MANU/BH/0176/1945

Equivalent Citation: AIR1946Pat110, 12(1946)CLT67

IN THE HIGH COURT OF PATNA
FULL BENCH

Second Appeal No. 8 of 1941

Decided On: 21.12.1945

Appellants: **Dandapani Gowda**
Vs.
Respondent: **Bishun Das**

Hon'ble Judges/Coram:
Sinha, Das, C.M. Agarwala, Herbert Ribton Meredith and Bira Kishore Ray, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K.D. Chatterji, Adv.

For Respondents/Defendant: P. Misra, Adv.

ORDER

Sinha and Das, JJ.

1. This is a decree-holder's second appeal from the decision of the learned Additional Subordinate Judge of Berhampur, reversing that of the District Munsif of the same place in execution proceedings. The facts leading up to this appeal are as follows. The respondent executed a mortgage bond in 1910 in favour of one Ghaitana Goudo. Original Suit No. 9 of 1922 was instituted by the mortgagee's sons. The Madras High Court passed a preliminary decree in the suit on 4th April 1933, and on 31st January 1939, the final decree was drawn up. Execution was taken out of this decree by the assignee of the decree from the original decree-holders. In that execution case the judgment-debtor made an application under Section 10, Orissa Money-Lenders Act (Orissa Act 3 [III] of 1939) for sealing down the decree. This objection of the judgment-debtor was numbered as Miscellaneous judicial case No. 16 of 1940. The opposite party to that case' (the assignee of the decree-holders) contended in the Court of first instance that the original mortgagee-decree-holder was not a money-lender within the meaning of the Act, and that, therefore, Section 10 of the Act could not apply. It does not appear to have been contended in the first Court that Section 10 read with Section 16 of the Act did not apply to the case. The executing Court took the view that Section 10 read with Section 16, Money-Lenders Act was applicable to the case, provided that it was proved that the original mortgagee decree-holder was a money-lender. And, on taking evidence, it came to the conclusion that the original mortgagee-decree-holder was not a money-lender as defined in the Act, and, in that view of the case, dismissed the judgment-debtor's application.

2. On an appeal by the judgment-debtor, the lower appellate Court came to the conclusion that the judgment-debtor was entitled to relief under Section 10 read with Section 16 of the Act in the view it took of the evidence that the mortgagee-decree-holder was a moneylender. Thus, on the only question of if act in, controversy between the parties, the lower appellate Court reversed the decision of the trial

Court. In the result, the lower appellate Court directed that the decretal amount should be reduced to double the principal sum advanced with interest for the period subsequent to the institution of the suit, as also cost. Hence, this second appeal by the decree-holder.

3. It was contended, in the first instance, by Mr. Chatterji appearing for the appellant that the finding of the lower appellate Court that the original mortgagee-decree-holder was a money-lender is not correct. But this finding, is essentially one of fact, and is, therefore, binding on this Court in second appeal. It must, therefore, be held that the judgment of the lower appellate Court cannot be assailed on the ground that the finding is incorrect.

4. But it was next contended that the relief granted by the lower appellate Court was not available to the judgment-debtor in execution proceedings, and, naturally, reliance was placed on a decision of a Division Bench of this Court in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431. In that case it was laid down by a Division Bench of this Court that Section 10 read by itself must be held to apply to suits only. We respectfully agree with that observation. But it has been further laid down that that Section read with Section 16, Orissa Money-Lenders Act is not applicable to execution proceedings. With the utmost deference to the opinion of their Lordships who constituted the Bench, we are inclined to the opinion that that decision is not correct.

5. Hence, it becomes necessary to examine in some detail the ratio decidendi of the decision aforesaid., Section 10, Orissa Money-Lenders Act, runs as follows:

> (1) Notwithstanding anything to the Contrary contained in any other law or in anything having the force of law or in any contract, 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 originally advanced.
>
> (2) Where, in any suit, as is referred to in Sub-section (1), it is found that the amount already realised as interest through Court or otherwise, for the period preceding the institution of the suit, is greater than the amount of the loan originally advanced, so much of the said amount of interest as is in excess of the loan shall be appropriated towards the satisfaction of the loan and the Court shall pass-a decree for the payment of the balance of the loan, if any.

