PETITIONER:
BALKISHANDAS & 12 OTHERS

Vs.

RESPONDENT:
STATE BANK OF HYDERABAD AND ANR.

DATE OF JUDGMENT20/01/1972

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
HEGDE, K.S.
PALEKAR, D.G.

CITATION:
1972 AIR 1053 1972 SCR (3) 157
1972 SCC (1) 530

ACT:
Hyderabad Jagirdars Debt Settlement Act, 1952-S. 11 and 25-Its scope-Mortgage executed in favour of Bank-Whether extinguished by virtue of S. 11 and 25 of the Act.

HEADNOTE:
Respondent 1, a bank, filed a suit against appellants Nos. 1 to 4, members of a joint family, for the recovery of Rs. 5 lakhs on the basis of a mortgage deed executed in favour of the bank, by securing certain immovable properties without possession. Defendant No. 5 became a guarantor for the amount borrowed and executed a separate guarantee in favour of the Bank. The appellants, who were Jagirdars, had money transactions with the bank prior to the execution of the mortgage on three separate accounts. The accounts were however, closed by payment from the amount of Rs. 5 lakhs advanced to them on the basis of the Mortgage deed. As the defendants failed to pay the amounts which fell due under the terms of the mortgage, a suit was filed against all the defendants. The firm and the 5th defendant remained ex-parte, but defendants Nos. 2-4 defended the suit. The trial court, decreed the suit against the appellants and the High Court also confirmed the judgment and decree of the trial court. In an appeal by certificate, two main points were urged :-(I) that the suit debts were extinguished under S. 22 of the Hyderabad Jagirdars Debt Settlement Act 1952, inasmuch as no application was presented by the Bank u/s.11 of the Act before the 30th June, 1953 which was the notified date and (2) the civil court had no jurisdiction to try the suit because u/s 25 of the Act, all suits and proceedings for the recovery of a debt from a Jagirdar had to be transferred to the Jagirdars Debt Settlement Board, which alone had jurisdiction to settle it. It was contended on behalf of the appellants that the mortgage executed by the appellants did not create any new debt but merely secured the payment of prior debts which was the balance due to the Bank on the 3 accounts as on the date of the mortgage which debts were pending debts within the meaning of S. 25(1). Dismissing the appeal,
HELD : (i) From the terms of the mortgage deed, it was clear that the debt of Rs. 5 lakhs was a fresh debt created by and

secured thereunder with interest that may become due from the date of the mortgage and that there was no question of the mortgage deed having been executed as a settlement of prior debts so as to attract the provisions of Sections 11 and 25 of the Act. [163 A]
(ii) The expression 'pending' in Section 25 related to proceedings which were pending on the notified date and could not mean any proceedings which were instituted after such date. In the facts and circumstances of the case the debt created by the mortgage deed is a fresh debt and therefore, the provisions. of S. 1 1 and 25 are, not attracted. [161 E]
Joint family of Mukund Dais v. State Bank of Hyderabad [1971] 2 S.C.R. 136, followed.
158
(iii) Once the provisions of S. 11 and 25 were shown to be not applicable, the civil court had jurisdiction to try the suit and the decree granted by the Trial Court and confirmed by the Appellate Court did not suffer from any infirmity. [163 H]
State of Rajasthan v. Mukund Chand, [1964] 6 S.C.R. 903, and State Bank of Hyderabad v. Mukunda Raja Bhagwandas & Ors., 1963 (11) Andhra Weekly Reporter 14, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 547 of 1967.
Appeal from the judgment and decree dated November 14, 1966 of the Andhra Pradesh High Court in Original Side Appeal. No. 9 of 1959.
A. R. Somnath Iyer, R. K. P. Shankardass, R. V. Ramarao and P. K. Pillai, for the appellants.
S. V. Gupte, A. V. Rangam and A. Subhashini, for respondent No. 1.
The Judgment of the Court was delivered by
P. Jaganmohan Reddy, J. This appeal is by certificate against the judgment of the Andhra Pradesh High Court which confirmed the judgment and decree of a single Judge of the Original Side of that Court. The first respondent Bank filed a suit against the appellants-defendants Nos. 1-4 who are members of the joint family firm, for the recovery of a sum of I.G. Rs. 5,00,000/- on the basis of a mortgage deed executed by them in favour of the Bank by securing certain immovable properties without possession. As a further security, the first defendant on behalf of the joint family, caused the 5th defendant-respondent 2 to guarantee the amount borrowed from the Bank and accordingly he executed a promissory note in favour of the 5th defendant on 26-9-1953 for Rs. 5,00,000/- which he in turn endorsed in favour of the Bank. The 5th defendant also executed a separate guarantee in favour of the said Bank on the same date. As the defendants failed to pay the amounts which fell due under the terms of the mortgage, a suit was filed as aforesaid against all the defendants. The 1st defendant who was the manager and Karta of the joint family remained ex-parte. The 5th defendant though he appeared in the Court, did not file any written statement and chose to remain exparte throughout. Defendants 2-4 alone filed written statements resisting. the suit on several pleas, two of which alone may be noticed for the purposes of this appeal, namely, (i) that the suit debts were extinguished under section 22 of the Hyderabad Jagirdars Debt Settlement Act 1952 (hereinafter called 'the Act'), inasmuch as no application was presented by the Bank under section 11 of

