

**(1938) 12 CAL CK 0011**  
**In the Calcutta High Court**  
**Case No : Civil Rev. No. 632 of 1938**

Abu Taher Bazlul Rashid and Others

APPELLANT

Vs

Chandra Moni Saha and Others

RESPONDENT

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**Date of Decision :** 07-12-1938

**Acts Referred:**

**Citation :** (1938) 12 CAL CK 0011

**Final Decision :** Dismissed

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### **Judgement**

Ghose, J.—The fourteen Petitioners before us are some of the judgment-debtors in an execution case pending before the Subordinate Judge of the First Court at Comilla and the point they raise is that the Subordinate Judge was wrong in not staying the execution as against them in pursuance of a notice received under sec. 34 of the Bengal Agricultural Debtors Act. The relevant facts are these. The decree-holder Opposite Party obtained two mortgage decrees against certain persons including the predecessors of Petitioners Nos. 1 to 4. The matter went up to the Judicial Committee of the Privy Council. The decree-holders have now applied for the realization of the decretal amount with costs of the Privy Council and the High Court appeal against the Petitioners and others. The Petitioner No. 1 filed objection under sec. 47 of the Code of Civil Procedure, upon which Miscellaneous Case No. 20 of 1938 was started. That case appears to have been dismissed. In the meantime, some of the judgment-debtors Opposite Parties, Sattar Gazi and others, who are parties to the Execution Case No. 114 of 1937., applied before the Debt Settlement Board under sees. 8 and 13 (1) of the Bengal Agricultural Debtors Act for settlement of their debts. This application was filed on 13th March, 1938. Thereupon the Debt Settlement Board issued a notice under sec. 34 of the Act for stay of proceedings in Money Execution Case No. 114 of 1937. This notice was served upon the Subordinate Judge on 13th March, 1938. On 2nd April, 1938, the Subordinate Judge decided to stay the sale of lots other than lots Nos. 1, 3, 4, 8 and 9 on the ground that the Petitioners before the Debt Settlement Board had interest in those properties. He further decided to proceed with the sale of lots Nos. 1, 3, 4, 8 and 9. The present Petitioners before

us applied to the Subordinate Judge to stay the entire execution case on the ground that the decree in question was a joint decree and had been included in the aforesaid petition before the Debt Settlement Board. On 12th April, 1938, the Subordinate Judge dismissed the petition and ordered execution proceedings to continue as against the present Petitioners. Against that order, this Rule has been obtained.

2. It is contended that in accordance with sec. 34 of the Bengal Agricultural Debtors Act, the Subordinate Judge had no choice but to stay the entire execution case, not only against those of the judgment-debtors who had applied to the Debt Settlement Board, but also against the remaining judgment-debtors. The argument on the other side is, first, that so far as the actual wording of the notice under sec. 34 of the Act is concerned, it merely requests the Court to stay proceedings as against the debtors who are applicants before the Board. The second contention is that, in any case, the Act does not contemplate stay of proceedings as against anyone other than those debtors who are applicants before the Board.

3. As regards the actual wording of the notice under sec. 34 of the Act which is before us, it is open to the construction that it refers to the case of debtors who had made the application before the Court and not of other persons who might be jointly liable. But conceding as has been argued in behalf of the Petitioners that the issue of notice was merely a routine matter on the part of the Debt Settlement Board and was not deliberately framed so as to exclude the case of the non-applicant debtors, I shall have to examine the more important point as to whether under the Act, the Court which had received the notice under sec. 34 was bound to stay the proceeding as against those judgment-debtors who had not made the application to the Board. It is relevant to note that the preamble to the Act states that

It is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors.