6. In terms that Section is limited in its application to that stage in the litigation which has not yet resulted in a decree. By virtue of Notification No. 2316D, published in the Orissa Gazette of 28th June 1939 Sections 10 and 16 (so far as Section 16 applies Sections 10, 11, 12 and 13 to pending suits, appeals and execration proceedings mentioned therein) were to come into force on 1st July 1939. As the final decree in the present case was passed on 1st January 1939, Section 10 by its own force cannot apply to the present case, and the judgment-debtor, therefore, will not be entitled to any relief under Section 10 of the Act. But Section 16 provides as follows:

> The provisions of Sections 10 to 15 shall apply (i) to suits brought by money-lenders in respect of loans advanced before the commencement of

> this Act, and pending on the date on which the said Sections came into force; and (ii) to appeals and proceedings in execution arising in respect of decree passed on 1st April 1936 or thereafter on the basis of loans whether such appeals or proceedings in execution were pending on, or instituted after, the date on which the said Sections came into force.

7. By virtue of Clause (ii) of Section 16, the provisions of Section 10 have been made applicable to proceedings in execution arising in respect of decrees passed on 1st April 1936 or thereafter, either then pending or instituted after that date. As this Section came into force on 1st July 1939, the judgment-debtor, on the face of the section, is entitled to relief unless it can be held, as has been held in the decision of the Division Bench of this Court aforesaid, that Section 10 has not been made applicable to execution proceedings by virtue of the provisions of Section 16. Reliance was placed on behalf of the respondent on another Division Bench decision of this Court in A.I.R. 1942 Pat. 384 Sano Kashinath v. Pattito Sabuto in which the following observations have been made by Harries C.J. and Manohar Lall J.:

> It is to be observed that in the present case the decree had been passed long before the Orissa Money-Lenders Act came into force but Section 10 is made applicable to this case by reason of Section 16 of the Act. In any event this Section can only apply in a suit brought by a money-lender.

8. In that case their Lordships took the view that the lower Court was right in its con-elusion that it had not been proved that the decree-holders were money-lenders within the meaning of the Orissa Money-Lenders Act. It was said on behalf of the appellant that the observations of their Lordships quoted above are mere obiter dicta, inasmuch as they decided the appeal on the footing that the decree-holders in that case had not been proved to be money-lenders. But it has been rightly contended on behalf of the respondent that that decision itself would not have been necessary unless their Lordships were of the opinion that the Money-Lenders Act applied. Be that as it may, their Lordships' did not discuss the question in controversy in the present case at all. They practically assumed that Section 10 of the Act had been made applicable to execution proceedings by virtue of Section 16.

9. Hence, in our opinion, that decision cannot be cited as a considered opinion of that Bench. As the report itself shows, their considered opinion was given on the other question, namely, as to what is understood by the term "money-lender" in the Act. The appellant, on the other hand, relied upon a decision of a Bench of this Court consisting of Varma and Imam JJ., in Thangudu Lingaraju Patro v. Balunki Mohanatra Misc. First Appeal No. 10 of 1940, decided on 14th September 1944 in which that Bench followed the earlier decision of this Court in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431 already referred to.

10. Their Lordships in this case also have not discussed the question independently, but have only followed the earlier decision of this Court. Hence, it must be held that the only considered judgment of this Court on the question in controversy between the parties brought to our notice is that reported in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431. In that case their Lordships have pointed out that the distinction between a suit and an execution proceeding has been carefully observed in chap. III, Orissa Money-Lenders Act. In that chapter Sections 8 to 12 in express terms are confined to a suit by a money-lender up to the stage of passing of the decree, except that Sub-section (2) of Section 11 contemplates a proceeding by the judgment-debtor even after the passing of the decree and before execution is taken