the Act before 30th June 1953 which was the notified
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date; and (ii) the Civil Court had no jurisdiction to try the suit as under section 25 of the Act all suits and proceedings for the recovery of a debt due from a Jagirdar have to be transferred to the Jagirdars Debt Settlement Board which alone had jurisdiction to settle it. It appears that the appellants who it is admitted are Jagirdars had money transactions with the Bank prior to the execution of the mortgage on three separate accounts. Ultimately these accounts were closed by payment from the amount of Rs. 5,00,000/- advanced to them by the Bank on a cash credit account secured by the aforesaid mortgage deed. It was contended that as the amounts due on the three earlier accounts to the Bank were debts which were pending on the date of the Act and since these loans were secured by the mortgage, the provisions of the Act are applicable and the debts got extinguished as the Bank had not applied under section 11 before 30-6-1953 to refer them for settlement by the Jagirdars Debt Settlement Board.

The trial court on the evidence held that the amounts due from the appellants on the three old accounts were Rs. 5,00,000/- made up of (a) Rs. 2,59,436-0-0 on the L.B.D. Account; (b) Rs. 2,05,358-8-8 on Overdraft Account (Clean) Ledger No. 14) Dwarkadas Mukandas; (c) Rs. 35,205-7-4 on Overdraft Account (Clean) (Ledger No. 2) Dwarkadas Mukundas. It further held that at the request of the appellants they were granted by the first respondent a cash credit to the extent of Rs. 5,00,000/and in compliance with the terms of sanction the appellants executed a mortgage deed (Ex. P-10) in favour of the Bank; that from the fresh cash credit account which was opened on 8-8-1953 in the name of the appellant firm with the Bank, the appellants cleared the earlier liabilities under the three accounts mentioned above which were closed and that on the same date the Bank returned to the appellants thirteen bills duly endorsed in favour of the appellant firm. On these facts, the trial court held that as the 1st respondent was a Scheduled Bank, the provisions of the Act would not bE applicable by virtue of section 3(v) and accordingly the Civil Court would have jurisdiction to entertain the suit. The suit was, therefore, decreed against the appellants and the second respondent, against which an original side appeal was filed in the High Court. By the time the appeal came up for hearing, a Full Bench of the Hyderabad High Court in the case of State Bank of Hyderabad v. Mukundas Raja Bhgawandas and Sons and Ors.(1) held that under section 25(1) of the Act, all suits appeals, applications for execution and proceedings other than revisions, taken before the Courts in regard to debts for which applications under section 11 of that Act could be made to the Board and involve the questions, as to the status of the Debtor and the total extent of his debts, are liable to be transferred if they

(1) (1963) (II) Andhra Weekly Reporter, 147.

