

BOMBAY EXECUTION OF DECREES (TEMPORARY POSTPONEMENT) ACT, 1959

70 of 1959¹

[25 December, 1959]

An Act to provide for relief to agriculturists by way of temporary postponement of institution of suits in, and execution of decrees passed by, Civil Courts in areas that are for the time being affected by natural calamities.

Whereas, it is necessary to provide for relief to agriculturists by way of temporary postponement of institution of suits in, and execution of decrees passed by, Civil Courts in areas that are for the time being affected by failure of crops, famine, fire, drought, flood or such other natural calamities;

And, whereas, it is expedient that such relief should be limited within those areas, where on account of such calamities, the State Government either has granted remission or super session of land revenue and made a declaration of scarcity or of famine conditions, or has ordered remission or suspension of collection of land revenue;

It is hereby enacted in the Tenth Year of the Republic of India as follows:-

PART 1 Preliminary

1. Short title, extent and commencement.- (1) This Act may be called the Bombay Execution of Decrees (Temporary Postponement) Act, 1959.

(2) It extends to the whole of the State of Bombay

(3) This Part and Part IV shall come into force at once. Part II shall come into force in such area, being an area where, on account of failure of crops, famine, fire, drought, flood or such other natural calamities, the State Government has granted remission or suspension of land revenue and besides made a declaration of scarcity or of famine conditions, and on such date as ¹[the Collector] may, be notification in the Official Gazette specify, and different dates may be specified for different areas for this purpose. Part III shall come into force in such area, being an area whether, on account of any of the aforeside calamities, the State Government has ordered suspension or remission of land revenue, and on such date as ¹[the Collector] may, by notification in the Official Gazette specify, and different dates may be specified for different areas for this purpose.

(4) Part II or, as the case may be Part III shall, unless it is sooner declared by the ²[the Collector] by notification in the Official Gazette that it shall cease to be in force in any area or part thereof, cease to be in force in such area or such part and on such date as may be specified by ²[the Collector] by a notification in the Official Gazette, being the area or the part in which and the date on which, the State Government has declared the cesser of carcity or of famine conditions or as the case may be, has discontinued the suspension or remission of land revenue.

1. These words were substituted for the words, "the State Government" by Mah. 12 of 1979, s. 2(a)

2. These words were substituted for the words, "the State Government" by Mah. 12 of 1979, s. 2(b)

2. Definitions :-In this Act, unless the context otherwise requires-

(a) "agriculturist" means a person who by himself or by his servants or tenants earns his livelihood wholly or principally by agriculture carried on within the limits of the State of Bombay or who ordinarily engages personally in agriculture within those limits;

Explanation.-(i) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture, or to engage personally in agriculture, or who is prevented from so earning his livelihood, or engaging personally in agriculture by reason of old age or bodily infirmity or necessary absence on account of service in the Armed Forces of the Union does not thereby cease to be an agriculturist within the meaning of this definition;

(ii) an assignee of Government assessment or a mortgagee of lands belonging to an agriculturist is not as such an agriculturist within the meaning of this definition;

(iii) in the case of member of joint family or co-owners or co-tenants, if any member, co-owner or co-tenant, ordinarily engages personally in agriculture, such member, co-owner or co-tenant shall be deemed to be an agriculturist, although the other members of the joint family or other co-owners or cotenants do not ordinarily engage personally in agriculture;

(b) "civil court" includes a Court of Small Causes.

PART 2

Stay of Execution of Decrees and Postponement of Institution of Suits in Certain Cases Under Scarcity or Famine

3. Stay of proceedings in case of certain decrees and postponement of certain suits(1)Save as provided in sub-section (5), in any area where, on account of any of the calamities referred to in sub-section (3) of section 1, the State Government has granted remission or suspension of land revenue, and besides made a declaration of scarcity or of famine conditions, all proceedings in execution of any decree for money, all proceedings for making final any preliminary decree for foreclosure in enforcement of a mortgage and all proceedings in execution of any final decree for foreclosure or sale in enforcement of a mortgage and all proceedings in execution of any final decree for foreclosure or sale in enforcement of a mortgage, passed by any Civil Court in that area on the basis of any liability incurred before the commencement of this Part in that area, in which the judgment-debtor or one of the judgment-debtors is on such commencement an agriculturist, shall be stayed during the period this Part remains in force in that area.

(2) In any area to which sub-sec. (1) applies,-

(a) no application for execution of any decree referred to in that sub-section or for making final any preliminary decree for fore-closure referred to in that sub-section, shall be entertained by any Civil Court in that area so long as this Part remains in force in that area;

(b) no suit for money and no suit for fore-closure or sale in enforcement of a mortgage, shall be instituted, or proceeded with if instituted in any Civil Court in that area against an agriculturist so long as this Part remains in force in that area, except in cases where an agriculturist is about to dispose of the whole or any part of his immovable property.

(3) Where proceedings in execution of any decree have been stayed under sub-sec. (1), all attachments of growing crops, agricultural produce, live-stock and other movable property of a perishable nature, made in execution of such decree and subsisting on the date on which the stay order is passed, shall be deemed to be withdrawn.

(4) All proceedings under the Provincial Insolvency Act, 1920 (V of 1920) against an agriculturist in any area to which sub-sec. (1) applies whether on the applications of the debtor or creditor, pending on the commencement of this Part in that area, shall be stayed during the period this Part remains in force in that area.

(5) Nothing in sub-sec. (1) shall apply to a proceeding subsequent to the sale of any property made in execution of a decree relating to such property.

