decree had been passed by a court of civil jurisdiction.

(3-A) Revisions of order under sub-section(3). The State Government may, at any time, for the purpose of satisfying itself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, the Deputy Commissioner under sub-section (3) call for and examine

the record of any case pending before, or disposed of by, the Deputy Commissioner and may pass such order in reference thereto as it thinks fit:

Provided that it shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and be heard in support of such order.

(4) If an instalment is recoverable as an arrear of land revenue, the Deputy Commissioner or Revenue Officer appointed under sub-section (1) shall, as far as may be, follow the procedure laid down in the Central Provinces Land Revenue Act, 1917 (11 of 1917) or the Berar Land Revenue Code, 1928 as the case may be, for the recovery of Government dues as arrears of land revenue.
(emphasis supplied)

The other provisions of the Act which may be of assistance in interpreting the aforementioned sections are sections 14, 15 and 27. The said sections are also quoted for the sake of convenience :

14. Application of sums recovered under Section 13(1) When the Deputy Commissioner or other Revenue Officer recovers any sums under sub-section (1) of Section 13, he shall, in the first instance, apply the sum realized from the sale of any immovable property to the amount payable on account of the debt which is secured by a mortgage or lien on such property in accordance with the scheme drawn up by the Debt Relief Court, or if the sum is insufficient towards such repayment rateably. If there is any surplus, such surplus shall be applied for rateable repayment of further instalments, if any, under the scheme and the balance, if any, returned to the debtor.

15. Invalidity of transfer made by debtors in certain circumstances (1) No transfer of immovable property shall be valid if made by a debtor, in respect of whose debts proceedings are pending under Section 5 or 6, unless made with the sanction of the Debt Relief Court.

(2) Every transfer of immovable property made by a debtor in respect of whose debts a scheme has been prepared under sub-section (1) of Section 11, shall be void unless made with the sanction of the Deputy Commissioner within whose jurisdiction the debtor ordinarily resides or earns his livelihood. The Deputy Commissioner shall not sanction any transfer of such property unless he is

satisfied that such transfer will not defeat the claims of any creditor the payment of whose claims has been ordered by such scheme.

27. Readjustment of instalments fixed under Central Provinces and Berar Debt Conciliation Act- (1) In any local area to which the State Government may, by notification, apply this section, a debtor whose debts did not exceed rupees twenty-five thousand at the time of making an application under the Central Provinces and Berar Debt Conciliation Act, 1933 (hereinafter referred to as the said Act), and the settlement of whose debts was effected under the said Act may, notwithstanding anything contained in the said Act or in this Act, apply to a Debt Relief Court to readjust the instalments fixed in the agreement registered under the said Act.

(2) If on an application made under sub-section (1), the Debt Relief Court is satisfied that the instalments are beyond the (paying) capacity of the debtor, it may readjust the instalments so as to bring them within his (paying) capacity but not so as to reduce the total amount payable by him under the said agreement.

(3) The rights under the said agreement shall thereupon be extinguished and the instalments so readjusted shall be deemed to be instalments fixed under this Act.

(4) On an application being made under sub-section (1), the proceedings; if any, pending before a Revenue Officer under Section 13 of the Central Provinces and Berar Debt Conciliation Act, 1933 for the recovery of an amount due in accordance with the terms of the agreement to which the application relates shall, if so required by the Debt Relief Court, be stayed. The proceedings shall be, resumed, if the application is rejected.

(5) If an application made under sub-section (1) is rejected, the debtor shall not be entitled to make another application to the Debt Relief Court.

The specific question for consideration relates to interpretation of section 13(3). What do the expressions in the case of a mortgage, lien or charge as if a final decree had been passed by a court of civil jurisdiction mean. Does it mean that a deemed decree for foreclosure of the mortgaged property comes into existence automatically when the order of the Debt Relief Court ceases to have effect and the creditor-mortgagee can straightaway proceed to any execution for recovery of possession of the mortgaged property or steps have to be taken for sale of mortgaged property in accordance with the provisions in Order 34 of the Civil Procedure Code. While deciding this

question it has to be kept in mind that in the mortgage deed it is stipulated that in case the mortgagor does not pay the mortgage loan within the time stipulated then the property shall stand foreclosed. A further question in this connection is what is the effect of the Act on the mortgage transaction in the case. On perusal of the relevant provisions of the Act it is clear to us that the Act, which was intended to make provision for relief of indebtedness of agriculturists, was in the nature of a temporary statute initially for a period of three years. In the Act various provisions have been made enabling the agriculturists to get relief from indebtedness by seeking intervention of the statutory authorities who are empowered to draw a schedule of time by providing reasonable instalments and to further revise the schedule of payment in an appropriate case. In case of default in payment of the debt by the debtor according to the schedules the creditor is required to apply to the Revenue Officer authorised by the State Government for recovery of such instalment as arrear of land revenue and thereupon such revenue officer shall recover such instalment as an arrear of land revenue. In sub-section (2) of the said section it is provided that if the instalment or part thereof is irrecoverable the authorised officer may certify accordingly. In sub-section (3) of the section the consequences which follow in a case in which the authority has certified the instalment or part thereof as irrecoverable under sub-section (2) or if two consecutive instalments remain in arrear then the Dy. Commissioner on the application of the creditor shall pass an order that the order of the Debt Relief Court fixing instalment shall cease to have effect and the balance remaining shall be recoverable as if a decree, and in the case of a mortgage, lien or charge as if a final decree has been made by a Court of Civil jurisdiction.

On a fair reading of the provisions of the Act referred to above, it is clear that the statute has only attempted to help the agriculturists by making it easier for them to pay the accumulated dues in instalments and has further safeguarded their interest by providing for adjudication of the matters relating to recoverability or otherwise of the loan amount from the debtor. Only in extreme cases in which the debtor has not merely defaulted in payment of instalments fixed by the authority but outstanding amount is found to be not recoverable as arrear of land revenue then in such a case the statute authorises the creditor to proceed for realisation of his dues as if the final decree has been passed in his favour by a court of civil jurisdiction.

What the provisions of the Act, as we read them, provide is that in a case where the debtor fails to utilise the benefits given to him under the statute and it is not possible to realise the amount from him according to the procedure prescribed under the Act then the creditor is to realise his dues by proceeding on the basis that there is a deemed decree in his favour. In such a case recourse has to be taken to the provision of Order 34 of the CPC for execution of a final decree which is made clear in the last part of section 13(3). The provisions of the Act neither specifically nor by reasonable inference can be said to lay down that in a case where conditions specified in section 13(3) are complied with a decree for foreclosure of the mortgage shall be deemed to have been passed and the creditor can straightaway, without taking any other step file an execution petition for delivery of possession of the mortgaged property.

In that view of the matter the High Court in this case rightly interpreted the decree to be one for realisation of the entire amount due in lump-sum and rightly directed the executing court to proceed in the matter accordingly.

Thus, there being no merit in the appeal, it is dismissed but in the circumstances of the case without any order for costs.

J.
(D.P.Mohapatra)

..J.
(K.G.Balakrishnan)

October 19, 2001