

## BANK OF BARODA

v,

MOTI BHAI AND ORS.

29th January, 1985

[Y.V. CHANDRACHUD, C.J. AND V. BALAKRISHNA ERADI, J.]

*Bar to jurisdiction of civil courts—Suit for recovery of a demand loan sanctioned to agriculturist by a Bank under a promissory note duly covered by hypothecating the standing crop of his lands and supported with two guarantors for the repayment of the loan—Maintainability of the Suit—Rajasthan Tenancy Act (Act 3 to 1955) sections 43, 207 and 256 read with Entry 35 of Third Schedule, scope of.*

The appellant Bank filed a suit for the recovery of the amount of loan together with interest thereon granted to Respondent No. 1 who had not only executed a promissory note but also a bond hypothecating the standing crop of his lands situated at Khandu and Surjipada in Rajasthan. Respondents 2 and 3 being guarantors for the repayment of the loan were also proceeded against. The Trial Court overruled the preliminary objection raised by the Respondents as to the maintainability of the Suit, in view of sections 207 and 256 of the Rajasthan Tenancy Act, 1955. But the High Court, while allowing the Civil Revision Application set aside the judgment of the Trial Court and dismissed the suit.

Hence the appeal by special leave of the Court.

Allowing the appeal, the Court,

HELD : 1.1 A combined reading of sections 207 and 256 of the Rajasthan Tenancy Act, 1955 would show that the jurisdiction of the civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act, the long title of which shows that it was passed in order "to consolidate" and amend the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms and matters connected therewith. [787C-D; 788A]

1.2. Entry 35 is described in the Third Schedule as a "General" entry, that is to say, not relatable to any particular section of the Act. The

suit filed by the Bank cannot fall under this "General" or "residuary" entry. A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and cannot be said to be in respect of any matter arising under the Act.

[787G; 788A-B]

1.3. The business of the Bank, in so far as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys. In this particular case, the Bank lent a certain sum of money to respondent 1 in the usual course of its commercial business and nothing could be further removed from the contemplation of the Act than such a transaction. It is only by way of a collateral security that the Bank obtained a hypothecation bond and a deed of mortgage from respondent 1 and a letter of guarantee from respondents 2 and 3. The assumption that the mortgage was executed in pursuance of section 43 of the Act and, therefore, residuary Entry 35 of the Third Schedule is attracted, is not correct.

[788G-H; 789A]

2. On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. Approaching the matter from that point of view, primarily and basically the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promissory note executed by respondent No. 1 and the guarantee given by respondents 2 and 3. The reliefs sought for also make it clear that the suit is not one to enforce the mortgage and, even assuming that it is, the mortgage not having been executed under section 43 of the Act, nor being one relatable to that section, the residuary Entry 35 can have no application. If that entry is out of way, there is no other provision in the Act which would apply to the instant suit and therefore, the civil court has jurisdiction to entertain the suit filed by the appellant Bank. [789C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1321 of 1980.

From the Judgment and Order dated the 15th February, 1976 of the High Court of Rajasthan at Jodhpur in S. B. Civil Revision No. 320 of 1978.

*P. G. Gokhale* and *Mr. B. R. Agarwala* for the Appellant.

*Dalveer Bhandari* for the Respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. The appellant, the Bank of Baroda, agreed through its Banswara Branch to sanction a demand loan facility in the sum of Rs.36,000 in favour of respondent 1. In consideration thereof, respondent 1 executed a demand promissory note in favour of the Bank on June 18, 1973. He also executed a bond hypothecating the standing crop of his lands situated at Khandu and

A Surjipada in Rajasthan. Respondents 2 and 3 are the guarantors for the repayment of the loan. In order to further secure the repayment of the loan, respondent 1 executed a deed of simple mortgage in favour of the Bank, in respect of the lands at Khandu and Surjipada.

B The respondents having failed to repay the loan, the appellant filed against them a suit in the court of the learned District Judge, Banswara, for recovering a sum of Rs. 52,000 and odd which was due on the loan transaction. Respondents raised a preliminary objection to the maintainability of the suit on the ground that the claim in the suit was essentially one for enforcing the mortgage executed by them in favour of the Bank and, therefore, the Revenue court had the exclusive jurisdiction to entertain the suit, by reason of the provisions contained in the Rajasthan Tenancy Act 3 of 1955, (hereinafter called "the Act"). That objection was overruled by the learned District Judge but, in a civil revision application filed by the respondents, the High Court upheld it. According to the High Court, "the execution of the mortgage deed by defendant No. 1 in favour of the plaintiff in respect of his tenancy rights in agricultural land also forms the essential part of the cause of action of the plaintiff and as such, the suit is triable by a revenue court". The correctness of this view is questioned by the plaintiff in this appeal by special leave.

