

(1946) 02 CAL CK 0008
In the Calcutta High Court
Case No : Appeal No. 204 of 1943

Aptar Ali Talukdar and others

APPELLANT

Vs

Ahammad Ali Molla and others

RESPONDENT

Date of Decision : 04-02-1946

Acts Referred:

Citation : (1946) 02 CAL CK 0008

Final Decision : Allowed

Judgement

Henderson, J.—This appeal is by the assignee of the mortgagor and arises in connection with an application filed by them under S. 26G (5), Ben. Ten Act. There were two mortgages, one for Rs. 475 and the other for Rs. 300. The mortgagor's heirs applied for settlement of the debt to a Debt Settlement Board. The debt was determined under S. 18 (2) of the Act at Rs. 450. A settlement was then made under S. 19 by which the respondents were to remain in possession of most of the land for 15 years, at the end of which period the debt would be taken to be extinguished. This agreement was embodied in the award on 18th October 1939. Act (6 [VI] of 1938) came into force on 18th August 1938. As it gives the appellants a better remedy, they filed the present application. The question for determination is whether they are entitled to do so. The Courts below have differed on the point. It is not very easy to follow the judgment of the learned Additional District Judge. Mr. Roy thought that he held that, inasmuch as the mortgage was extinguished by the award, there was nothing left upon which the present application could proceed. He certainly referred to that in the opening part of his judgment as an argument. But he nowhere makes it a ground of his decision and in view of the provisions of S. 27 it would be impossible to support such a view. In my opinion, the learned Judge intended to hold that the present application is incompetent in view of the provisions of the Bengal Agricultural Debtors Act, although he has not given any reason for that opinion. The learned Munsif relied upon the words "notwithstanding anything contained in any other law" in S. 26G (5). To this Mr. Ali replied with the similar words in S. 36, Bengal Agricultural Debtors Act. The question, therefore, arises

which, in a case of a conflict, will prevail.

2. Mr. Lahiri contended that the Bengal Agricultural Debtors Act confers a special jurisdiction on a special tribunal and it is not open to the Courts to give any relief. I should certainly not be prepared to go as far as that. On the other hand, Mr. Roy argued that the Bengal Tenancy Act and Bengal Agricultural Debtors Act are both special Acts dealing with absolutely distinct matters the former with the relationship of landlord and tenant and the latter with the relationship of creditor and debtor. Broadly speaking this may be perfectly true; but S. 26G, Ben. Ten. Act, is really part of the law of creditor and debtor smuggled into an Act dealing with a different subject-matter. The Bengal Agricultural Debtors Act deals with agricultural debtors in general while S. 26G, Ben. Ten. Act, deals with a particular class of them. It is, therefore, quite meaningless to suggest that the former is a special Act and the latter, a general Act. There is nothing unreasonable in a provision by which an agriculturist who took advantage of a less adequate remedy should be allowed to take advantage of a later and better one. This provision in S. 26G, Ben. Ten. Act, is quite inconsistent with that in S. 36, Bengal Agricultural Debtors Act. The proper inference, therefore, is that by implication it repeals the section so far as these particular mortgages are concerned. On the other hand, there is nothing really inconsistent in the two Acts. The only provision in the Bengal Agricultural Debtors Act, which would interfere with the jurisdiction of the Munsif to give relief, is that in S. 18 (4) which prohibits the Court from calling in question the amount of the debts determined by the Board under sub-s. (2). Here, there is no attempt to question the figure of Rs. 450 as settled by the Board. The new section merely provides that by a legal fiction that debt whatever may be its amount, has been paid off. The appeal is accordingly allowed, the order of the lower appellate Court is set aside and that of the Munsif restored. I make no order as to costs.