THE RECOVERY OFFICER, LAKHIMPUR AND ORS. A

v.

SMT. RAVINDRA KAUR AND ORS.

DECEMBER 4, 1996

[N.P. SINGH AND S.B. MAJMUDAR, JJ.] B

U.P. Co-operative Societies Act, 1965 :

Sections 39 and 91—Interpretation of—Proviso to Section 39—Applicability of. C

Co-operative Society—Members—Loan obtained from Society for seeds and manure—Default—Recovery proceedings initiated for enforcing the statutory charge under Section 39(a) read with Section 91—Challenge by members contending that proceedings under Section 91 against their lands were illegal as their lands were not subject matter of any charge under Section D *39—High Court quashed the recovery proceedings holding that sale of the lands belonging to the members could not be effected unless the concerned societies obtained decrees of court of competent jurisdiction as required by the proviso to Section 39—Appeal before Supreme Court—Held, only clause (a) of Section 39 would get attracted on the facts of the present* E *case—Clause(a) creates a statutory charge on the crops or produce of the land which result out of the utilisation of the seeds or manure loan which is said to have been taken by the concerned member—Therefore, the charge attaches to the produce of the land and not on the land itself out of which the said produce is realised—Proviso to Section 39 would encompass in its fold all other properties of the indebted member provided there is a decree in favour* F *of the society—As the lands of the writ-petitioners were not the subject-matter of any charge under Section 39, there was no occasion for Recovery Officer to proceed under Section 91 for enforcement of such non-existing charge on the lands—Till the society obtained executable decrees on the basis of the loan amounts there would arise no occasion for the society to get attachment and* G *sale of other uncharged property of the judgment-debtor by resort to the proviso to Section 39—The High Court was justified in quashing the steps taken by the appellants for sale of the lands belonging to the respondents.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3238-40 of 1979. H

A From the Judgment and Order dated 15.2.79 of the Allahabad High Court in W.P. No.1108 of 1976.

Ranjit Kumar for the Appellants.

S.K. Jain, A.P. Dhamija and Pradeep Aggarwal for the Respondents.

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The following Order of the Court was delivered :

In these appeals Recovery Officer functioning under the U.P. Co-operative Societies Act, 1965 and others have brought in challenge the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench in different writ petitions moved by the contesting respondents. The High Court allowed the writ petitions of the contesting respondents concerned and quashed the recovery proceedings initiated against them in so far as they related to the execution order under Section 91 of the Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter referred to as 'the Act') by attachment and sale of the lands of the contesting respondents. It is not in dispute between the parties that the original writ petitioners being members of the co-operative societies concerned had taken loans for seeds and manure etc. form these societies functioning under the Act. When the contesting respondents did not repay the loans, the co-operative societies which advanced the loans sought to enforce the statutory charge on the properties of the writ petitioners as created by Section 39(a) of the Act. Recovery proceedings for enforcing the said charge were initiated under Section 91 read with Section 39(a) by the appellant Recovery Officer. The contesting respondent writ petitioners moved the High Court challenging these recoveries. It was contended before the High Court by the contesting writ petitioners-lonees that as the loans were taken for procuring seeds and manure etc. charge under Section 39(a) attached to the crops produced in the lands of the contesting respondents by utilising seeds and manure procured out of the loan amounts but the said charge did not fasten on the other properties and the lands of the writ petitioners and, therefore, proceedings under Section 91 against the lands of the writ petitioners were illegal and liable to be quashed. The High Court accepted the said contention and allowed the writ petitions by holding, on construction of Section 39 read with Section 91 of the Act that for realisation of loans advanced for the objects mentioned in Section 39 (a) of the Act, sale of the lands belonging to the writ petitioners could not be effected unless the concerned societies obtained decrees of court of competent jurisdiction as required

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by the proviso to Section 39. Writ Petitions were accordingly allowed. A

The aforesaid decision of the High Court is challenged by the appellant on the ground that the High Court had erred in not properly construing the provision in Section 39 (a) read with Section 91 of the Act. In order to appreciate the aforesaid contention, it is necessary to have a look at the relevant provision. Section 39 reads as under : B