160

were pending on the date. notified ’under section 11, i.e. 30-6-1953. But, if they were filed after that date, they are liable to be transferred only on notice by the Board by reason of an application under section 11 or statement under section 21 of the Act. AR other ;suits, appeals, applications for execution or other proceedings, including cases relating to debts incurred subsequent to the notified date are clearly beyond the purview of section 25 and are not liable to be transferred to the Board, as the Board itself cannot deal with such suits or proceedings because of

the limitations placed in the Act. What is meant by the expression 'pending' in section 25(1) was interpreted as pending on the notified date.

In view of this decision, the questions that were urged before the appellate court were whether the debt was a post-notification debt or a pre-notification debt, namely, whether it was contracted after 30-6-1953 or prior to that date. If it was a pre-notification debt, the said debt would be extinguished by virtue of section 22 of the Act. Even if it was a post-notification debt, it was urged that the civil court would not have jurisdiction under section 25 notwithstanding the judgment of the Full Bench of the Andhra Pradesh High Court referred to above. Further, section 3 of the Act was also challenged as ultra vires of Article 14 of the Constitution of India on the application of the decision of the Supreme Court in the State of Rajasthan v. Mukand Chand.(1) It was held by the Rench that the drawing of money in the new account and the payment into the old accounts had discharged the old debts which could not form the basis of a suit against the defendants for recovery of the said amounts. Accordingly, following the Full Bench judgment, it was held that the Civil Court had jurisdiction to entertain the suit as the debt was a post-notification debt and in this view confirmed the judgment and decree of the trial court.

In this appeal on the reasoning of the Court in Mukandchand's case(1) the provisions of section 3 exempting Scheduled Banks from the application of the provisions of the Act equally offend Article 14 as was section 2(e) of the Rajasthan Act which was analogous so that the 1st respondent's debts to a Jagirdar are liable to be challenged under any of the provisions of the Act like those of any other creditor to whom section 3 was not made applicable. Before dealing with the contentions raised before us, it is necessary to state that as a consequence of the abolition of Jagirs by the Hyderabad (Abolition of Jagirs Regulation) 1358 Fasli (1949 A.D.) and the Hyderabad Jagirs (Commutation Regulation) 1359 F (1950 A.D.) passed on 25-1-1950, the re-sources of the Jagirdars were greatly affected and as a consequence the- creditors of those JagirdaRs were also faced with a

(1) [1964] 6 S.C.R. 903.

162

must relate to proceedings which were pending on the notified date and could not take in any proceedings which came to be instituted after such date. The other condition for the applicability of s. 25 was that the suit or other proceedings must be in respect of a debt with regard to which a Jagirdar or the creditor could make an application to the Board on or before the date which the Gov-ernment had notified for settlement of debts due by the Jagirdar. A close examination of s. 22 puts the matter beyond controversy. If no application had been made under s. 1 1 within the period, specified therein or for recording a settlement made under s. 15 every debt due by the debtor was to stand extinguished. In a case of the present kind a debt would have stood extinguished if no application had been made under s. 11 within the specified period. Thus the material date would be the one notified by the Government under s. II and only those debts which were

due on or before that date from a debtor or in respect of which any proceedings were pending in a court or before the Board would be the subject-matter of settlement by the Board".

