

Mohammad Mehdi Vs. Mt. Narain Dei

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Court : Allahabad

Decided On : Oct-20-1948

Reported in : AIR1949All326

Appellant : Mohammad Mehdi

Respondent : Mt. Narain Dei

Judgement :

1. This appeal arises out of a suit instituted by the appellant Raja Syed Mohammad Mehdi for recovery of Rs. 64,512 on the foot of a mortgage.

2. The controversy between the parties is now confined to issue 3 which was as follows:

Is the plaintiff a professional creditor under Section 32, U.P. Agriculturists' Relief Act, as alleged? If so, is the defendant not liable to pay interest and costs of the suit since the date of the enforcement of the Act as pleaded? Its effect?

3. The mortgage-deed was executed on 31st July 1928 by the defendant-respondent Mt. Narain Dei in lieu of Rs. 18,000. It carried interest at the rate of 9 per cent. per annum compoundable yearly. The property hypothecated under it was mohal Bhaiya Nageshwar Prasad, village Yorki, district Faizabad. The plaintiff did not supply to the debtor any statement of account in compliance with Section 32, Agriculturists' Relief Act, and the sole question which arises for determination is whether or not he is liable to the penalty laid down in Section 34.

The determination of the point involved in the appeal depends upon whether the plaintiff was or was not a creditor within the meaning of Section 32. The learned Additional Civil Judge of Faizabad held that he was. The Raja is dissatisfied with that decision and has come up in appeal.

4. We have heard the arguments of the learned Counsel at the bar and after going care-fully through the record we have come to the conclusion that this appeal must succeed.

5. A creditor has been defined in the Act as a person, who in the regular course of business, advances a loan as defined in the Act. 'Loan,' according to Section 2(10), means an advance to an agriculturist whether of money or in kind It is not disputed that Mt. Narain Dei is an agriculturist within the meaning of the Agriculturists' Relief Act and the evidence has, therefore, to be examined only for the purpose of determining the question whether the advance with which we are concerned was made 'in the regular course of business.'

6. Raja Syed Mohammad Mehdi is a Taluqdar. The evidence to prove that he also carries on money-lending business in the course of which the transaction in suit was made is afforded principally by five documents (Exhibits I, A2. A3, A4 and 62) the answers to interrogatories served on the plaintiff and the statement of P.W. I. It shows that between the years 1928 and 1937 the Raja advanced monies to the defendant and the family of one Syed Mumtaz Husain and to one Sri Ram Baqqal. There are also indications that he advanced certain amounts in 1928, 1929 and 1930 as taqavi to the estate tenants. Exhibit 1 is the mortgage-deed in suit by Mt. Narain Dei. She is the widow of one Bhaiya Nageshwar of Shahzadpur. It would seem that Nageshwar's grandfather Ram Krishna was at one time treasurer of the plaintiff's estate and that the plaintiff's father in the years 1917 and 1918 made advance to Nageshwar's brother Babu Sheo Shankar also. P. W.1, Zainul Abdin, says that Sheo Shankar and Nageshwar were on good terms with the plaintiff and his father and that they used to join ceremonies at each others place Besides this the hypothecated village is surrounded by the plaintiff's villages and if it eventually came to the estate in the event of non-payment it would consolidate the plaintiff's zamindari.

7. The members of Mumtaz Husain's family owed, it would appear from Ex. 62, six debts to the Raja, two of which were covered by the mortgage deeds, Exs. A-2 and A-3. The first of these documents was executed by Syed Mumtaz Husain himself for a sum of Rs. 3480. (The figure of Rs. 12,455 given by the lower Court is obviously wrong.) The second deed was executed by Mumtaz Husain's wife Abbas Bandi in lieu of Rs. 9500. Both advances were made in 1931. It would appear from the statement of P.W. 1, Zainul Abidin, that Mumtaz Husain was at one time Munsarim of the estate. His uncle Mir Fazal Husain served the Raja in the past as manager and his cousin Mir Liaqat Husain is managing the estate now. Some other members of his family have also been in the estate service, and the members of the family of Mir Mumtaz Husain including ladies have been on visiting terms with the plaintiff's family. They lived within a radius of 4 to 5 furlongs.

8. The advance to Sri Ram Baqqal is evidenced by the mortgage deed, (Ex. A-4), dated 27th August 1937. It was in lieu of Rs. 900. The evidence shows that Sri Ram is a resident of Shahjehanpur which is apparently a village comprised in the taluqa. He is a riyaya of the plaintiff and supplied ghee and other provisions to the estate.

