

(1945) 03 CAL CK 0033
In the Calcutta High Court
Case No : Civil Revision Case No. 141 of 1945

Chowdhury Md. Abdul Washe Mutwali and Others	APPELLANT
Vs	
Rai Bahadur Brojendra Mohan Maitra and Another	RESPONDENT

Date of Decision : 01-03-1945

Acts Referred:

Citation : (1945) 03 CAL CK 0033

Judgement

Mukherjea, J.—In our opinion this Rule should be made absolute. As has been held in more than one case, it is undoubtedly open to a Civil Court to determine whether a notice issued by the Debt Settlement Board is valid or not and to ignore the notice if it is found to be a nullity, provided its validity is not challenged on any ground which it is within the exclusive competence of the Debt Settlement Board to decide. In the case before us, the notice is challenged on the ground that the claim in the suit did not amount to a debt within the meaning of the Bengal Agricultural Debtors Act. That is a matter with regard to which the Debt Settlement Board is now invested with exclusive jurisdiction under sec. 20 of the Bengal Agricultural Debtors Act. That being the position the Civil Court could not have any jurisdiction to decide as to whether the liability amounted to a debt or not. Mr. Choudhury appearing for the Opposite Party has argued before us that as the amount of the debt was more than five thousand rupees, it was beyond the jurisdiction of the Debt Settlement Board to entertain the application for settlement of the debts at all. This was not a point, which was raised before the Court below. It will be open to the Opposite Party, if he is so advised, to raise it properly before the learned Subordinate Judge for his decision on this point. We express no opinion whatsoever as to the propriety or otherwise of the point that is raised.

2. Mr. Chaudhury is undoubtedly right in saying that the proper remedy of the Petitioner would have been to file an appeal against the order, as the order refusing to stay execution proceeding comes within sec. 47 of the CPC and is appealable. But as the value of the decree is above five thousand rupees and an appeal would lie to this Court, we have ample jurisdiction to convert this petition

of revision into a memorandum of appeal from Original Order and there is no dispute that adequate court-fees have been paid.

3. In the result, therefore, we treat this petition as an appeal and allow it in the way indicated above. The order of the Court below is set aside. It will be open, however, to the decree-holder to raise any other point which will entitle a Civil Court to ignore the notice issued by the Debt Settlement Board. We make no order as to costs.

Ellis, J.

I agree.