

**SamiruddIn Maltey Vs. Naba Kumar Saha**

**SamiruddIn Maltey Vs. Naba Kumar Saha**

**SooperKanoon Citation :** [sooperkanoon.com/869271](http://sooperkanoon.com/869271)

**Court :** Kolkata

**Decided On :** Dec-16-1941

**Reported in :** AIR1942Cal224

**Appellant :** SamiruddIn Maltey

**Respondent :** Naba Kumar Saha

**Judgement :**

ORDER

1. After hearing the learned advocates on both sides we are of opinion that this rule should be made absolute. We think that the Court below was not right in holding that the suit was not one to which the Act applied and consequently the Court had no jurisdiction to reopen the decree under the provisions of Section 36, Bengal Moneylenders Act. The suit was one to enforce a mortgage by conditional sale and it was instituted sometime in the year 1933. It culminated in a compromise decree passed in the same year and under the terms of the compromise the mortgage money was payable in certain instalments and the further provision was that in default in payment of any one of the instalments the entire sum would become due and the mortgagee would be entitled to recover possession of the mortgaged property by taking out execution. It is admitted that the judgment-debtor paid the first four instalments in proper time. There was default in the year 1938. After certain proceedings before the Debt Settlement Board with which we are not concerned, the present execution proceedings were started in the year 1940. As the execution proceedings in connexion with the

decree were pending after 1st January 1939, we must hold that the suit was one to which the Act applied and consequently the Court which passed the decree had jurisdiction to grant relief under Section 36, Clause (6), Bengal Money-lenders Act. We are not impressed by the argument of Mr. Ghose that a suit for foreclosure cannot be deemed to be a suit to which this Act applies within the meaning of Section 2 Sub-section (22) of the Act. It is true that what the plaintiff wants in a foreclosure suit is not recovery of a certain amount of money and the only relief he prays for is to bar the mortgagor's right of redemption with regard to the mortgaged property, but we think that the wording of Clause (6), Section 2, Sub-section (22) is sufficiently wide to include a foreclosure suit inasmuch as it is certainly a suit for the enforcement of a security taken in respect of a loan.

2. Mr. Ghose has argued in the last place that, at any rate, the decree in the foreclosure suit itself discharges the liability of the mortgagor irrespective of any execution proceedings under the provisions of Order 34, Rule 3, Civil P.C., and, consequently, the decree can be said to have been satisfied as soon as default occurred in the year 1938. This contention also, in our opinion, has no substance. Section 36, Bengal Money-lenders Act, speaks of satisfaction of the decree prior to 1st January 1939. The liabilities of the mortgagor might have been at an end as soon as the decree had become final, but the decree itself was not satisfied unless execution proceedings were taken and the mortgagee decree-holder got possession of the mortgaged property. In our opinion, therefore, this rule should be made absolute. The order of the Court below is set aside and we send the case back to that Court in order that it may be disposed of in accordance with the provisions of the Bengal Money-lenders Act. We make no order for costs.