

(1954) 12 CAL CK 0011

Calcutta High Court

Case No: Appeal from Appellate Order No. 15 of 1954

Bijoy Kali Chakravarty

APPELLANT

Vs

Somendra Chandra Nandy

RESPONDENT

Date of Decision: Dec. 15, 1954

Acts Referred:

- Bengal Agricultural Debtors Act, 1936 - Section 2, 2(5), 2(8), 33, 52
- Civil Procedure Code, 1908 (CPC) - Section 47
- Presidency Small Cause Courts Act, 1882 - Section 31

Citation: (1956) 2 ILR (Cal) 500

Hon'ble Judges: S.R. Das Gupta, J; Mallick, J

Bench: Division Bench

Advocate: Purusottam Chatterjee and Dharendra Kumar Das, for the Appellant; Sitaram Banerjee and Amarendra Narayan Bagchi, for the Respondent

Final Decision: Allowed

Judgement

S.R. Das Gupta, J.

This appeal raises an interesting point of law. The appeal is against an order of the learned Subordinate Judge dismissing an objection u/s 47 of the Code of Civil Procedure.

2. The matter arises in this way: On July 31, 1940, a decree was passed by the Court of Small Causes, Calcutta. The decree was for the total sum of u/s 2, 013-4 which includes costs. After the decree was passed the judgment-debtor on August 4, 1940, went to the Debt Settlement Board for settlement of this debt. The Board dismissed the said claim for default of the judgment-debtor on May 18, 1941. Thereafter, on August 6, 1952, an application for execution of the said decree was made. An objection was taken by the judgment-debtor that the application for execution was barred by limitation, the application having been made after the period of twelve years from the date after decree. It was contended on behalf of the decree-holders

that the bar of limitation was saved by the provisions of Section 52 of the Bengal Agricultural Debtors Act. The learned Subordinate Judge upheld the contention of the decree-holders and dismissed the objection. It is against the order that the present appeal has been filed.

3. The question which arises for our consideration is whether or not Section 52 of the Bengal Agricultural Debtors Act is at all applicable to the present case. The said section reads as follows:

Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceeding continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded.

4. In this case the time which is sought to be excluded is the time during which the proceedings before the Debt Settlement Board continued, that is to say, the period between August 4, 1940, and May 18, 1941. If that period is excluded the application for execution is not barred. The question is should that period be excluded because of the provisions of Section 52 of the Bengal Agricultural Debtors Act? Answer to that question depends on whether or not Section 52 of the Act is at all applicable to the present case? The learned advocate for the Appellant contended before us that Section 52 of the Act is not applicable to the present case firstly because the amount payable under the decree of the Presidency Small Cause Court for which the execution is sought is not a "debt" within the meaning of Sub-section (8) of Section 2 of the Bengal Agricultural Debtors Act. In the second place, he contended that even if it be a "debt", the decree-holders were not "debarred by any provisions of the Act from making or instituting the application". He contended that Section 52 of the Act would apply only if it be shown that during the time which is sought to be excluded the person interested was debarred by any provisions of this Act from making or instituting the application, suit or appeal or executing the decree in question; in other words, the decree-holders must be prevented from putting the decree into execution during the time the proceedings before the Debt Settlement Board continued because of any of the provisions of the Act. But, the learned advocate contended, there is no such provision which debarred the decree-holders in this case from proceeding with the execution of the said decree.

5. The first question, therefore, is whether the claim under the decree is a debt within the meaning of the Bengal Agricultural Debtors Act. Sub-section (8) of Section 2 of the said Act defines "debt" as follows:

Debt includes all liabilities incurred prior to the first day of January 1940 of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order

of a Civil Court or otherwise, and whether payable presently or in future.

6. The rest of the section is not material for our present purpose. It appears from the said definition that if there is a liability which is payable under a decree or order of a civil court and if that liability was incurred prior to January 1, 1940, then it would be a debt. The question is whether if such liability has become payable under a decree, not of a civil court but of the Presidency Small Cause Court, would it still be a debt within the meaning of the said Act. In the case of *Tarak Nath Kundu v. Panchanan Dutt* (1939) 43 C.W.N. 886 this Court had to consider whether the debt as defined in Section 2(5) of the Bengal Agricultural Debtor Act includes a liability under a decree passed by the High Court. It was urged before their Lordships that the expression "or otherwise" appearing in the said section indicates that a liability under a decree other than a decree of the civil court is a "debt" under the said Act; in other words, the liability under a decree of the High Court comes within the definition of "debt" because of the use of the said expression. That contention was negated by their Lordships in the said case. In delivering judgment Mr. Justice Mukherjea observed as follows:

"Debt" as defined in that Sub-section includes all liabilities of a debtor in case or in kind, secured or unsecured, whether payable under a decree or order of Civil Court or otherwise, and whether payable presently or in future. Then follow certain exceptions which we need not mention at this stage. If a debt is payable under a decree, then to come within this definition it must be under a decree or order of a Civil Court and a decree passed by the High Court, must, in my opinion be deemed to have been excluded. The expression "or otherwise" I think would mean debt not founded on a decree, and even if it includes decretal debts, they would be decrees passed by other Courts, e.g., the Revenue Court; but not by this High Court.