out, though it may be even after the decree has been put into execution. Similarly, Section 13 also may apply in both stages, (i) after the passing of the decree and before execution is taken out, and (ii) after the decree has been put in execution. This is made clear by the expression "at any time" occurring in the section. It has been observed by their Lordships in the decision aforesaid that, if Section 16 were to be construed in the manner suggested on behalf of the judgment-debtor, Sub-section (2) of Section 11 would appear to be redundant. But, with all respect to their Lordships, that Sub-section is not necessarily confined to the stage of execution proceedings. On a plain reading of Sub-section (2) of Section 11 if a decree passed by a Court on 1st April 1936, or thereafter, on the basis of a loan, has not already been satisfied in whole or in part, it is open to the judgment-debtor to apply to the Court which passed the decree, even though the decree-holder has not started any execution proceeding, inviting it to exercise all or any of its powers given to it by Sub-section (1) of Section 11, that is to say, the Act empowers the Court to review a decree passed on or after 1st April 1986, to which the Act applies, by way of taking accounts between the parties, re-opening the account or relieving the judgment-debtor from the liability of paying any interest in excess of nine per cent, or twelve per cent, per annum as the case may be Such a relief may also be claimed by the judgment, debtor even after execution proceedings have been started.

11. Hence, it would appear that the provisions of Sub-section (2) of Section 11, not being confined only to the execution stage, are not redundant even if Section 16 were to be read along with Section 11. It is certainly "difficult to understand why a similar provision was not made in Section 10." We also respectfully agree with the observations of their Lordships in that case with reference to the terms of Sections 14 and 15, Orissa Money-Lenders Act. The provisions of these two Sections apply in their terms to execution proceedings only, where, as Section 13 may apply before execution is taken out. There may, therefore, be some sense in saying that Section 13 will apply to execution proceedings, but it is a little difficult to understand why the Legislature in Section 16 repeated that the provisions of Sections 14 and 13 shall apply to execution proceedings or, to put it in another way, how these Sections could be made applicable to suits before any decree was passed.

12. It must, therefore, be said that Section 16 has been rather loosely worded. But it is quite a different thing to say that, though the Section makes Section 10 applicable to proceedings in execution arising in respect of decrees passed on or after 1st April 1936 the Court was in a position to hold to the contrary. In our opinion, the provisions of Section 16 read with the other provisions of chap, in of the Act make it absolutely clear that, in a suit between a money-lender and the borrower resulting in a decree passed on 1st April 1936, or after that date, it is open to the Court to apply the rule of "damdupat"--thus to describe compendiously the provisions of Section 10 of the Act--to reopen the accounts between the parties, even though those accounts may purport to have been closed by the decree; or to reduce the decretal sum by reducing the amount of interest in excess of nine per. cent, in the case of secured debts and of twelve per cent, in the case of unsecured debts; or to grant instalments in which the decree may be paid by the judgment-debtor. All these are indications of the intention of the Legislature to grant concessions to borrowers or to judgment-debtors who may have been harshly treated by money-lenders. Similarly, the Legislature was intent upon making it clear that in such suits the aforesaid reliefs could be granted at the stage of appeal from decree passed, or even at the stage when execution had been taken out by the decree-holder, or perhaps even at a stage after the passing of the decree and before taking out of execution of that decree. In its endeavour to make that intention clear, the Legislature has grouped together all

those sections, thus leading to those difficulties of interpretation which have been pointed put in the judgment aforesaid. But, in spite of those difficulties of interpretation, in our opinion, to the question whether the Legislature intended to apply the provisions of Section 10 to execution proceedings in respect of decrees passed on or after 1st April 1936, there is only one answer, and that is in the affirmative.

13. Apart, however, from the question of the "intention of the Legislature," which expression has been characterised by Lord Watson as a

> common but very slippery phrase signifying anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant: see Salomon v. Salomon & Co. Ltd. (1897) 1897 A.C. 22.

the express words used in Section 16 are that

> the provisions of Sections 10 and 15 shall apply to proceedings in execution arising in respect of decrees passed on 1st April 1936, etc.

14. Quoting Lord Wensleydable, Lord Macnaghten has observed in Vacher & Sons, Limited v. London Society of Compositors (1913) 1913 A.C. 107 that the universal rule in construing statutes, as in construing all other written instruments, is that

> the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further: Grey v. Pearson (1857) 6 H.L.C. 61.

