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**Legislative Department**

**Bengal Act VIII of 1940**

**The Bengal Agricultural Debtors  
(Amendment) Act, 1940**

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**THE BENGAL AGRICULTURAL DEBTORS (AMENDMENT) ACT, 1940.**

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# Bengal Act VIII of 1940.

## THE BENGAL AGRICULTURAL DEBTORS (AMENDMENT) ACT, 1940.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette* of the 2nd May 1940.]

*An Act to amend the Bengal Agricultural Debtors Act, 1935.*

Ben. Act  
VII of  
1936.

WHEREAS it is expedient to amend the Bengal Agricultural Debtors Act, 1935, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Agricultural Debtors (Amendment) Act, 1940. Short title and commencement.

(2) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In section 2 of the Bengal Agricultural Debtors Act, 1935 (hereinafter referred to as the said Act)— Amendment of section 2 of Bengal Act VII of 1936.

(1) after clause (6) the following clause shall be inserted, namely :—

“(6A) “Civil Court” means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court ;”;

XII of  
1887.

(2) in clause (8)—

(a) after the word “liabilities” the words and figures “incurred prior to the first day of January 1940” shall be inserted ;

(b) in sub-clause (iv)—

(i) after the word and figure “section 28” the word “and” shall be omitted, and

(ii) after the words “held by a tenant” the following shall be inserted, namely :—

“and

Ben. Act  
III of  
1913.

(c) any sum referred to in Article 12A of Schedule I to the Bengal Public Demands Recovery Act, 1913, or any sum ordered by a liquidator under any Act of the Provincial Legislature, for the time being in force, relating to co-operative societies, to be recovered as a contribution to the assets of a co-operative society or as the cost of liquidation thereof ;”;

2 *The Bengal Agricultural Debtors (Amendment) Act, 1940.*

[Ben. Act VIII

(Sections 3—5.)

(c) in sub-clause (v) for the words “by limitation; or” the words “by limitation, or which is otherwise irrecoverable under the law;” shall be substituted; and

(d) after sub-clause (vi) the following sub-clause shall be inserted, namely:—

“(vii) any tax or rate due to a Municipality or Union Board or Union Committee;”

and

(3) after clause (II) the following clause shall be inserted, namely:—

“(IIA) “original principal” means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;”.

Amendment of section 4.

3. In the proviso to section 4 of the said Act for the words “officer who has had judicial experience” the words “servant of the Crown” shall be substituted.

Amendment of section 7.

4. In section 7 of the said Act—

(a) for the words, figures and brackets “sub-section (2) of section 9” the words, figures and brackets “sub-sections (2) or (3) of section 9” shall be substituted, and

(b) after the word, letter and brackets “clause (b)” the words, letter and brackets “or clause (c)” shall be inserted.

Amendment of section 9.

5. To section 9 of the said Act the following sub-section shall be added, namely:—

“(3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (b) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the entire amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that, notwithstanding anything contained in any other law,—

(a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other

of 1940.]

(Sections 6, 7.)

persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and

- (b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord shall be debarred from instituting a suit for the recovery of the same, unless during such period the debtor fails to comply with the said terms."

6. In section 11 of the said Act—

Amendment of  
section 11.

(1) in sub-section (1)—

- (a) after clause (d) the following clause shall be inserted, namely :—

"(dd) details of any liabilities incurred on or after the first day of January 1940 ;" and

- (b) after clause (e) the following clause shall be inserted, namely :—

"(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor ;" ;

(2) in sub-section (2)—

after clause (e) the following clause shall be inserted, namely :—

"(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor ;".

7. In sub-section (1) of section 13 of the said Act—

Amendment of  
section 13.

- (a) for the words and figure "If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall,"

(Sections 8—10.)

the words, figures and brackets “At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,” shall be substituted :

(b) after the words “whichever is later” the following shall be inserted, namely :—

“and further requiring all creditors to produce on a date specified in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document” ; and

(c) in the proviso after the words “his statement of debt” the words “or the production of his documents and true copies thereof” shall be inserted.

Insertion of new section 13A.

8. After section 13 of the said Act the following section shall be inserted, namely :—

“13A. If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice.”

Amendment of section 14.

9. In section 14 of the said Act—

(1) sub-section (1) shall be omitted ;

(2) in sub-section (2) for the words “so produced” the words, figures and brackets “produced in compliance with the notice under sub-section (1) of section 13” shall be substituted ; and

(3) in sub-section (3) after the words, figure and brackets “as required by sub-section (1)” the words and figure “of section 13” shall be inserted.

Amendment of section 18.

10. In section 18 of the said Act—

(1) in sub-section (2) for the words “after hearing the parties and considering the evidence produced” the words “the evidence produced, if any, after having given an opportunity to the parties to appear and be heard,” shall be substituted ;

(2) sub-section (3) shall be omitted ; and

of 1940.]

(Section 11.)

(3) after sub-section (4) the following sub-sections shall be added, namely :—

“(5) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where a creditor has taken possession on any terms whatsoever of any immovable property of the debtor as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, and where the Court has not pronounced a final decree for foreclosure or has not confirmed a sale held in execution of a final decree for the sale of the property, the Board shall, in making the determination under sub-section (2), prepare an account in the prescribed manner of the receipts of the creditor derived from the said property and after deducting the expenses properly incurred by the creditor (of which an account shall similarly be prepared) either for the cultivation or for the management of the said property, shall credit the sum of such receipts in reduction of the amount, if any, from time to time due to the creditor as interest on the original principal of the debt and, so far as such sum exceeds any interest due, in reduction or discharge, as the case may be, of such original principal.