> "S.39 - First charge of co-operative society on certain assets - Notwithstanding anything contained in the Provincial Insolvency Act, 1920 (Act V of 1920), or in the Code of Civil Procedure, 1908 (Act V of 1908), or in any other enactment relating to land tenure C for the time being in force, any debt or outstanding demand due to a co-operative society by any member, past or present, or standing against the estate of any deceased member, shall subject to any claim of the Central Government or the State Government arising from a loan granted by it before, but not after, the grant of the loan by the society, or in respect of land revenue or any sum D recoverable as arrears of land revenue, be a first charge -
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> (a) if such debt or demand is due in respect of the supply of, or any loan to provide the means for, seed, manure, labour subsistence, fodder for cattle or any other thing incidental to E the conduct of agricultural operations, upon the crops and agricultural produce of such members ;
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> (b) if such debt or demand is due in respect of any loans to provide the means for paying the rent or revenue of the land or for irrigation facilities, upon the land whose rent or F revenue has been so paid or, as the case may be, on which the irrigation facilities have been provided ;
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> (c) if such debt or demand is due in respect of supply of, or any loans to provide the means for the purchase of cattle, or other G livestock, or for the purchase, repair or maintenance of agricultural implements, transport equipments or equipment for dairy or for other activities relating to animal husbandry, or for making, repairing or purchasing of farm-house or shed for cattle or for other livestock or for making, repairing or purchasing of warehouse for storage of agricultural produce, H

then upon the farm-produce of such members and also upon the cattle, livestock so purchased, or upon the equipments, warehouse, farm-house or shed so purchased, repaired, maintained or made wholly or partially out of any such loan, and if the borrower is a land-holder, then upon his land also, at any time within three years from the date on which the instalment of such loan becomes repayable ;

(d) if such debt or demand is due in respect of the supply of, or any loan for the purchase for raw material, industrial implements, plant and machinery, workshops, warehouse or business premises, upon the material or other things so supplied or purchased by such member and in the case of a debt or demand in respect of the supply, or for the purchase of raw materials also upon the articles manufactured from such raw material;

(e) if such debt or demand is due in respect of any loan for the purchase or redemption of land, upon the land so purchased or redeemed;

(f) if such debt or demand is due in respect of any loan for the purchase or construction of any house or building or any other portion thereof, or in respect of the supply of materials for such constructions upon the house or building or materials so purchased or constructed or supplied; and

(g) if such debt or demand is due in respect of any loan of Rs. 500 or more for reclaiming or protecting land or for effecting improvement on land or for preparation of land for orchard or plantation or for purchase of cattle, agricultural implements, machinery, upon the land so sought to be reclaimed, protected, improved or prepared, or upon the land for the use of which the implements or machinery are sought to be purchased and in case of purchase of cattle, upon any land of the borrower:

Provided that along with the charge created under this section all other property of the indebted member including any amount payable to him by a society shall be liable to attachment and sale

in execution of a decree in favour of the society irrespective of the object of the loan." A

The next relevant section is Section 91 which reads as under :

"S.91- Enforcement of charge : - Notwithstanding anything contained in Chapter IX, or any other law for the time being in force, but without prejudice to any other mode of recovery provided in this Act, the Registrar or any other gazetted officer subordinate to him, and authorised by him in this behalf may, on the application of a co-operative society and on being satisfied of the existence of the debt or outstanding demand make an order directing the payment of such debt or outstanding demands due to the society by any member or past or deceased member, by sale of the property or any interest therein, which is subject to a charge under Section 39 : B C

Provided that no order shall be made under this section, unless the member, past member or the nominee, heir or legal representative of the deceased member, has been served with a notice of the application and has failed to pay the debt or outstanding demand within one month from the date of service". D

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A conjoint reading of the aforesaid two provisions clearly shows that before a charge can be enforced under Section 91 by way of recovery proceedings, it has to be shown that the concerned property of the debtor was subjected to a statutory charge under Section 39 and it is such a charged property which can be sold in the summary manner as laid down by Section 91 for realising the payment of debt of the members due to the outstanding demand of the society against such members. Consequently, it has to be found out whether the proposed sale of the property is referable to any charge which is settled on such property under Section 39. Section 91 lays down the procedure for enforcement of the charge which is referable to Section 39. All that Section 91 does is to provide a mode for enforcing the said charge. Once a charge is found to have been created on the concerned property as per Section 39, then it would create an executable right in favour of the society and a corresponding obligation on the part of the loanee to satisfy his dues from the sale of the charged property. When we turn to Section 39, we find that only clause F G H