9. The advances made by way of taqvi between the years 1928 and 1930 might well be regarded as having been made in course of the management of the zamindari property. It is difficult to characterise these transactions as evidencing any money lending business.

10. The Raja's contention is that his relations with Nageshwar, Mumtaza Husain and Sri Ram were cordial and that in accommodating the debtors and relieving them of their temporary difficulties he was actuated not by a desire to indulge in money lending business but by the motive to help them because of the special relations that he had with them. The evidence referred to above supports this contention, and it remains only to see how far this defence absolves him from the liability imposed by the Act on a creditor who advances a loan 'in the regular course of business'.

11. The word 'regular' in the definition of creditor in Section 2 (7) would seem to imply that the advance was made in conformity with some rule or method and that

such advances were of periodical recurrence. The word 'business' has to be read with reference to the object and intent of the Act in which it occurs. In the Agriculturists' Relief Act it would seem to import an idea of an occupation, a money, making concern and the words 'course of business' would bring in the element of continuity and habit. They would exclude the idea of transactions made with the sole object of helping friends, relations or neighbours; contrariwise they would include the notion of the readiness to advance monies to all and sundry provided the transactions were considered sound from the business point of view. Judged in this light we have no hesitation in holding that the transactions between the years 1928 and 1937 do not disclose the existence of a money-lending business.

12. The learned lower Court confined itself to the consideration of the question whether or not there should be proof of a large number of loan transactions before the lender could be considered to be ordinarily engaged in money-lending business. It held, and held rightly that) the question will depend upon the particular circumstances of each case, for it is obvious aspointed out by the lower Court that there are money-lenders who go about giving small loans and their clientele is necessarily large. There are others who advance big loans only and their transactions would naturally be limited in number by the extent of the capital available for investment. Having regard, however, to the nature, extent and purpose of the transactions proved in this case and the period over which the advances were spread and taking further into consideration the fact that if the plaintiff desired to engage in money-lending business, he would have done so on a fairly large scale and that ample evidence would have been available. to prove that he took to money-lending as a profit making concern, we find it impossible to agree with the lower Court that the loan to this defendant was given in the course of a regular money-lending business. The mere fact that he charged interest to recompense himself for loss is hardly a criterion. The lower Court was under the impression that the rate was exorbitant. Our examination of exs. A-2, A-3, A-4 and 1, however, shows that the stipulated rate of interest was, if anything, generally concessional. In some case it was lower than the prevailing rate.

13. We have already indicated that a part of the evidence in the case consisted of answers to certain interrogatories served on behalf of Mt. Narain Dei on the Raja. It was urged on behalf of the respondent that the replies contained in the affidavit sworn by the Raja's Mukhtar should be rejected, inasmuch as they were not verified in the manner provided by law and that the general agent was incompetent to answer the interrogatories. Having regard, however, to the provisions of Order 11, Rule 9 read with Order 3, Rule 1, Civil P.C., these objections can scarcely be regarded as legitimate. Reference in this connection was also made on behalf of the respondent to para. 82 of the Oudh Civil Rules. That paragraph is an amplification of the general rule in respect of affidavits contained in Order 19, Rule 8, Civil P.C. It has no connection with answers to the interrogatories, a matter to which Rule 9 of Order 11, specifically relates. The respondent's contention has no force.

14. We hold that the appellant did not advance the loan in the regular course of money, lending business. He was not bound, therefore, to act in compliance with Section 82 and could neither be deprived of his interest after the coming into force of the Agriculturists' Relief Act nor could he be deprived of his costs. We accordingly and in modification of the decree raised by the Court below we order that the plaintiff shall be entitled to the principal amount plus interest from the date of loan till 31st December 1929 at the contractual rate and from 1st January 1930 to 7th May 1935 at 6 per cent. per annum compoundable annually. From 8th May 1935 to 14th January 1936 interest shall run at 5 per cent. compoundable annually and from 15th January 1936 till the date of the suit at $4\frac{3}{4}$ per cent. per annum compoundable annually. The office will calculate the amount to which the plaintiff is thus found entitled. The defendant would be allowed six months' time from today to pay into the lower Court the sum found due plus pendente lite and future interest at 3 per cent. per annum simple on the aforesaid amount provided that if the additional amount found due to the plaintiff-appellant by this Court exceeds Rs. 16,210, it will be confined to that amount only. Let a preliminary decree for sale be passed as indicated above. The appellant will get from the respondent his proportionate costs of this Court and of the Court below.