15. The only absurdity or inconsistency which has been pointed out is as respects the application of Sections 14 and 15 to suits, i.e., at a stage before the passing of the decree. There is no absurdity or inconsistency in applying Section 10 to execution proceedings: the Section by itself applies to suits, but the Legislature can say, as it has said in clear terms, that it shall apply to certain execution proceedings. No inconsistency or absurdity follows from such application. On the contrary, it advances the general object of the Orissa Money-Lenders Act, the object being to "lessen the burden of debtors generally in respect of loans from money-lenders": see Govind Dani v. Purusotam Mahapatra A.I.R. 1943 Pat. 430. It would be rather difficult to understand the meaning of Notification No. 2316-D, dated 28th June 1939, in so far as it brought Section 16 in force, if that Section did not make Sections 10, 11, 12 arid 13 applicable to execution proceedings. In our view, there are no good grounds why effect should not be given to the express words used in Section 16, and why the literal construction should be modified beyond the purpose of avoiding an absurdity, inconsistency or repugnance. The marginal note to Section 16 has been referred to as giving the clue to the proper interpretation of this section. In this connection reference may be made to the decision of their Lordships of the Judicial Committee of the Privy Council in Balraj Kunwar v. Jagatpal Singh (04) 26 All. 393. Lord Macnaghten, delivering the opinion of their Lordships, has observed as follows:

> It is well settled that marginal notes to the Sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian Statute any

greater authority than the marginal notes in an English Act of Parliament.

16. In this connection reference may also be made to the cases in Kesava Chetty v. Secy. of State A.I.R. 1919 Mad. 514 and Dharwar Urban Bank, Ltd. v. Krishnarao Anantrao A.I.R. 1937 Bom. 198. Counsel for the appellant drew our attention to the decision of a Full Bench of the Allahabad High Court in Ram Saran Das v. Bhagwat Prasad MANU/UP/0214/1928 : AIR1929All53 where their Lordships are reported to have observed, while construing the Agra Preemption Act of 1932, that marginal notes to Sections of an Act can be referred to for the purpose of interpretation if they can be regarded as inserted by, or under the authority of, or assented to by, the Legislature. The observations in the last mentioned case may be correct with reference to the procedure followed in that particular legislation. Even assuming that the marginal note to Section 16 can properly be looked at for the correct interpretation of that section, we cannot find anything in the marginal note to lead us to the conclusion that Section 10 was not made applicable to execution proceedings by virtue of Section 16. On the other hand, if effect were to be given to the words of the marginal note, Section 10 is said to apply to execution proceedings. There are no indications in the marginal note to the contrary. The marginal note is not by itself complete; it refers to "certain pending suits, appeals and execution proceedings." At least, two of the provisions, Section 11(2) and Section 13, may apply to a stage when the suit has ended in a decree but before execution has been taken out. There is no reference to that stage in the marginal note, and it cannot be said that the omission of that stage in the marginal note would make those two Sections inapplicable in that stage. The word "certain" in the marginal note may have reference to the retrospective' character of the section, but it does not and cannot take away the effect of the express words used in the section.

17. Hence, it cannot be said that the marginal note shows that Section 10 was not meant to apply to execution proceedings. In the present case, if the words used by the statute in Section 16 have to be given their ordinary meaning, it must be held that Section 16 intended to extend the provisions of Section 10 to execution proceedings also. Hence, in our Opinion, the correctness of the decision in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431 is open to considerable doubt, and the decision requires consideration. We would, therefore, under Rule 2 of chap. V, High Court Rules, refer the following question for the decision of a Full Bench: "Do the provisions of Section 10 read with Section 16(2), Orissa Money-Lenders Act (Orissa Act 3 [III] of 1939) empower the executing Court to scale down a decree already passed?" As this question arises in a second appeal, the appeal itself has to be referred to the Full Bench for decision.

C.M. Agarwala, J.

