

20  
Nov. 6.

## RANI BRIJ RAJ KUMARI

v.

SUBH KARAN DAS.

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN  
AND SIR SRINIVASA VARADACHARIAR, JJ.]

*Bihar Money-Lenders Act, 1938 (Act No. III of 1938) ss. 16 and 17—Whether repugnant to an existing Indian Law—Bihar Money-Lenders (Regulation of Transactions) Act, 1939 (Act No. VII of 1939), ss. 13 and 14—Effect of Governor-General's assent.*

It was not intended in the order passed in *Shyamakant Lal v. Rambhajan Singh* to imply that a formal application by the judgment-debtor to the Court was necessary before he could obtain relief under the provisions of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, which repealed and re-enacted the Bihar Money-Lenders Act, 1938.

*Shyamakant Lal v. Rambhajan Singh*, [1939] F. C. R. 193 applied.

APPEAL from the High Court at Patna.

*Raghubir Singh* for the appellant. The respondent did not appear.

The main facts are stated in the Judgment.

The Judgment of the Court was delivered by GWYER C. J.—This appeal does not differ in essence from other appeals of the same kind which have been recently before this Court from Bihar. A mortgage decree had been obtained against the appellant's predecessor in title for a sum of nearly Rs. 1,50,000 and when execution proceedings were threatened, she sought the protection afforded by ss. 16 and 17 of the Bihar Money-Lenders Act, 1938<sup>(1)</sup>. Her application was rejected by the lower court and, on appeal, by the High Court, on the ground that by a previous decision of the High Court those provisions had been held to be void. Those provisions have now been repealed and re-enacted by the Bihar Money-Lenders (Regulation of Transactions) Act, 1939<sup>(2)</sup>, and cannot now be challenged, since the later Act was reserved for the consideration of the Governor-General and subsequently received his

<sup>(1)</sup> Bihar Act No. III. of 1938.

<sup>(2)</sup> Bihar Act No. VII of 1939.

assent. This Court has already held in *Shyamakant Lal v. Rambhajan Singh*(<sup>1</sup>) that the Act is retrospective and that the Court has power to make such an order on an appeal as the court below could have made if the case had been heard by them at the date of the appeal. This case is indistinguishable from the case cited and we therefore allow the appeal and remit the case to the High Court with a direction to discharge their order of 30th January, 1939, and the order of the lower court dated 23rd January, 1939, leaving the matter to be disposed of under the provisions of ss. 13 and 14 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, the sections which have replaced ss. 16 and 17 of the earlier Act.

Our attention has been drawn to a slight ambiguity in the order passed in *Shyamakant Lal's* case, which might be thought to imply that a formal application by the judgment-debtor to the Court was necessary before he could obtain relief under the provisions of the new Act. We did not intend to imply anything of the kind; and we have modified our order in the present case in order to remove any possible misunderstanding.

There will be no order as to costs.

*Case remitted to High Court.*

Agent for Appellants : *T. K. Prasad.*

1939.  
Rani Brij  
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Das.  
Judgment.

(<sup>1</sup>) [1939] F. C. R. 193.