

PUNJAB DEBTORS PROTECTION ACT, 1936

2 of 1936

[16th April, 1936]

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An Act to provide for the more effective protection of debtors in Punjab. Preamble. Whereas it is expedient for the more effective protection of debtors to modify the existing law on certain points and to amend the law with respect to persons carrying on business as money-lenders; And whereas the previous sanction of the Governor-General under subsection (3) of Section 80-A of the Government of India Act and the previous sanction of the Governor under Section 80-C of the said Act have been obtained.

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

- (1) This Act may be called the Punjab Debtors' Protection Act, 1936.
- (2) It extends to 1Punjab and Union territory of Delhi.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context:

- (1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom, or in any of the Colonies or Dependencies thereof, or in any Part A State or Part C State, or incorporated by an Act of Parliament of the United Kingdom, or by Royal Charter or Letters Patent or by any Act of Parliament.
- (2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in any Part A State or Part C State, or incorporated by an Act of Parliament of the United Kingdom, or by Royal Charter or Letters Patent, and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, (VI of 1912) applies.
- (3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912 (II of 1912).
- (4) "Court" includes a court acting in the exercise of insolvency jurisdiction.
- (5) "Interest" includes the return to be made, over and above what was actually lent, whether the same is charged or sought to be recovered, specifically by way of interest, or otherwise.
- (6) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include :
 - (i) a deposit of money or other property in a Post Office Savings

Bank or any other bank or in a company or with a co-operative society;

(ii) a loan to or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, (XXI of 1860) or under any other enactment for the time being in force;

(iii) a loan advanced by the [State] Government or by any local body authorized by the 5 [State] Government;

(iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Indian Companies Act, 1913 (VII of 1913);

(v) a loan advanced to a trader;

(vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXVI of 1881), other than a promissory note;

(vii) a transaction which is, in substance, a mortgage or a sale of immovable property.

(7) "Money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of the person who advanced the loan.

(8) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include:

(i) a wholesale or a retail merchant,

(ii) a commission agent,

(iii) a broker,

(iv) a manufacturer,

(v) a contractor,

(vi) a factory owner, but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

CHAPTER 2

Execution of Decrees

3. Definitions :-

In this Chapter, unless there is anything repugnant in the subject or context,

(1) "land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land;

(2) "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the [State] Government to exercise the powers of a Collector under this Chapter;

[(3) "Commissioner" means the Commissioner of a division or any officer specially empowered by the State Government to exercise the powers of a Commissioner under this Chapter.]

4. Temporary alienation of land in execution of decree for the payment of money :-

(1) Notwithstanding anything contained in any other enactment for the time being in force, whenever a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the civil court, the Collector shall decide the period of alienation, which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the State Government in exercise of the powers conferred by Section 4 of the 1Punjab Alienation of Land Act, 1900, (XIII of 1900).

5. Partial exemption of land :-

Such portion of the judgment-debtor's land shall be exempted from temporary alienation as in the opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person, is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.

6. Collector and Commissioner deemed to be acting judicially :-

The Collector when acting under Sections 4 and 5 shall be deemed

to be acting judicially and shall act in accordance with the provisions of law applicable to be Court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under Section 4 or 5 shall have a right of appeal to the Commissioner who when hearing appeals under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of Appeal.

6A. . :-

The Financial Commissioner may, at any time, call for and examine the record of any order passed, or proceedings taken by the Collector or the Commissioner under this Act for the purpose of satisfying himself as to the legality or propriety of such order or such proceedings and may pass such order thereon as he may think fit.

7. Limitation for appeals :-

The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be sixty days.

8. Rules to be made after previous publication :-

The State Government may, subject to the condition of previous publication, make rules for carrying into effect the provisions of Sections 4, 5, 6 and 7 of this Chapter.

9. Exemption of ancestral property from liability :-

When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder [whether male or female and if female whether she holds as a limited owner or full owner] shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors-in-interest:

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by a predecessor in interest, the court shall determine the liability of such land as if this section had not been passed :

Provided further, and subject to the foregoing proviso, that, in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable, only if all the following conditions are satisfied :

First. That, before such liability is determined, the judgment-debtor shall be given sufficient opportunity to show cause against such liability. Second. That such liability was permitted by the rule of custom applicable to the judgment-debtor immediately before the commencement of this Act, and nothing in this section shall prevent the judgment-debtor from proving the contrary.

Third. That the decree-holder is able to show to the satisfaction of the court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not in *ex parte* proceedings, holding that such a custom was applicable to the sub-tribe in the tehsil to which the judgment-debtor belongs.

Fourth. That the judgment-debtor is not able to show to the satisfaction of the court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not in *ex parte* proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree-holder.

10. Exemption of standing crops and trees from attachment or sale :-

Notwithstanding anything to the contrary contained in any other enactment for the time being in force :

- (1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree;
- (2) standing trees apart from the land on which they stand shall not be liable to sale in the execution of a decree or an order of a court.

11. Execution barred in certain cases :-

(1) Notwithstanding anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of Section 7 of the Punjab Relief of Indebtedness Act, 1934, (VII of 1934) and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from :

- (a) the date of the decree sought to be executed, or
- (b) where the decree or any subsequent order directs any payment

of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed :

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application; or
- (b) to limit or otherwise affect the operation of article 183 of the First Schedule to the Indian Limitation Act, 1908 (IX of 1908).

11A. . :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908, no decree for the payment of money shall be executed by the sale without attachment, or by the appointment of a receiver of land or the produce of land or an interest in land, which under any law for the time being in force, is exempt from attachment or sale.

CHAPTER 3

Burden of Proof

12. Burden of proof of consideration :-

Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the burden of proving that any consideration alleged to have been paid by a money-lender actually passed shall be on him; unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of Section 58 of the Indian Registration Act, 1908 (XVI of 1908), as having been paid in his presence.