18. This appeal arises out of an application by a judgment-debtor to have his liability for interest for the period preceding the institution of the suit limited to the principal amount of the loan under Section 10, Orissa Money-Lenders Act. The respondent obtained a decree on the mortgage which was made final on 31st January 1939. The appellant is an assignee of this decree. The application out of which this appeal arises was made to, the Court executing the decree. Section 10 prohibits a Court in any suit brought by a money-lender in respect of a loan advanced before or after the commencement of the Act from passing 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, is greater than the amount of the loan originally advanced. Section 16 applies the provisions of Sections 10 to 15 to proceedings in execution

arising in respect of decrees passed on or after 1st April 1936 on the basis of loans, whether such proceedings were pending on or instituted after the date on which Sections 10 to 15 came into force. The first Court held that the mortgagee in this case was not a money-lender within the meaning of the Act and accordingly dismissed the application of the judgment-debtor. On appeal by the latter, the Subordinate Judge held that the mortgagee was a moneylender and, purporting to act under Section 16 of the Act, allowed the application of the judgment-debtor by restricting the amount of interest for the period prior to the institution of the suit to a sum equal to the amount of the principal debt. Against that decision the decree-holder assignee preferred an appeal to this Court. The learned Judges before whom the appeal came were of the opinion that Section 16 had been rightly applied to the facts of the case; but as there is a previous decision of a Division Bench of the Court in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431 they referred to this Bench under Rule 2 of chap. 5 of the High Court Rules the following question:

> Do the provisions of Section 10 read with Section 16(2), Orissa Money-Lenders Apt, (Orissa Act 3 [III] of 1939) empower the executing Court to scale down a decree already passed?

This question having arisen in a second appeal, the appeal itself was also referred to this Bench. The preamble to the Act declares its object to be to regulate money-lending transactions and to grant relief to debtors in the Province of Orissa. None of the provisions of the Act come into force until the Governor has, by notification, directed them to do so under Section 1(3). Sections 10, 11, 12, 18 and Section 16, in so far as it applies these Sections to pending suits, appeals and execution proceedings, were directed to come into force by Notification No. 2316D dated 28th June 1939, which was published in the Orissa Gazette on 30th June 1939. Sections 14 and 15, and also Section 16, except in so far as it applies Sections 10, 11, 12 and 13 to pending suits, appeals and execution proceedings, were directed to come into force by Notification No. 3930, dated 17th November 1939, which was published in the Orissa Gazette on 24th November 1939.

19. All these Sections fall within chap. 3 which contains "provisions relating to suits in respect of loans and execution of decrees." Section 8, the first Section of this Chapter, bars a suit on a loan advanced after the date on which the Section comes into force unless the plaintiff had been registered as a money-lender under the Act at the time when the loan was advanced. Section 9 restricts the amount of interest which may be allowed on such a loan to 9 per cent, in the case of a secured loan and 12 per cent, in the case of an un-secured loan.

20. The material portion of Section 10 has already been cited. By its language, it applies to a suit and not to an execution proceeding. It prohibits a Court, in a suit by a moneylender, in respect of a loan advanced before or after the commencement of the Act, from passing 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 originally advanced. Further provisions relating to the amount of interest recoverable by a money-lender in respect of a loan advanced before the commencement of the Act are contained in Section 11(1) which empowers the Court in a suit on such a loan to reopen the transaction between the-parties, take an account and relieve the debtor of all liability in respect of any interest in excess of 9 per cent, in the case of a secured loan and 12 per cent, in the case of an unsecured loan, and to appropriate the excess interest towards the satisfaction of the principal of the loan. By its language this

subjection restricts the powers conferred in it to the Court trying the suit; but by Sub-section (2), in the case of a decree passed by a Court on or after 1st April 1936, and which remained unsatisfied in whole or in, part on the date on which the Act came into force, the powers conferred by Sub-section (1) were declared to be exercisable either by the Court which passed the decree or by the Court to which the decree was sent for execution. In the case of a suit on a mortgage, the Court is enabled to grant further relief to the debtor by Section 12 which empowers it in such a case to direct payment of the debt by instalments. The provisions of Sections 8 to 12 are ex-facie applicable to a suit and not to an appeal from the decree passed in the suit or to proceedings taken in execution of the decree except that the powers conferred by Section 11 are exercisable after the decree has been passed either by the Court which passed the decree or by the Court to which it has been sent for execution.