4. Installment decrees :-Where any decree referred to in sub-sec. (1) of Sec. 3 is payable by Installment and any Installment payable thereunder falls due while this part remains in any area, then notwithstanding anything contained in such decree, failure to pay such Installment on the due date shall not be deemed to be a default and every such Installment shall be deemed to fall due on the expiration of one month from the withdrawal of this Part under sub-sec. (4) of Sec. 1 from that area.

5. Exemption from arrest :-No agriculturist in any area in which this Part is in force shall be liable to arrest or detention in civil prison in execution of a decree referred to in sub-sec. (1) of Sec. 3 during the period this Part remains in force in that area.

6. Computation of the period of limitation :-(1) In computing the period of limitation prescribed by the Indian Limitation Act, 1908 (IX of 1908) or any other law for the time being in force, for-

(a) a suit in a Civil Court in any area against any agriculturist for money or for fore-closure or sale in enforcement of a mortgage referred to in clause (b) of sub-sec. (2) of Sec. 3, or

(b) an application in a Civil Court in any area for execution of any decree referred to in sub-sec. (1) of Sec. 3 or an application in a Civil Court in any area for making final any preliminary decree for fore-closure or sale referred to in that sub-section, the period during which this Part remains in force in that area shall be excluded, and a further period not exceeding thirty days shall be added so as to make up the deficit, if any, prior to the expiry of one month from date of withdrawal of this Part under sub-sec. (4) of Sec. 1 from that area.

(2) In computing the period of twelve years prescribed in Sec. 48 of the Code of Civil Procedure, 1908 (V of 1908), for an application in a Civil Court for execution of any decree referred to in sub-sec. (1) of Sec. 3 the period during which this Part remains in force in that area shall be excluded.

(3) In computing the aforesaid period of twelve years, the period during which proceedings were stayed under the Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956 (M.P. Act V of 1956), shall, notwithstanding the expiry of that Act by efflux of time, also be excluded as if that Act had not expired.

7. Restrictions on transfer :-Every transfer of immovable property or of any Interest therein made in any area where this Part is in force, by an agriculturist who is a judgment-debtor of any decree referred to in sub-sec. (1) of Sec. 3, during the period this Part remains in force in that area shall be void as against the holder of such decree.

8. Payment of certain decrees :-Nothing contained in this Act shall-

(a) prevent any decree-holder from accepting any payment under a decree or making any adjustment thereof voluntarily made by the judgment debtor:

(b) apply to a decree for money arising out of claims relating to trust; or for maintenance or for profits in favour of a co-tenant or a co-owner, or for damages for a tort or for contribution between co-tenants of agricultural land; or

(c) apply to a mortgage decree sought to be executed by the sale of the mortgage property in the hands of a subsequent transferee who has taken the transfer subject to the mortgage on the basis of which, such decree has been obtained.

PART 3

Stay of Execution of Decrees and postponement of institution of suits in certain cases not falling under Part II

9. Application of provisions of Part II to certain cases of agriculturist not covered by that Part :- (1) In any area where, on account of any of the calamities referred to in sub-sec. (3) of Sec. 1, the State Government has ordered suspension or remission of land revenue, the provisions of Part II shall, subject to the provisions of sub-sec. (3) also apply, so far as may be, in respect of a judgment-debtor, a defendant, or a person, as the case may be, who is an agriculturist in that area, provided during the period this Part remains in force in that area, he makes an application to a Civil Court of competent jurisdiction in this behalf seeking stay of execution of decrees or postponement of institution of suits in the manner and to the extent provided by Part II, and the Court, on being satisfied that it would be in the interest of the agriculturist to grant the relief prayed for, passes an order accordingly.

(2) Every stay order or other order passed by the Court under sub-sec. (1) shall relate back to the date of the application filed by the judgment- debtor, the defendant or the person, as the case may be, and shall cease to operate when this Part ceases to apply to the area.

(3) While construing the provisions of Part II in their application so far as may be for the purposes of this section-

(a) the period to be excluded under Sec. 6 shall be the period between the date of the application made under sub-sec. (1) and the date when this Part ceases to apply to the area of the date of rejection of the application by the Court whichever is earlier;

(b) the restrictions on transfer imposed by section 7 shall be deemed to apply only to an agriculturist who has made an application under sub-section (1), and to have effect on and from the date on which the application is presented to the Court and until the date when this Part ceases to apply to the area or the date of rejection of the application by the Court, whichever is earlier.

PART 4

Miscellaneous

10. Rules :- (1) The State Government may make rules for carrying into effect the provisions of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before each House of the Legislature as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following.

11. Repeal and Savings :-The Saurashtra Execution of Decrees (Temporary Postponement) Act, 1952 is hereby repealed : Provided that such repeal shall not affect-

(a) the previous operation of any Act so repealed or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any Act so repealed; or

(c) any Investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced as if this Act had not been passed :

Provided also that, subject to the preceding proviso, anything done or any action taken under the Act so repealed (including notification issued and rules made) shall, in so far as it is not inconsistent with any of the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act, as if the said provision was in force in the relevant part of the State when such thing was done or such action was taken, and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

12. Repeal of Bom:-Ordinance No. IV of 1959.- (1) The Bombay Execution of Decrees (Temporary Postponement) Ordinance, 1959 is hereby repealed and the provisions of Sections. 7 and 25 of the Bombay General Clauses Act, 1904 shall apply to such repeal as if that Ordinance were an enactment.

(2) The Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956 shall stand revived.