(6) In determining under this section the amount of arrears of interest due—

(a) the rate of interest taken shall not, notwithstanding anything contained in any contract, exceed the rate recoverable in a suit or other proceedings for the recovery of the interest under any law for the time being in force, and

(b) where the debt relates to a loan in kind or where there is any stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances require such calculation, be calculated in the manner prescribed.”

11. In sub-section (1) of section 19 of the said Act—

(a) proviso (ii) to clause (b) shall be omitted, and

(b) after clause (b) the following clause shall be inserted, namely :—

“(c) when in respect of a debt referred to in sub-section (5) of section 18, the Board, if so empowered under section 7, considers that the debtor has made an offer for the settlement

Amendment of section 19.



(Section 12.)

of the debt which the creditor ought reasonably to accept, it may order that the debt be settled in accordance with such offer, and may pass a further order directing the creditor to restore to the debtor by a specified date any immovable property of the debtor which is in his possession as security for or in lieu of payment of any portion of the principal of such debt or any portion of the interest thereon. Such date shall be fixed in consideration of the profits derived and the estimated profits which may be derived by the creditor from such property provided that in no case shall the date be fixed so as to allow the creditor to enjoy possession of the land of a *raiyat* or under-*raiyat* for a period exceeding fifteen years from the commencement of such possession."

Insertion of  
new section 19A.

12. After section 19 of the said Act the following section shall be inserted, namely :—

- “ 19A. (1) If the creditor does not restore possession of the immovable debtor by the date specified in an property to award under sub-section (2) of debtor. section 19, the debtor may, apply to the Certificate-officer exercising jurisdiction in the area in which such property is situated, to be put in possession thereof.
- (2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate-officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.
- (3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate-officer shall on the

of 1940.]

Sections (13—16.)

application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate-officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

Ben. Act  
III of  
1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand."

13. In section 20 of the said Act, after the word "not," the words "or whether a liability is a debt or not" shall be inserted. Amendment of section 20.

14. In section 21 of the said Act—

Amendment of section 21.

(a) the words, figures and brackets "in excess of simple interest at the rate of six *per cent. per annum* on the principal of such debt as determined under sub-section (2) of section 18" shall be omitted, and

(b) for the words, figures and brackets "or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate" the following words, figures and brackets shall be substituted, namely:—

"or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under sub-section (5) of section 29, until the award has so ceased to subsist."

15. In sub-section (1) of section 25 of the said Act, after clause (g) the following clause shall be inserted, namely:— Amendment of section 25.

"(h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19."

16. To sub-section (1) of section 27 of the said Act the following proviso shall be added, namely:— Amendment of section 27.

"Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modification as to the period of possession as may be contained in the award."

(Sections 17—19.)

Amendment of section 33.

17. In clause (a) of section 33 of the said Act, after the words "before a Board" the words "or an Appellate Officer or a District Judge or an Additional District Judge" shall be inserted.

Substitution of new section for section 34.

18. For section 34 of the said Act the following section shall be substituted, namely:—

"34. When an application under section 8 or a statement under sub-section (I) of section 13 includes any debt or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (I) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Stay and abatement of suits and proceedings. of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (I) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

*Explanation.*—For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt in respect of which the sale takes place shall be deemed to exist until such sale becomes absolute."

Amendment of section 35.

19. In section 35 of the said Act—

(1) in clause (ii) after the word "debtor" the words and figures "on or after the first day of January, 1940, or" shall be inserted; and

(2) in clause (iii)—

(a) for the words "a debt" the words "any sum in respect of any loan other than a loan recoverable as a public demand" shall be substituted, and

of 1940.]

(Sections 20, 21.)

(b) after the word "debtor" the words and figures "on or after the first day of January, 1940, or" shall be inserted.

20. In section 40 of the said Act—

Amendment of section 40.

(1) for the proviso to sub-section (1) the following proviso shall be substituted, namely :—

"Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed."

(2) after sub-section (4) the following sub-section shall be inserted, namely :—

"(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order."

(3) for sub-section (6) the following shall be substituted, namely :—

"(6) subject to the provisions of section 40A the orders of the Appellate Officer shall be final."

21. After section 40 of the said Act the following section shall be inserted, namely :—

Insertion of new section 40A.

"40A. (1) An application may be made in the prescribed manner for revision by the District Judge of an order made by an Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or irregularity contained in the order

(Sections 22—25.)

of the Appellate Officer, or for any other sufficient cause either modify or reverse the order or any portion thereof:

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under sub-section (3) and such Additional District Judge shall in respect of the applications so transferred exercise the same powers and perform the same duties as those respectively conferred and imposed upon the District Judge under this section."

Omission of section 41.

22. Section 41 of the said Act shall be omitted.

Amendment of section 44.

23. In section 44 of the said Act—

(a) in clause (a) after the words "person interested" the words "or of its own motion", and

(b) in clause (b) after the words "person interested" the words "or of his own motion"

shall be inserted.

Amendment of section 55.

24. In sub-section (2) of section 55 of the said Act—

(a) in clause (i) after the word and figure "section 13" the words, letters, figures and brackets "section 13A, sub-section (2) of section 19A" shall be inserted;

(b) after clause (m) the following clauses shall be inserted, namely:—

"(ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18;

(mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18;"

Insertion of new section 57.

25. After section 56 of the said Act the following section shall be inserted, namely:—

"57. The fees which may be prescribed under clause Certain fees (b) of sub-section (2) of section recoverable as 55 for an order of determination public demands. under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector."