In view of this legal position, on behalf of the appellant it is urged that the mortgage executed by the appellants did not create any new debt but merely secured the payment of prior debts which was the balance due to the Bank on the 3 accounts as on the date of the mortgage which debts were pending debts within the meaning of s. 25(1). On this basis, it is contended that as no application was made under s. 11 in respect of the prior debts, the debts became extinguished and accordingly the mortgage deed lacked consideration to make it enforceable. Apart from the fact that both the courts on the evidence and on an interpretation of the mortgage deed, held that the mortgage transaction was in respect of a fresh loan advanced to the appellants under that deed, no plea that the debt was not supported by consideration or that the earlier debts had been extinguished was either raised before the trial court or before the appellate court. The learned advocate, however, referred us to prayer in para 9 of the written statement in which a plea was taken that the suit is not maintainable and that "the plaintiff ought to have submitted its claim before the Debts Settlement Board". This plea is general in character and does-not indicate that the suit is liable to be dismissed as the mortgage is unsupported by consideration. There was also neither an issue in the trial court nor has any ground been taken in the Memo of Appeal though as many as 75 grounds were urged against the judgment of the trial court. We cannot, therefore, permit the appellant to raise any contention based on the mortgage being unenforceable for want of consideration for the first time in this Court.

163

A perusal of the terms of the mortgage deed clearly justifies the conclusions that the loan of Rs. 5,00,000/- was a fresh debt created by the mortgage deed. There is unimpeachable evidence to show, and this has been accepted by both the courts, that all the three prior debts were paid from out of Rs. 5,00,0001- cash credit loan granted to the appellants under the mortgage deed and the 13 bills of exchange, the time for payment of which had not fallen due and some of which were executed by parties other than the appellants, were endorsed in favour of the appellants and returned to them as a consequence of the discharge of the debts due on the three prior accounts.

The mortgage deed states that the properties detailed in schedule annexed thereto were being mortgaged without possession as better security for the repayment of the sum of Rs. 5,00,000/under the deed together with interest accruing in future and other sums thereby secured. Clause 1 of the deed states that the mortgagor shall repay the said sum of Rs. 5,00,000 and all other sums secured thereunder within a period of 5 years from the date, in the manner and subject to the conditions detailed thereafter; that the mortgagors shall pay interest on the said sum of Rs. 5,00,0001- or such other sum that may remain due from them to the mortgagees from time to time at the rate of six per cent per annum till the whole amount is fully repaid; that the mortgagors shall pay the interest accruing due every three months without default, that the principal sum of not less than Rs. 1,00,000/was to be paid per year by the end of each year following; and that the payments towards the principal shall not be less than Rs. 5,006/- - at a time per

month and the balance to make up Rs. 1,00,000/- per annum payable shall be paid before the expiry of each year following. There are other terms to which it is not necessary to refer except the last one by which it is agreed that "If the mortgagors commit breach of any of the conditions and covenants and the mortgage money becomes payable either by reason of default or any other cause whatsoever and the mortgagors fail to pay the amount due on demand, the mortgagee will be entitled to sue and bring to sale the said properties hereby mortgaged and if the sale proceeds are not sufficient to satisfy the mortgagee decree the mortgagors will pay the said balance personally and from their other properties both movable and immovable". From the terms of this mortgagee it is evident that the debt of Rs. 5,00,0001- is a fresh debt created by and secured thereunder with interest that may become due from the date of the mortgage and that there is, therefore, no question of the mortgage deed having been executed as a settlement of prior debts so as to attract the provisions of sections 1 1 and 25 of the Act. In this view, the Civil Court had jurisdiction and the decree granted by the trial court and confirmed by the appellate court

164

does not suffer from any infirmity. The appellants have asked for a direction to allow them to pay the decretal amount by, instalments but we do not think that there is any justification for granting this prayer. The respondent, however, is prepared to give them time for payment provided half the amount is paid within a certain period and the balance thereof thereafter so that the entire decretal amount is payable within a year from the date of this judgment. We accordingly direct the appellants to pay within four months from the date of the judgment half the decretal amount with interest due thereon and the balance thereof together with further interest within 8 months thereafter. If half the decretal amount is not paid within four months as directed, the first respondent will be free to execute the entire decree. With these directions the appeal is dismissed with costs.

S.C. Appeal dismissed.

165