

(1943) 06 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 247 of 1943

Amiyanarain Sanyal and Others

APPELLANT

Vs

Mohinikanta Alias Mohini Mohan Chaki and Others

RESPONDENT

Date of Decision : 23-06-1943

Acts Referred:

Citation : (1943) 06 CAL CK 0004

Judgement

Henderson, J.—This Rule is directed against an order of the Munsif staying a suit on receipt of a notice under sec. 34 of the Bengal Agricultural Debtors Act in the following circumstances: Opposite Party No. 3 was a Naib, serving the predecessors of the Petitioners. The father of Opposite Parties Nos. 1 and 2 stood surety for him and executed a mortgage bond as surety. Opposite Party No. 3 retired from service in 1928. He did not render any accounts and the present suit was instituted on 5th June, 1940. A preliminary decree was passed on 30th July, 1942. and the order of stay on receipt of the notice was passed on 8th September, 1942. Opposite Parties Nos. 1 and 2 applied before a Debt Settlement Board after the preliminary decree was passed. By the preliminary decree Opposite Party No. 3 has been directed to render accounts and a Commissioner has been appointed to take them. It has further been declared that the liability of Opposite Parties Nos. 1 and 2 will be limited to Rs. 2,000. The only interest of Opposite Parties Nos. 1 and 2 is to see that the Commissioner does not make any mistakes and that Opposite Party No. 3 does not allow a collusive decree to be passed against him for a sum larger than what is really due.

2. Sec. 34 directs that a suit shall be stayed when an application under sec. 8 includes any debt in respect of which the suit is pending. The question, therefore is whether it can be said that the present suit is in respect of a debt included in the application under sec. 8 1 am told that the application of Opposite Party No. 3 did contain some sort of admission that he was liable.

3. Now, this suit is really one to ascertain whether Opposite Party No 3 is liable

at all. It may be found as a result of the investigation of the Commissioner that he is not liable but until his liability has been ascertained, it cannot be said that there is any suit in respect of a debt. The learned Munsif distinguished the decision in the case of Javed Sheikh v. Taher Malik (1) on account of the amendment to sec. 20. That amendment merely provides that it is for the Board to decide whether a liability is a debt or not. It has nothing to do with the question whether the present suit comes within the terms of sec. 34.

4. The Rule is accordingly made absolute. The Munsif is directed to proceed with the trial of the suit and determine it in accordance with law. Opposite Party No. 3 will pay the costs of the Petitioners in this Rule, hearing-fee, one gold mohur.