4. So the Act defines " debt " and " debtor " to which a special meaning is given; it does not concern itself with those debts and debtors who do not come under the definition. Joint liability is expressly provided for as I shall presently show. Then it seems to me that sec. 34 of the Act, in so far as the effect of it is to interfere with the ordinary jurisdiction of the Civil Court, must be construed strictly, though this does not mean that the construction might be inequitable or unreasonable. Sec. 34 opens with the premise that there is an " application " before the Board which " includes any debt in respect of which a proceeding is pending " before the Court. That means that the debt is the debt mentioned in the application; in other words, it is the debt of the applicant and not the debt of somebody else. Otherwise, the second part of sec. 34 would lead to an anomaly because it refers to the eventual decision of the Board which may be to the effect that " the debt does not exist" whereupon " the proceeding shall abate so far as

it relates to such debt." Therefore, it seems to me that if the case of other non-applicant debtors were to be included in the notice of stay, the result might follow logically that the entire execution case would abate as against such non-applicant debtors although they had nothing whatever to do with the matter before the Board. This is confirmed by those sections which deal with the initiation of the application before the Board. The opening words of sec. 8 (1) are

Subject to the provisions of sec. 9, a debtor may make an application for the settlement of his debts to a Board..... within which he ordinarily resides.

5. This, therefore, refers to the individual applicant and that is also common sense.

6. Now, turning to sec. 9 (2) which controls sec. 8, we find provision expressly made for the case where a debtor applicant is jointly liable with other persons. The provision is that the Board should make an order " regarding the debt so far as such applicant is concerned." Mr. Bagchi appearing on behalf of the Petitioners before us has strongly contended that it would be anomalous if the Civil Court were to proceed with the execution as against the other persons jointly liable with the debtor, because in that case such persons would not be able to get the benefit of any possible reduction of the applicant's debt by the Debt Settlement Board. But the provision is expressly against such a contingency, for it is

provided that an order of the Board under this sub section shall not affect the liability of any other person who is jointly liable," etc.

7. The final provision,

but in no case shall the creditor to whom the debt is due be entitled to realise" more than his dues from the persons jointly liable

enacts the ordinary law that a person shall not be entitled to get more than what is legally due to him. The expression "the persons jointly liable" include the debtor and the persons who are jointly liable with him. It seems to me, therefore, that the provisions in the Act favour the construction that the notice under sec. 34 of the Act can only refer to the execution proceeding as against those persons who are debtors applicants before the Debt Settlement Board and not others who might be jointly liable.

8. Mr. Bagchi on behalf of the Petitioners has referred to a number of reported cases decided by this Court, but those cases merely lay down this principle that it is not for the Civil Court to question the validity of proceedings before the Board, the Appellate authority in such cases being provided in the Act itself, viz., sec. 40. But here the circumstances are different. The question is as to proceedings before the Court and if the Court finds that the proceeding before it does not refer to the debt of the applicant before the Debt Settlement Board, then it is not bound to stay the entire proceeding in pursuance of a notice under sec. 34 of the Act.

9. The result is that I must uphold the order made by the Subordinate Judge on the 12th April, 1938. The Rule, therefore, stands discharged. There will be no order for costs in this Rule.

Mukherjea, J.

10. I agree with my learned brother in holding that the view taken by the Court below is right and that the Rule must be discharged. The controversy centres round the short point as to whether on receipt of the notice under sec. 34 of the Agricultural Debtors Act the executing Court was not bound to stay the entire proceeding and was justified in proceeding with the execution case as against the judgment-debtors who were not applicants before the Board. Mr. Bagchi appearing on behalf of the Petitioners argues that the execution case was one and indivisible and could not be stayed in part and in any event the Civil Court had no jurisdiction to go beyond the plain words of the notice which were perfectly unambiguous and directed a stay of the entire proceeding. To decide this point, it is necessary to refer to some of the sections of the Act. The object of the Act, as the preamble shows, is to provide for the relief of indebtedness of agricultural debtors and the term "debtor" is itself defined in the Act as meaning a debtor whose primary means of livelihood is agriculture. A person who is not a "debtor" within the meaning of the Act and who has not applied for settlement of his debts to the Debt Settlement Board does not come within the purview of the Act and the Civil Court's jurisdiction over his person and property is in no way affected by the provisions of this statute. Sec. 34 of the Act lays down that

When an application under sec. 8 or a statement under sub sec (1) of sec. 13, includes any debt in respect of which a suit or other proceeding is pending before a civil or Revenue Court, the Board shall give notice thereof to such Court in the prescribed manner, and thereupon the suit or proceeding shall be stayed.

