

JAGDISH JHA AND OTHERS

v.

AMAN KHAN.

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

Bihar Money-Lenders Act, 1938 (Bihar Act No. III of 1938), s. 11—Bihar Money-Lenders (Regulation of Transactions) Act, 1939 (Bihar Act No. VII of 1939), s. 7—Whether appellants entitled to benefit of s. 7 of new Act—Validity of s. 11 of Act of 1938.

Section 11 of the Bihar Money-Lenders Act, 1938 (No. III of 1938) has been re-enacted as s. 7 of the Bihar Act No. VII of 1939; and as this Act was passed in conformity with the procedure prescribed in s. 107(2) of the Constitution Act, its validity is not open to question. Section 7 of the new Act in terms made applicable to suits instituted before the commencement of the Act. The appellants were accordingly held entitled to claim the benefit of the section, and it was unnecessary to consider whether s. 11 of the Act of 1938 was void or not.

APPEAL from the High Court at Patna.

Raghubir Singh (A. C. Roy with him) for the appellants. The respondent did not appear.

The facts appear sufficiently from the Judgment.

Cur. adv. vult.

The Judgment of the Court was delivered by

GWYER C. J.—This appeal arises out of a suit instituted by the respondent for the recovery of money claimed to be due under a mortgage bond executed in his favour by some of the appellants on April 16, 1921. The other defendants are minor members of the mortgagors' family. The bond provided for payment of compound interest at Rs. 1-4-0 per cent. per mensem with yearly rests. Certain of the defendants did not contest the case, but the others put the plaintiff to proof of his claim generally; they also contended that the rate of interest was excessive and not justified by necessity.

1939.
Jagdish Jha
 v.
Aman Khan.
 Judgment.

The question of the interest seems to have been the main point in controversy in the litigation. The trial court allowed only simple interest at Rs. 1-4-0 per cent. per mensem; but on appeal by the plaintiff, the lower appellate court allowed compound interest in accordance with the terms of the mortgage bond. The third defendant carried the matter in second appeal to the Patna High Court; and during the pendency of the appeal before the High Court, the Bihar Legislature passed the Bihar Money-Lenders Act, 1938⁽¹⁾. Section 11 of that Act provided that "no court shall, in any suit brought by a money-lender in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise, is greater than the amount of the loan advanced". The appellant naturally relied upon this enactment in support of the second appeal. When the second appeal came on for hearing, the learned Judges of the High Court seem to have expressed themselves against the contention of the defendants as it stood independently of the Money-Lenders Act; the contention based on s. 11 of the Act was referred to a Full Bench which upheld the mortgagee's contention that that section was void under s. 107 of the Constitution Act, as being repugnant to an existing Indian law: *Sadanand Jha v. Aman Khan*⁽²⁾. It is against the decree of the High Court dismissing the second appeal on this ground that this appeal has been preferred by the defendants.

Section 11 of the Bihar Money-Lenders Act, 1938, has now been re-enacted as s. 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939⁽³⁾; and, as this Act has been passed in conformity with the procedure prescribed in s. 107 (2) of the Constitution Act, its validity is not open to question. Section 7 of the new Act has in terms been made applicable even to suits instituted before the commencement of

(1) Bihar Act No. III of 1938.

(2) (1938) I. L. R. 18 Pat. 13.

(3) Bihar Act No. VII of 1939.

the Act and the appellants are accordingly entitled to claim the benefit of the section. It is therefore unnecessary to consider whether s. 11 of the Bihar Money-Lenders Act, 1938, was or was not void, on the grounds raised before the High Court.

1939-
Jagdish Jha
v.
Aman Khan.
Judgment.

We, therefore, allow this appeal. The case is remitted to the High Court with a direction to pass a preliminary decree for Rs. 400 principal, and Rs. 119 (that is, Rs. 400 less Rs. 281 already paid) for interest up to February 26, 1934, the date of the institution of the suit. There will be further interest at the rate of six per cent. per annum on Rs. 400, the principal amount, from February 26, 1934, up to the date to be fixed by the High Court for payment; after that date, interest at six per cent. per annum will be payable on the consolidated amount up to the date of payment. The plaintiff will retain the costs awarded to him in the first two courts, that is to say, the Munsiff's Court and the District Judge's Court; there will be no order as to costs in the High Court and in this Court.

Case remitted to High Court.

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