
(1953) 08 CAL CK 0017

Calcutta High Court

Case No: Civil Revision Case No. 2398 of 1951

Ashutosh Patra

APPELLANT

Vs

Sundar Singh

RESPONDENT

Date of Decision: Aug. 10, 1953

Acts Referred:

- Bengal Agricultural Debtors Act, 1936 - Section 13, 19, 22, 28(1), 29
- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: 58 CWN 134

Hon'ble Judges: Mitter, J

Bench: Single Bench

Advocate: Shyare Charan Mitra, for the Appellant; Radha Kanta Bhattacharya, for the Respondent

Judgement

Mitter, J.

This application involves the construction of sub-section (5) of section 29 and clause (iii) of section 35 of the Bengal Agricultural Debtors Act. The application is for setting aside an order dismissing the petitioner's objection u/s 47 of the CPC to certain execution proceedings.

2. The petitioner made an application to the Debt Settlement Board for settlement of a debt which he had contracted. In due course an award was made. The opposite party, however, failed to take steps under the Act to recover the installments provided under the award. Thereafter, the opposite party instituted a suit to recover the arrears of installments and in due course obtained a decree which provided that it should not be executed until all the amounts payable under the Award had been paid, or the award had ceased to subsist under on 29(5) of the Bengal Agricultural Debtors Act, The decree-holder having initiated execution proceeding in respect, of that decree, the petitioner filed his objection u/s 47 of the code of Civil Procedure, which was rejected by the learned First subordinate Judge at Alipore. The

petitioner"s appeal from that order was dismissed by the learned District Judge.

3. It is common case that not all the amounts payable under the award had been paid and, therefore, the decree could not be executed unless it was shown that the award had ceased to subsist under sub-section (5) of section 29. Section 35 of the Bengal Agricultural Debtors Act provides as follows:-

Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913. shall be executed-

(i) for the recovery of a debt included in an application u/s 8 or in a statement under subsection (1) of section 13, until-

(a) the application has been dismissed by the Board in respect of such debt; or

(b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29;

(ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor on or after the first day of January, 1940, or after the date of an application u/s 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given; (iii) for the recovery of any sum in respect of any loan other than a loan recoverable as a public demand incurred by a debtor on or after the first day of January, 1940, or, after the date of an application u/s 8 in respect of his debts until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

4. It is thus seen that the decree in question could not be executed (i) until all the amounts payable under the award had been paid or (ii) such award had ceased to subsist under sub-section (5) of section 29.

5. Sub-section (5) of section 29 provides as follows :-

If the Certificate Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date :

Provided that the Certificate Officer, instead of at once certifying any part of such amount to be irrecoverable-able, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

6. The language of sub-section (5) clearly shows how an award ceases to subsist. An award ceases to subsist when on the failure of the Certificate Officer to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he certifies that it is irrecoverable. Having regard to the words "and thereupon", no other interpretation appears to be open to me. To repeat, an award under sub-section (5) of section 29 ceases to be an award when the Certificate Officer certifies for the reasons stated in the sub-section that the amount payable under the award is irrecoverable. Whether this was the intention of the Legislature or not is beside the point, seeing that the language is plain enough. That being the interpretation, the decree in question could not be executed by reason of section 35, clause (iii) whereof expressly attracts the provisions of sub-section (5) of section 29. The words Used in clause (iii) are :

or such award has ceased to subsist under sub-section (5) of section 29.

7. The effect of clause (iii) of section 35 is that the award should cease to subsist under the provisions of subsection (5) of section 29 before the decree in question could be executed.

8. In the case of *Nalini Kanta Maity v. Broja Mohan Patra* (2) (45 C. W. N. 466) the point for the decision of the Court was whether in the event of the creditor failing to apply for realization of the amount payable under an award a suit would lie to recover the amount of the award. *Mukherjea and Biswas. JJ.* held in that case that such a suit would be maintainable and that the decretal amount could be realized through the Civil Court subject to the restrictions contained in section 35 (iii) of the Bengal Agricultural Debtors Act. The point which has been raised before me does not appear to have been argued and was certainly not decided in that case. But for the language used in sub-section (5) of section 19, I should have been inclined to hold that the moment the Civil Court passed a decree for the amount payable under the award, the award, qua award, ceased to subsist.

9. Section 28(1), inter alia, provides :-

If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

If the creditor does not so apply such amount shall, for the purposes of clause (iii) in section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

10. It will thus be seen that there is provision for a new debt in place of the amount of the award. That being so, a suit to recover that debt would undoubtedly lie. But so long as section 35 is operative, the decree could not be executed until either of the two conditions set out in clause (iii) of section 35 was satisfied. The difficulty with regard to execution of the decree was not present in the case before *Mukherjea and*

Biswas, JJ. and was accordingly not the subject-matter of their decision.

11. That being my interpretation of how an award ceases to subsist in terms of subsection (5) of section 29, the learned Appellate Court was clearly wrong. In that view of the matter, the judgment of the learned District Judge as also the order of the learned First Subordinate Judge, dated March 31, 1951, must be set aside. The petitioner's objection u/s 47 of the CPC is restored and is directed to be heard in accordance with law. The question which I have had to decide is of some importance and is not altogether free from doubt. Accordingly, I make no order as to costs.