

**(1950) 01 CAL CK 0001****Calcutta High Court****Case No:** Civil Revision Case No. 1829 of 1949

Rati Kanta Biswas and Others

APPELLANT

Vs

Joynal Abedin and Another

RESPONDENT

**Date of Decision:** Jan. 9, 1950**Acts Referred:**

- Bengal Agricultural Debtors Act, 1936 - Section 40A

**Citation:** 54 CWN 260**Hon'ble Judges:** Mookerjee, J; Lahiri, J**Bench:** Division Bench**Advocate:** Nirmal Chandra Chakrabarty, for the Appellant; Atul Chandra Gupta and Radha Kanta Bhattacharjya, for the Respondent**Judgement**

Lahiri, J.

This Rule was obtained by the debtors, and it is directed against an order passed under sec. 40A of the Bengal Agricultural Debtors Act by the Extra-Additional District Judge of 24-Parganas. The facts which are material for the purpose of this Rule are these: In 1939, the present Petitioners along with two other persons named Harish Chandra Biswas and Parbati Charan Biswas filed an application for settlement of two debts,—the first debt being a simple mortgage for Rs. 3,000 executed on January 2, 1932, and the second debt being a usufructuary mortgage bond executed on the same date for Rs. 500. The simple mortgage bond was in respect of 40.78 acres of land and was executed in favour of Opposite Party No. 1; and the usufructuary mortgage deed was for a sum of Rs. 500 in respect of 39.96 acres of land and was executed in favour of Opposite Party No. 2 who is the minor son of Opposite Party No. 1.

2. By an order, dated June 21, 1947, the Special Officer who tried the case came to the conclusion that in respect of the simple mortgage bond, the debtors were liable for a sum of Rs. 200 only because he found that out of the total sum of Rs. 3,000

alleged to have been advanced to the debtors, the creditor himself kept in his hand Rs. 2,900 and actually paid the debtors a sum of Rs. 100 only in cash. In respect of the usufructuary mortgage the Special Officer came to the conclusion that as the mortgagee has been in possession of the land for more than 15 years, the entire debt was wiped out by the usufruct derived from the land.

3. It appears that with regard to the second debt, some of the properties measuring 7.57 acres of land were sold away in execution of rent decrees and were purchased by Opposite Party No. 1. The Special Officer applying sec. 90 of the Indian Trusts Act ordered that these properties which had been purchased by Opposite Party No. 1 be restored to the possession of the debtors.

4. Against the order of the Special Officer, Opposite Parties Nos. 1 and 2 filed two appeals before the Appellate Officer, Basirhat. During the pendency of the case before the Board, Harish and Parbati died and their heirs were duly brought on the record of the case, but in spite of that, at the time of filing the two appeals against the order of the Special Officer, the heirs of Harish and Parbati were not impleaded as parties to the appeal, and the appeal was contested by the three persons who are the Petitioners in this Court. The Appellate Officer modified the decision of the Special Officer in two respects. In the first place, he held with regard to the first debt, i.e., the simple mortgage bond, that the total liability of the debtors was Rs. 2,000 and not Rs. 200 as found by the Special Officer; the Appellate Officer found that a sum of Rs. 900 was actually deposited by the creditor in Civil Court on behalf of the debtors in a rent suit. In the second place, the Appellate Officer set aside the decision of the Special Officer with regard to the restoration of possession of 7.57 acres of land which had been purchased by Opposite Party No. 1 in rent sales, the ground given by the Appellate Officer for reversing this part of the order of the Special Officer was that there was nothing mala fide in the purchase of these lands. Against the order of the Appellate Officer, the debtors moved the District Judge without success under the provisions of sec. 40A of the Bengal Agricultural Debtors Act. Against the order of the District Judge the present revision petition has been filed.

5. On behalf of the Petitioners, it has been argued that the appeals which were filed by the creditors being against persons two of whom were dead and whose heirs were duly substituted before the Board, were incompetent and in support of this proposition, Mr. Chakravarti argued that as a result of the omission to implead the heirs of the deceased debtors, there have been two inconsistent awards in the present case. In the first place, it is said that the award of the Special Officer will stand so far as the heirs of Harish and Parbati are concerned, whereas under the order of the Appellate Officer, there will be a different award so far as the Petitioners before this Court are concerned. Mr. Chakravarti has relied upon the provisions of sec. 25 of the Bengal Agricultural Debtors Act and also Form No. 12 which is prescribed by Rule 61.

6. Mr. Gupta appearing for the Opposite Party has argued that so far as the creditors were concerned, it was quite open to them to realise the entire debt from the three Petitioners who appeared before the Appellate Officer leaving out the rest. So far as this contention of Mr. Gupta is concerned, we are of the opinion that if we give effect to his contention, we cannot avoid the conclusion that there will be two inconsistent awards in the case before us. So far as the heirs of Harish and Parbati are concerned the order of the Special Officer that their liability is Rs. 200 on the first debt has become final, whereas under the order of the Appellate Officer, the liability of the Petitioners before us on the first debt is Rs. 2,000. Moreover, with regard to 7.57 acres of land which has been ordered to be restored to the possession of the debtors, the heirs of Harish and Parbati will be entitled to the benefit of that order, whereas the Petitioners before us will not be entitled to claim any right in respect of that portion of the land. Sec. 28 of the Bengal Agricultural Debtors Act contemplates a sale on failure of the debtors to pay the amount payable under an award. It is difficult to see how the properties of some of the debtors can be sold for their liability to pay a sum of Rs. 200 while the properties of others will be liable to be sold for their failure to pay a sum of Rs. 2,000. It seems to us that there can be only one award for each debt upon an application filed under sec. 8 of the Bengal Agricultural Debtors Act. For these reasons we think that the order of the District Judge upholding that of the Appellate Officer must be set aside and the order of the Special Officer restored. This Rule is accordingly made absolute, but having regard to the fact that the point about the defect of parties was not raised before the Appellate Officer, we make no order as to costs in this Court.

Mookerjee, J.

I agree.