A (a) of the said section would get attracted on the facts of the present case. Clause (a) creates a statutory charge on the crops or produce of the land which result out of the utilisation of the seeds or manure loan which is said to have been taken by the concerned member. Therefore, the charge attaches to produce of the land and not on the land itself out of which the B said produce is realised. In this connection, we may usefully refer to clauses (b), (c), (e) and (g) of Section 39 which create charge on land of the debtor member under circumstances contemplated by these clauses. It is not the case of the appellants that any such charge on writ petitioners' lands was created under these clauses. Learned counsel for the appellants fairly C stated that clause (a) of Section 39 cannot be effectively pressed in service because charge was not created on the land on account of the fact that the loan was taken by the concerned member for purchasing seeds or manure. However, his submission was that charge on all other properties of the debtor was created in favour of the society by the proviso to Section 39. D A mere look at the proviso shows that it would encompass in its fold all other properties of the indebted member provided there is a decree in favour of the society. Then irrespective of the object of the loan such a decree-holder society can proceed against any other property of the judgment-debtor by attachment and sale in execution of the decree. The proviso E does not contemplate creation of any charge on these properties. It contemplates execution of the decree for a given sum of money and such a decree could be executed by attachment and sale of any of the properties of the judgment-debtor even though not subjected to any charge under Section 39. Proviso has nothing to do with creation of charge. Statutory charge is contemplated by clauses (a) to (g) of Section 39 only. The very F opening words of the proviso show that along with the charge created under this section meaning thereby under Section 39 clauses (a) to (g) respectively any other property i.e. not subjected to charge also can be proceeded against if the society has an executable decree against the debtor. All other properties mentioned in the proviso mean those which G are not the subject-matter of the charge. It cannot, therefore, be said that proviso enlarges the scope of Section 39 (a) to (g) and creates a further statutory charge. It must, therefore, be held that the High Court was justified in taking the view that under the proviso no further charge is created on other property of the loanee. Once that conclusion is reached, H Section 91 dealing with enforcement of the charge goes out of picture. As

the lands of the writ-petitioners were not the subject-matter of any charge under Section 39, there was no occasion for Recovery Officer to proceed under Section 91 for enforcement of such non-existing charge on the lands. Till the society obtained executable decrees on the basis of the loan amounts there would arise no occasion for the society to get attachment and sale of other uncharged property of the judgment-debtor by resort to the proviso to Section 39. It is also pertinent to note that execution of decree is contemplated by Section 92 and not by Section 91. Section 92 reads as under : -

> "S.92. - Execution of certain orders and awards. - Every award made under Section 71, and capable of execution in the manner provided below, and every order so capable of execution made by the Registrar under Section 67 or sub-section (2) of Section 68 or under Section 91, or by the liquidator under Section 74 or by an appellate authority on appeal under Section 97 or 98 or on review under Section 99 or as an interlocutory order under Section 100 or a certificate for recovery issued under Section 95-A shall, if not carried out, be executed -
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> (a) in the manner provided by law for the time being in force for the recovery of arrears of land revenue:
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> Provided that an application for the recovery or any such sum is made to the Collector and accompanied by a certificate signed by the Registrar or any person authorised by him in this behalf:
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> Provided further that such application is made within 12 years from the date fixed for payment in the order or award and if no such date is fixed, from the date of the order or award, as the case may be; or
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> (b) by the Registrar or any other person subordinate to him and empowered by him in this behalf, by attachment and sale or sale without attachment of any property of the person or the co-operative society against whom the order or award has been made; or
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> (c) by the civil court having jurisdiction over the matter as if the

A order or award were the decree of that court."

For all these reasons, therefore, it must be held that the High Court was justified in quashing the steps taken by the appellants for sale of the lands belonging to the respondents. We make it clear that our aforesaid conclusion is reached in the context of the loans advanced under Section B 39(a) of the Act. It would be open to the appellants to pursue other remedies available for realisation of the loan amounts advanced to the respondents writ-petitioners in accordance with law. These appeals fail and are dismissed with no order as to costs.

T.N.A. Appeals dismissed.