

(1938) 12 CAL CK 0020
In the Calcutta High Court

Bhabani Charan Law and Others

APPELLANT

Vs

Baikuntha Saha and Others

RESPONDENT

Date of Decision : 08-12-1938

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 34, 8

Citation : AIR 1939 Cal 341

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This rule raises a question regarding the interpretation of certain provisions of the Bengal Agricultural Debtors Act. The facts briefly are as follows : The petitioners Bhabani Charan Law, Tarini Charan Law, and Satish Charan Law obtained a decree for rent amounting to Rs. 344-4-9 against their tenants and in execution thereof put the taluk to sale. On 19th June 1937 the sale was held and one Akhoy Kumar Saha was declared to be the purchaser of the taluk for Rs. 580. He paid down the deposit of 25 per cent, of the purchase price in accordance with the provisions of Order 21, Rule 84, Civil P.C., and was directed to pay in the balance within 15 days, i.e., by 3rd July 1937. Between 19th June 1937 and 30th June 1937 the judgment-debtor applied to the Debt Settlement Board of Fazilpur in accordance with the provisions of Section 8, Bengal Agricultural Debtors Act, for a settlement of his debt. The Board sent a notice to the Court of the Munsif where the execution proceedings were pending stating that an application had been made to the Board by the judgment-debtor for the settlement of his debt. The notice was issued in accordance with the provisions of Section 34, Bengal Agricultural Debtors Act, and it was received by the Court on 30th June 1937 before the deposit of the balance of the purchase price had been made. Thereafter, the balance was paid and the case came up for confirmation of sale on 24th July 1937. On that date the learned Munsif stayed further proceedings and fixed 30th November 1937 for further orders. On 16th September 1937, the auction-purchaser applied to have the stay order set aside. The matter was heard and decided on 30th November 1937 and the learned

Munsif held that the proceedings should remain stayed u/s 34, Bengal Agricultural Debtors Act, as the sale was not complete and as the debt had not been extinguished on the date on which the notice under the aforesaid Section had been received by him. Against this order the decree-holder obtained a rule from this Court. In his application the auction-purchaser was not made a party. After the rule was issued the auction-purchaser applied to be joined as a party and supported the petition of the decree-holder. The decree-holder also made an application praying that the auction-purchaser may be joined as a party. These applications are resisted by the opposite-party who is the judgment-debtor. It was pointed out on his behalf that the right of the auction-purchaser to move against the order of stay is barred by limitation and it was urged that he should not be permitted to join in the application at this late stage. In my opinion the application to join the auction-purchaser as a party should be allowed. The decree-holder was competent to move against the stay order without joining the auction-purchaser as a party. This petition was in time. The present applications for joining the auction-purchaser as a party have been made not because the auction-purchaser is a necessary party but in order that the matter may be decided in the presence of all parties. I accordingly allow the auction-purchaser to be joined as a party to the present proceeding.

2. The next point for determination is whether the learned Munsif was right in staying further proceedings. Now Section 34, Bengal Agricultural Debtors Act, says that when a debtor applies to the Debt Settlement Board, for the settlement of a debt in respect of which a suit or proceeding is pending in a Civil Court, the Board shall send the Court a notice in the prescribed manner of such application and thereupon the suit or proceeding shall be stayed until the Board has either dismissed the application or made an award thereon. The first point for consideration is whether there was any proceeding pending in the Court in respect of the debt of the judgment-debtor at the time when the notice was issued to the Civil Court by the Debt Settlement Board. The learned advocate for the petitioner points out that the notice was received on 30th June 1938 and he argues that by that date there was no proceeding pending with respect to the debt. His argument is that by the sale on 19th June 1937 the debt was wiped out and ceased to exist and therefore the proceedings which were pending i.e. the proceedings for the confirmation of the sale were not with respect to any debt. In support of this argument learned advocate for the petitioner relies on the case in *Jatindra Mohan Banik and Another Vs. Surendra Mohan Roy Choudhury and Others*, and on the cases in *Nrishingha Charan Nandi Choudhury Vs. Kedar Nath Chaudury*, , *Manindra Mohan Roy v. Bepin Behari* 41 C.W.N. 1366, *Satyendra Mohan Ghose Vs. Nibaran Chandra Bose and Another*, , *Jagabandhu, Gobinda Chandra, Probhat Chandra Roy Choudhuri Firm Vs. Bhusai Bepari and Others*, , *Ramendra Nath Mondal Vs. Dhananjay Mondal*, and *Jatindra Mohan Mandal v. Elahi Bux* 42 C.W.N. 530.

3. In my opinion all these cases can be distinguished from the present one. In all the cases reported in 41 C W N and 42 C W N the purchaser of the property in

the execution sale was the decree-holder and the Court held that by this sale the decree-holder's debt was liquidated either completely or when the purchase price was less than the decretal dues to the extent of the price realised on the ground that the price fetched was set off against the decretal dues. These cases are distinguishable from the present one where the auction-purchaser is not the decree, holder and where the decretal dues have not been liquidated by any set-off or appropriation of the purchase money towards them. In *Jatindra Mohan Banik and Another Vs. Surendra Mohan Roy Choudhury and Others*, the auction-purchaser was not the decree-holder but there the purchase money had already been deposited by the auction-purchaser and before the notice u/s 34, Bengal Agricultural Debtors Act, was received there had been an order for rateable distribution of the sale proceeds. In these circumstances this Court held that the debt had been extinguished. In the present case, the sale price had not been deposited on the date of the notice. The sale was not complete. There could be no question of the decretal debt being satisfied either in whole or in part until the sale price was deposited in Court. In the circumstances of this case, I am of opinion that the debt was still in existence and that the proceedings pending in the Court were with respect to this debt. That being so, the learned Munsif had no other course open to him but to stay further proceedings. I accordingly uphold the order of the learned Munsif and discharge this rule with costs, the hearing-fee being assessed at one gold mohur.