11. It seems to me that as it was the intention of the Act to afford protection to those who were debtors within the meaning of the Act, the expression "suit or other proceeding" as used in the section must be construed to mean "suit or proceeding" so far as it relates to the applicant before the Board. To hold otherwise would lead to anomalous consequences and bring within the ambit of the Act persons whom the legislature did not intend to benefit at all. This is also clear as Mr. Gupta has pointed out, from the concluding words of the section which lay down that

If the Board includes any part of such debt 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.

12. The words "the suit or proceeding" as used in this clause could not mean "the whole suit or proceeding" when all the parties are not applicants before the Board. In that case the result of an application by one of the Defendants before the Board and a decision by the Board that the debt does not exist so far as that Defendant is concerned, would lead to the dismissal of the whole suit even as against persons other than those who were applicants before the Board.

13. I am also not impressed by the argument of Mr. Bagchi that the notice is unambiguous and refers to the entire execution proceeding and the Civil Court is not competent to go beyond the words used in the notice. The notice speaks of the execution case as between the persons who are applicants before the Board and the decree-holder. It is quite possible to construe the words to mean only the execution proceedings so far as it relates to the applicants before the Board and when it is possible to put such construction upon these words the Court should lean against a construction which makes the act of the Board illegal or contrary to law. Mr. Bagchi for the Petitioners further argues that unless the proceedings are stayed, the provision of sec. 9 (2) of the Agricultural Debtors Act would be totally frustrated. His contention is that the application was really one under sec. 9 (2) of the Act and what the Board had to do was to apportion the liability of those persons in respect of the joint debt and make it a separate one. Till this is done, the proceedings are to be stayed, for other-wise the creditor would be at liberty to realise the whole amount from the other debtors, whereas his does could not be properly ascertained till the debt of the applicant was settled by the Board and under the proviso the creditor would not realise anything in excess of this amount. This contention, in my opinion, is not sound and cannot prevail. All that sec. 9 (2) lays down is to empower the Board to settle a debt even when the applicant before it is jointly liable for the same, along with others and the latter are not debtors within the meaning of the Act or did not join in the application under sec. 8. In such cases the Board may pass such orders as it thinks fit regarding the debt so far as the applicant is concerned. There is no question here of apportionment of the debt as between him and other debtors who are not before the Board and no question of splitting up of the joint liability arises. The applicant remains jointly liable as before, but his liability is limited in the way determined by the Board and his creditors cannot realise any larger sum nor realise it in any other way than the Board has prescribed. The proviso makes it clear that the liability of the other persons jointly liable with the applicant and who were not before the Board remains intact and is not in any way affected by the settlement of the debt of the applicant. The creditor can certainly realise his dues from the other debtors or he may proceed at his option against the applicant debtor and can recover from him such amount as is determined by the Board though certainly he cannot recover anything in excess of the total amount due to him. Mr. Bagchi complains that as the applicant debtor's liability under the decree is limited to a certain amount which is determined by the Board and nothing in excess of that can be realised from him, the right of contribution of the other debtors must necessarily be affected. Mr. Gupta appearing on behalf of the Opposite Party on the other hand points out that the right of contribution is based upon a different cause of action and if the other debtors sue the applicant before the Board for contribution and recover a decree, they will be at liberty to execute the decree though it would be open to the applicant to seek the protection of the Board again if he is a debtor within the meaning of the Act. I think, that it may be argued that as the amount of contribution to which other debtors are entitled would depend upon the extent to

which the applicant debtor was benefitted by their payment and as the liability of the latter under the decree was limited in a certain way determined by the Board the other debtors would have to be satisfied with a lesser amount by way of contribution than what they otherwise would be entitled to, under the law. But this is a direct result of the Agricultural Debtors Act which grants relief to a certain class of debtors only. In case of joint debt, each one of the debtors is liable to pay the whole amount to the creditor and the debtor who makes the payment in satisfaction of the entire dues is really in the position of a creditor as regards his co-debtors so far as the payment was made in excess of his share. If the other debtors or any of them are entitled to the protection of the Agricultural Debtors Act, the position of the debtor who made the payment is exactly the same as that of any other creditor. He undoubtedly suffers loss but this cannot be avoided so long as the Bengal Agricultural Debtors Act is in force. For these reasons I concur with my learned brother in discharging the Rule.