

(1946) 07 CAL CK 0008
In the Calcutta High Court
Case No : Civil Revision Case No. 2119 of 1945

Bepin Chandra Dutta and Another	Vs	APPELLANT
Sita Nath Dab Munshi and Others		RESPONDENT

Date of Decision : 25-07-1946

Acts Referred:

Citation : (1946) 07 CAL CK 0008

Final Decision : Dismissed

Judgement

Lodge, J.—This Rule arises out of an order under sec 40A of the Bengal Agricultural Debtors Act passed by the District Judge of Backergunge. The material facts are as follows. The Opposite Parties made an application under sec. 8 of the Bengal Agricultural Debtors Act before the Perojpur Special Board asserting that a certain transaction was a usufructuary mortgage, that the present Petitioner was the creditor and that by enjoyment of the usufruct that usufructuary mortgage debt had been satisfied. The application was transferred to the Kalakhali Debt Settlement Board. After about eight months the Kalakhali Debt Settlement Board made an award on September 5, 1944. On November 7, 1944. the present Petitioners applied for review of that order. The Debt Settlement Board rejected the application on the sole ground that they were not entitled to review their order inasmuch as the award had already been registered. The present Petitioners appealed against that decision and their appeal was heard by the Appellate Officer. The Appellate Officer expressed the opinion that inasmuch as the application for review was not filed within sixty days it was barred by limitation and that the Hoard ought to have rejected the application for review on the ground of limitation. The learned Appellate Officer also expressed his opinion on the merits of the application. The present Petitioners thereupon applied to the District Judge in revision and the learned District Judge passed the following order:

Perused the records and considered the grounds of revision. I agree with the learned Appellate Officer that the application for review is learned by limitation

since it was not made -within 60 days of the date of order sought to be reviewed. In this view of the matter I consider it unnecessary to enter into the merits. The application for revision is dismissed.

2. From his order it appears that the learned Appellate Officer was under the impression that a decision of this Court, namely, *Srikanta Kamar v. Atul Krishna Biswas* (1944) 49 C. W. N. 143. was not applicable merely because the order of the Debt Settlement Board had been passed prior to the delivery of the judgment of this Court. It suggests that the learned Appellate Officer might have come to a different conclusion if he had thought that the ruling referred to by him was applicable. It is clear therefore that if the question of limitation was decided other than as the District Judge decided, there might be an important question of law to be decided by the Revisional, Officer in this case.

3. It is necessary therefore to consider whether the learned Appellate Officer and the District Judge were right in holding that the application was barred by limitation. The Bengal Agricultural Debtors Act provides that applications for review may be made under cl. (a) of sec. 44 of the Act. Rule 91B of the rules framed under the Act is as follows:

An application for review under cl. (a) of sec. 44 shall ordinarily be made within sixty days of the date of the decision or order of the Board and a Board may also, of its own motion, review its decision or order within 60 days of the date of the decision or order passed by it: Provided that no action shall be taken by a Board on an application for review made after the said period of sixty days and no Board shall review its decision or order after the said period save with the sanction of the Collector.

4. Rule 91C sets out the matters which the Collector shall take into consideration in deciding whether to grant sanction to make an application after the expiry of sixty days.

5. In the present case the award was made on September 5, 1944, and the application for review was registered on November 7, 1944, that is to say, more than sixty days after the order sought to be reviewed. In the petition before me it was stated that the application for review was actually placed before the Chairman on November 1, 1945, but not registered until November 7, 1945. This statement was controverted in a counter-affidavit and no material was placed before me to justify me in holding that the application was in fact made to the Chairman on November 1, 1945. In the application before this Court it was also stated that this particular Board, the Kalakhali Debt Settlement Board, used to hold its sittings on Tuesdays only and that November 7 was the first Tuesday after the expiry of the period of sixty days" limitation from the date of the award. The statement that this Board used to hold its sittings on Tuesdays only has not been controverted and I must accept that statement as correct. The position therefore is that the sixty days provided by the rules in which an application for review might be entertained by the Board expired on November 4, 1944. The

Debt Settlement Board did not sit on November 4, nor on November 5 and 6. The Debt Settlement Board sat on November 7, and the application for review was made on that date.

6. If this were an application to the Civil Courts, it would have been treated as made within time. But I am asked to hold that under the special provisions of r. 91B it must be held that the application was made out of time. The special provision referred to is the proviso to r. 91B, namely, that no action shall be taken by a Board on an application for review made after the said period of sixty days save with the sanction of the Collector. I am unable to hold that this provision is essentially different from the provisions of secs. 3 and 4 of the Limitation Act. Sec. 4 of the Limitation Act provides:

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens.

7. Sec. 3 provides that if the application is made beyond the period of limitation the application shall be dismissed subject to the provisions of certain sections of the Act.

8. The fact that under sec. 5 of the Act the period of limitation may be extended by the Court and the fact that under the Bengal Agricultural Debtors Act the period may not be extended by the Board, but may be extended by some other authority, does not seem to me to make any serious difference. It seems to me further that sec. 12 of the Bengal General Clauses Act also leads to the view that the application made on the first date on which the Board was sitting after the fifty-ninth day of the period of limitation was a date on which the Board was entitled to receive the application.

9. In my opinion the application for review was filed within time and the Appellate Officer and the Revisional Officer were wrong in holding that it was barred by limitation. In this view the Rule must be made absolute. The order of the Revisional Officer must be set aside and the case remanded to the District Judge for decision on the merits. No order is made as to costs in this Rule.