21. Then follow three Sections containing provisions exercisable by the Court executing a decree in a suit on a loan. Section 18 empowers the executing Court to direct payment of the decree by instalments in the case of a decree passed in a suit on loan, including a suit on a mortgage. Section 14 requires the Court executing a decree passed in a suit on loan to determine how much of the judgment-debtor's property should suffice to satisfy the debt, and Section 15 directs that only so much of the property so determined shall be advertised for sale and that this portion shall not be sold for less than the decretal dues unless the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the value of the property specified in the sale proclamation. By themselves the application of these Sections presents no difficulty.

22. With regard to each it is clear which provisions of Chap. 3, apply to suits and which to execution proceedings and the special provisions relating to mortgage decrees and proceedings in execution of mortgage decrees are clearly distinguishable from the provisions relating to decrees made in suits for recovery on other loans. The difficulty which has led to this reference arises with respect to the provisions of Section 16 which are as follows:

> 16. The provisions of Sections 10 to 15 shall apply: (i) to suits brought by money-lenders in respect of loans advanced before the commencement of this Act, and pending on the date on which the said sections came into force; and (ii) to appeals and proceedings in execution arising in respect of decrees passed on 1st April 1936 or thereafter on the basis of loans whether such appeals or proceedings in execution were pending on, or instituted after the date on which the said Sections came into force.

23. It is contended that the effect of these provisions of Section 16 is to apply any or all of the provisions of Sections 10 to 15 to all proceedings in respect of a loan, ignoring altogether the distinctions which have been made in these Sections between mortgage and other loans and between suits and execution proceedings. It may be conceded that the Section has not been happily worded. The learned Judges who made this reference were of opinion that the language of the Section is ambiguous and taking into consideration that one of the objects of the Act is to grant relief to debtors, have held that the Section should be so construed as to attain this object even though this construction entails disregarding the difference between mortgage and other loans and between suits and execution proceedings which mark the provisions of the other Sections contained in chap. in. That contention was advanced in Basudeb Mahapatra v. Surendra Nath Mitra A.I.R. 1942 Pat. 431 which was heard

by Fazl Ali J. (as he then was) and Varma J. in 1942, and was rejected. I agree with the reasons which led to the rejection of the contention on that occasion and I do not propose to enumerate them here. I agree also with the conclusion then reached that Section 16 was enacted only for the purpose of showing to what extent Sections 10 to 15 were intended to be retrospective. None of the Sections in question contain any provisions with regard to suits or execution proceedings, or appeals in suits or execution proceedings, instituted before any one of these Sections had been brought into operation by a Notification of the Governor under Section 1(3) of the Act. The object of Section 16 was to make it clear that the appropriate Section is to apply to suits, execution proceedings and appeals in suits and execution proceedings, in the case of suits, execution proceedings and appeal pending at the time that the relevant Section came into force.

24. The effect of this Section may be summarised as follows: (1) In respect of a loan advanced before the commencement of the Act the appropriate provision of Sections 10, 11 or 12 according to whether the loan was by way of mortgage or otherwise, is to be applied even in a suit pending on the date on which the relevant Section was directed to come into force. (2) In respect of all loans the provisions of Sections 18, 14 and 15 are to be applied in a proceeding to execute a decree passed on or after 1st April 1986, even though the proceeding was pending on the date on which the relevant Section was directed to come into force. (3) In the case of appeals: (i) from a decree, the appellate Court has the same power and is subject to the same restrictions as the Court which passed the decree so far as the provisions of Sections 10, 11(1) and 12 are concerned; (ii) in execution cases, the appellate Court has the same powers as the executing Court so far as Sections 13 to 15 are concerned.

25. In my opinion, it was not the intention of the Legislature in enacting Section 16 to permit the executing Court to disregard the distinction made between mortgage and other loans and between suits and execution proceedings which is contained in the other Sections of chap. III.

26. I would accordingly allow the appeal and dismiss the application of the judgment-debtor. The appellant is entitled to his costs throughout.

Herbert Ribton Meredith, J.

I agree.

Bira Kishore Ray, J.

I agree.