7. The question as to whether or not a liability under a decree of a Presidency Small Cause Court is a debt within the meaning of the Bengal Agricultural Debtors Act was agitated before a Special Bench of this Court in the case of *Mati Lal Saha v. Chandra Kanta Sarkar and Ors.* (1946). 51 C.W.N. 1. Mr. Justice Chakravarti as he then was, in delivering his judgment in the said case observed quite clearly that whatever doubt there might have been on the question previously, there can be none, after the amending Act of 1940, that the liability under a decree of a Presidency Small Cause Court is not a debt within the meaning of the Bengal Agricultural Debtors Act. His Lordship observed:

The Act, by Section 2(8), defines "debt" as including all liabilities of a debtor, "whether payable under a decree or order of a Civil Court or otherwise". * * * A decretal debt would have to come under the definition as payable under a decree of a Civil Court, or it would be outside the definition altogether. Previously, the term "Civil Court" which had not been defined in the Act, had been held to mean only the Courts established under the Civil Courts Act. The Legislature, by the amending Act, sought to meet the effect of these decisions only by adding a definition of "Civil

Court" and including therein the High Court on its Appellate Side, but did not, in this respect, amend the definition of "debt" in any way. In other words, it widened the content of the first part of the definition of "debt" incorporating more decretal debts there through an enlarged definition of "Civil Court" but made no use of the phrase "or otherwise." In the circumstances, it must be held that the Legislature accepted the view that a decretal debt could not be a debt within the meaning of the Act by virtue of the phrase "or otherwise" but must come under the first part of the definition as a liability payable under a decree of a Court which is a "Civil Court". * * * The definition of "Civil Court", now added, does not include the Presidency Small Cause Court and it follows that a liability, payable under a decree of that Court, is not a debt within the meaning of the Act.

8. We are bound by the view expressed in the said case and we can say with respect that we are in entire agreement with the same. In our opinion also a liability under a decree, if it is to be a "debt" within the meaning of the said Act, must be payable under a decree of a civil court. The Presidency Small Cause Court is not a civil court and therefore, a debt payable under a decree of the Presidency Small Cause Court would not be a debt within the meaning of the Bengal Agricultural Debtors Act. It seems to us that this view is now well established and there is hardly room for any dispute over the same. In the result, therefore, the present debt is not a "debt" within the meaning of Sub-section (8) of Section 2 of the Bengal Agricultural Debtors Act. The contention of the learned advocate for the Appellant on this point, in our opinion, should prevail.

9. The contention of the learned advocate for the Appellant is, in our opinion, equally sound. What he contends is that Section 52 of the Bengal Agricultural Debtors Act would only exclude the period during which proceedings under the Act were pending if there was a bar under any of the provisions of the Act as a result of which the decree-holders could not put their decree into execution. There is no such bar in the present case and the decree-holders notwithstanding the fact that the matter was agitated before the Debt Settlement Board could proceed with the execution of the decree. On behalf of the Respondent reference was made to Section 33 of the Act which provides:

Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of-

(a) any debt included in an application u/s 8. etc., * * *

10. The learned advocate for the Appellant contended before us, and we accept that contention, that although it is laid down in Section 33 of the Act that no civil court or revenue court shall entertain a suit, application or proceeding, but the civil court or revenue court can entertain the same if it relates to a decree other than a decree of the Civil Court. In support of that proposition he relied on the very decision to which reference has already been made in this judgment, that is, the case of Mali Lal Saha

v. Chandra Kanta Sarkar and Ors. (2). In that decision it was held that because of the provisions of Section 31 of the Presidency Small Cause Court Act, Section 33 of the Bengal Agricultural Debtors Act should be read as having a proviso to the effect that the decrees of the Presidency Small Cause Court would not be affected by the said section. The reasoning for that view was that Section 31 of the Presidency Small Cause Court Act, which enacts that if the judgment-debtor under any decree of the Small Cause Court has not within the local limits of its jurisdiction movable property sufficient to satisfy the decree, the court may, on the application of the decree-holder, send the decree for execution inter alia to any civil court within the local limits of whose jurisdiction such judgment-debtor or any of his movable or immovable property may be found for execution of the said decree, is a Central Act and cannot be affected by any provisions of the Bengal Agricultural Debtors Act which is a Provincial Act. On this view it has been held that as Section 33 of the Bengal Agricultural Debtors Act offends against the provisions of Section 31 of the Presidency Small Causes Court Act, it should be read as subject to the said provisions; in other words, the decrees of the Presidency Small Cause Court which are pending for execution before a civil court will not be affected by the provisions of Section 33 of the Bengal Agricultural Debtors Act. That being so, there was nothing to prevent the decree-holders from proceeding with the execution of the said decree notwithstanding the fact that proceedings were pending before the Debt Settlement Board in respect thereof. No other provision has been shown to us which would create such a bar. In the circumstances, one of the conditions of the applicability of Section 52 of the Bengal Agricultural Debtors Act is wanting. The said section would not, in the circumstances, be applicable to the present case. On both the grounds, in our opinion, the contention of the learned advocate for the Appellant should prevail and the same is given effect to.

11. In the result, therefore, this appeal is allowed. The order of the learned Subordinate Judge is set aside and the execution case is dismissed.

12. The Appellant is entitled to costs of this appeal the hearing fee being assessed at two gold mohurs.

13. The sums deposited by the judgment-debtor in the court below may be withdrawn by him.