E Section 207 of the Act reads thus ;

*207. Suit and applications cognizable by revenue court only.*—(1) All suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court.

F (2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

G *Explanation:*—If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted.

H Section 256 of the Act, which is complementary to section 207, reads thus;

"256. *Bar to Jurisdiction of civil courts.*—(1) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any civil court with respect to any matter arising under this Act or the Rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein.

(2) Save as aforesaid, no order passed by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the Rules made thereunder shall be liable to be questioned in any civil court".

A combined reading of these two sections would show that the Jurisdiction of civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act.

The legal position on the question of jurisdiction which is stated above requires examination of the various entries in the Third Schedule. That Schedule is divided into three parts, the first of which is called "Suits", the second is called "Applications", and the third is called "Appeals". We are concerned in this appeal with the 35 entries which are comprehended in the first part which deals with suits. It is common ground, and the High Court has not held to the contrary, that none of the specific entries 1 to 34 is applicable to the suit filed by the appellant Bank. The argument is that the residuary Entry 35 would govern the suit and, therefore, by reason of sections 207 and 256 of the Act, the Revenue court alone could entertain it. Entry 35 is described in the Third Schedule as a "General" entry, that is to say, not relatable to any particular section of the Act. The description of the entry as "General" is given in Column 2 of the Third Schedule which is headed "Section of Act." the third column of the Schedule carries the heading "Description of suit, application or appeal". Under that column, the relevant description runs thus :

"Any other suit in respect of any matter arising under this Act, not specifically provided for elsewhere in this Schedule".

A We are unable to appreciate how the suit filed by the Bank can fall under this "General" or residuary entry. The suit of the Bank to recover the loan is not in respect of any matter arising under the Act. The long title of the Act shows that it was passed in order "to consolidate and amend the law relating to tenancies of agricultural lands, and to provide for certain measures of land reforms and matters connected therewith". A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and can, by no stretch of imagination be said to be in respect of any matter arising under the Act.

C The High Court has relied on section 43 of the Act in order to come to the conclusion that the deed of mortgage was executed by respondent 1 in favour of the Bank in accordance with that section and, therefore, the suit for the sale of the tenancy rights of the mortgagee by enforcement of the mortgage is a suit in respect of a matter arising under the Act. The High Court holds that such a suit would attract the residuary entry since the matter to which it relates has not been specifically provided for elsewhere in the Third Schedule. With respect, we are unable to accept this line of reasoning. Section 43 (1) of the Act, which is relevant for this purpose, reads thus:

E "43. *Mortgage*:—(1) Khatedar tenant, or, with the general or special permission of the State Government or any officer authorised by it in this behalf, a Ghair Khatedar tenant, may hypothecate or mortgage his interest in the whole or part of his holding for the purpose of obtaining loan from the State Government or a Land Development Bank as defined in the Rajasthan Co-operative Societies Act, 1965 (Act 13 of 1965) or a Co-operative Society registered or deemed to be registered as such under the said Act or any Scheduled Bank or any other institution notified by the State Government in that behalf".....

G The High Court is in error in saying that 'it cannot be disputed' that the mortgage was executed by respondent 1 in pursuance of section 43. The business of the Bank, in so far as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys. In this particular case, the Bank lent a certain sum of money to respondent 1 in the usual course of its commercial business and nothing could be further removed from the contemplation of the Act than such a transaction. It is only by way of a collateral security that the Bank obtained a hypothecation bond and

a deed of mortgage from respondent 1 and a letter of guarantee from respondents 2 and 3. The entire judgment of the High Court is based on the assumption that the mortgage was executed in pursuance of section 43 of the Act and, therefore, residuary Entry 35 of the Third Schedule is attracted. Once it is appreciated that the mortgage executed by respondent 1 is outside the scope of the Act, the reasoning of the High Court has to be rejected.

On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. If the matter is approached from that point of view, it would be clear that primarily and basically, the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promisory note executed by respondent 1 and the guarantee given by respondents 2 and 3. The relief sought by the Bank is that the suit should be decreed for the repayment of the amount due from the respondents. By the second prayer, the Bank has asked that "in case of non-payment of the decretal amount" the mortgaged property should be brought to sale and if the proceeds of that sale are not enough to meet the decretal liability, the other moveable and immovable properties of the respondents should be put at sale. The suit is not one to enforce the mortgage and, even assuming for the purpose of argument that it is, the mortgage not having been executed under section 43 of the Act, nor being one relatable to that section, the residuary Entry 35 can have no application. If that entry is out of way, there is no other provision in the Act, which would apply to the instant suit. The civil court has therefore, jurisdiction to entertain the suit filed by the appellant Bank.

For these reasons, we set aside the judgment of the High Court and restore that of the District Court. The suit shall be disposed of expeditiously. The appellant will be entitled to its costs of this appeal from the respondents.

S. R.

*Appeal allowed.*