(1939) 11 PAT CK 0013

In the Patna High Court

Buxar Central Co-operative Bank Ltd. APPELLANT

Vs

Akhouri Bindhyachal Prasad Singh RESPONDENT

Date of Decision : 29-11-1939

Acts Referred:

Bihar and Orissa Co-operative Societies Act, 1935 — Section 24A

Citation : AIR 1940 Patna 261

Hon'ble Judges : Harries, C.J;Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This is an appeal from a decision disallowing objection of the appellant, the Buxar Central Co-operative Bank, Ltd., that execution of a decree obtained against it by the respondent is barred by a scheme of compromise u/s 24-A, Bihar and Orissa Co-operative Societies Act (6 of 1935), which was sanctioned by the Registrar of Co-operative Societies on 15th October 1936. In 1927, the respondent deposited Rs. 13,000 with the appellant. In 1935 correspondence began between the parties regarding the re-payment of this sum, and failing to get satisfaction, respondent filed a suit on 3rd February 1936, for the recovery of his deposit. During the pendency of the suit the scheme of compromise u/s 24-A of the Act was agreed to by the required majority of creditors and sanctioned by the Registrar under Sub-section (2) of Section 24-A of the Act. The respondent''s suit was decreed on 18th December 1936.

2. An appeal was preferred by the appellant against this decree and dismissed by Wort J. (Chatterji J. concurring), who found that there was nothing either in the alleged arrangement (that is to say, the "scheme of compromise," the factum of which is not disputed before us) or in the Act itself which would bar plaintiff''s claim or bar his action for the money or balance of the money deposited by him. The learned Judge went on to add:

I propose to say no more for fear of dealing with matters which are not strictly before us in this appeal, the substance of the decision of this Court being that the plea taken up by the defendant society was not a bar to the plaintiff''s suit.

3. When the respondent put the decree into execution, the appellant again pleaded the scheme of compromise by way of a bar. The lower Court found no provision in the Bihar and Orissa Co-operative Societies Act (Act 6 of 1935)

ousting the jurisdiction of the Civil Court, either to entertain a suit for money deposited with the Central Co-operative Bank or for execution of a decree for such money obtained in a Civil Court,

and arrived at the conclusion that the provision in Section 24-A that the order of the Registrar shall be final "would not bar a proceeding in the Civil Court instituted before such scheme was contemplated or sanctioned." The objection of the judgment-debtor-appellant was accordingly dismissed. It is not very clear from the order of the lower Courts how far the contention advanced on behalf of the decree-holder that as a depositor he was not a creditor of the judgment debtor within the meaning of Section 24-A was accepted by the lower Court; but Mr. Sushil Madhab Mullick, who appears for the decree-holder-respondent, does not dispute the position that as a depositor the respondent was a creditor of the appellant. Sub-section (2) of Section 24-A of the Act, makes the compromise agreed to by , the specified majority, if sanctioned by an order of the Registrar,

binding on all the creditors or the class of creditors, as the case may be, and also on the Society.

4. It was suggested on behalf of the respondent that he was not a party to the compromise; but Sub-section (2) makes his individual participation absolutely immaterial. It has not been suggested on behalf of the respondent that the compromise, which was published in the Gazette with the order of the Registrar sanctioning it as required by Sub-section (4) of Section 24-A, was in any respect informal. The learned Subordinate Judge fell into an error in thinking that in this execution proceeding he was asked to hold that the finality of the order of the Registrar barred "a proceeding in the Civil Court instituted before such scheme was contemplated! or sanctioned." It was the suit of the respondent that had been instituted before, the order of the Registrar sanctioning the compromise; but the execution proceeding itself came years after that order. It is true that the scheme was pleaded as a bar to the suit itself, but in overruling the plea Wort J. was careful enough "to say no more for fear of dealing with matters which are not strictly before us in this appeal."

5. The learned Subordinate Judge has missed the point of this reservation. The compromise with the sanction of the Registrar bars execution, not by reason of any express provision in the Bihar and Orissa Co-operative Societies Act, but under the general law. A judgment-debtor is always entitled to resist execution on the basis of a compromise if the compromise is binding on the decree-holder and has the effect of barring execution.

It has been contended on behalf of the respondent that the compromise in the present case contains nothing to bar execution of the decree obtained by him. Now, it is true that the compromise says nothing expressly about any decrees obtained or to be obtained by any creditor of the Buxar Central Co-operative Bank.

6. Indeed, it does not purport to impose any obligations on any of the creditors of the Bank. What it does do is to make such provisions as that in the first place at least 75 per cent, of the Bank''s recoveries on account of principal shall be distributed strictly pro rata among the creditors, towards the principal, and that all recoveries on account of interest shall, after meeting certain indispensable and also unforeseen expenditure, be similarly paid towards interest at certain flat rates. There are other restrictions imposed on the Bank as regards the manner in which it is to conduct its business.

7. It is also provided that the lands purchased by the Bank may be sold to any creditor in set-off of his deposit, provided he is the highest bidder, and that the scheme is to be in operation for five years, unless it is revised earlier with the approval of the Registrar, if the financial position of the Bank should require it. This was the "scheme of compromise" which the Registrar sanctioned as in the best interests of all the parties concerned. It is plain that it would be no compromise at all if its effect was to impose no obligations on the creditors. It may, indeed, be doubted whether it would be binding as a compromise upon the Bank in the absence of any consideration moving from the creditors for the restrictions to which the Bank is subjected under the scheme.

8. When pressed with this aspect of the matter, Mr. Mullick argued that what the respondent may be taken to have given up was his right to attach all the income of the Bank. But it is plain that at the time the scheme of compromise was arrived at, neither the respondent nor any other creditor of the Bank had any such right; the respondent still had to obtain his decree. It seems to me impossible to read the sanctioned scheme of compromise in any other light than as an arrangement under which creditors were to refrain from levying execution in return for the restrictions imposed upon the Bank as regards the disposal of its income and property.

9. Mr. Mullick has contended that in this view the decree obtained by the respondent would become a nullity. But there is no substance in the contention. The decree is only a security for the debt that is owing to the respondent, and has the effect of establishing that debt as against the appellant; and though the compromise was no bar to the passing of a decree establishing the respondent''s debt, it is, in my opinion, a clear bar to execution. I would accordingly allow this appeal with costs.

Harries, C.J.

10. I agree.

