

*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

CHHEDI LAL (PLAINTIFF) v. BHARAT (DEFENDANT)*

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U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—"Agriculturist debtor"—Debtor who was an agriculturist at the date of the loan.

The words "agriculturist debtor" in section 33 of the U. P. Agriculturists' Relief Act refer to a debtor who was an agriculturist at the date when the loan was contracted, and the section does not apply to a person who is an agriculturist at the time when he sues for an accounting but was not an agriculturist at the time when he took the loan.

Mr. *Shiva Prasad Sinha*, for the appellant.

Dr. *N. C. Vaish*, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is a plaintiff's appeal against the order of a learned single Judge of this Court in proceedings which were instituted under section 33 of the Agriculturists' Relief Act of 1934.

The plaintiff filed a suit for an accounting. The defence to the suit was that the plaintiff is not an agriculturist. The learned Munsif sustained the defence and dismissed the suit. The plaintiff appealed and the learned Civil Judge in the lower appellate court held that inasmuch as the plaintiff was an agriculturist at the time of the institution of the suit the suit should not have been dismissed. He accordingly remanded the case to the trial court for decision on the merits. The defendant appealed and the learned single Judge of this Court set aside the order of remand and dismissed the suit.

The short question for consideration is as to whether a person who was not an agriculturist at the time when he contracted the loan is entitled to the benefits of section 33 of the Agriculturists' Relief Act. Upon a consideration of the terms of the section itself and of

*Appeal No. 88 of 1937, under section 10 of the Letters Patent.

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the general scheme and objects of the Act the learned single Judge has held that section 33 does not apply to a person who was not an agriculturist at the time when he took the loan in respect of which he sues for an accounting. We are of the opinion that the decision of the learned single Judge is sound.

Section 33(1) of the Act is as follows: An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person." The important word in this section, in our view, is the word "lent". Now "loan" as defined in section 2 of the Act is "an advance to an agriculturist whether of money or in kind, and shall include any transaction which is in substance a loan." As defined clearly "loan" includes the transactions referred to in section 33 as follows—"advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person." It is further to be observed that in sub-section (3) of section 33 there is reference to sections 30(2) and 31(2). Now sections 30(2) and 31(2) clearly refer to "loans". The word "loan" is used in section 30 and section 31 and can mean only "loan" as defined by section 2 of the Act. It is therefore clear from the terms of section 33 itself that that section was intended to cover only those transactions which are contemplated in sections 31 and 32.

Furthermore it is to be observed that in section 2(10) which defines "loan" there is a reference to section 33(1). Section 2(10) (a) (ii) provides that "small loans which are not included as loans within the definition shall be included so far as section 33(1) is concerned."

The definition of a creditor in section 2 of the Act further lends support to the view that section 33, as

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indeed every section of chapter V of the Act, refers to debtors who were agriculturists at the date when the loan was contracted. "Creditor" is defined in section 2(7) as follows: "'Creditor' in chapter V means a person who, in the regular course of business, advances a loan as defined in this Act, and includes the legal representatives and the successors in interest, whether by inheritance, assignment or otherwise, of a creditor." Now the suits contemplated by section 33 of the Act are suits against "creditors", that is against persons who have advanced "loans" as defined in the Act. "Loan" as already observed is defined as "an advance to an agriculturist", that is a person who was an agriculturist at the time when the advance was made.

Upon a consideration of the provisions of section 33 and of the other sections in the Act above referred to we are satisfied that the plaintiff in the suit out of which this appeal arises was not entitled to prefer a claim under section 33(1). His suit was therefore rightly dismissed by the learned single Judge.

In the result the appeal is dismissed with costs.

Before Justice Sir Edward Bennet and Mr. Justice Verma

MUNICIPAL BOARD, MORADABAD, (DEFENDANT) v.
 HABIB ULLAH (PLAINTIFF)*

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Municipalities Act (Local Act II of 1916), sections 186, 321—Order for demolition ultra vires—Suit for injunction maintainable—"Instructions regarding Nazul entrusted to the management of Municipal Boards"—No force of law—Municipalities Act, sections 60, 61, 321—Notice of demolition issued by Executive Officer—Validity.

In order that section 321 of the Municipalities Act may be applicable it is necessary that the order or direction purporting to be made under sections 186 and 211 of the Municipalities Act should be made in accordance with the powers conferred

*Second Appeal No. 1435 of 1935 from a decree of Harish Chandra, District Judge of Moradabad, dated the 8th of August, 1935, reversing a decree of Mazhar Husain, Munsif of Moradabad, dated the 18th of January, 1935.