

(1944) 06 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Order (S. M. A.) No. 16 of 1941

Dinanand Singh Jha and Others

APPELLANT

Vs

Sm. Nazimannessa and Others

RESPONDENT

Date of Decision : 26-06-1944

Acts Referred:

Citation : (1944) 06 CAL CK 0008

Final Decision : Dismissed

Judgement

1. The Appellant and their co-sharers hold a tenancy under the Respondents. The latter instituted a suit for arrears of rent against the former and their co-sharer tenants and recovered a decree for Rs. 5,160 odd on the 25th May, 1939. This decree was put into execution in Rent Execution Case No. 8 of 1939. In 1940, the Appellants filed an application under sec. 8 (1) of the Bengal Agricultural Debtors Act to the Malda Debt Settlement Board for settling their debts. The co-sharer tenants of the Appellants did not join in that application. In that application, however, the Appellants admitted liability for a portion of the aforesaid decretal amount. The Malda Debt Settlement Board sent a notice under sec. 34 of the Agricultural Debtors Act to the Subordinate Judge of Malda where Rent Execution Case No. 8 of 1939 was pending. The decree-holders challenged the validity of the notice under sec. 34 of the Act before the learned Subordinate Judge who by his order dated 17th June held that the notice under sec. 34 issued by the Malda Debt Settlement Board was a bad notice inasmuch as that Debt Settlement Board had no jurisdiction to entertain the application under sec. 8 (1) made by the Appellants. Ignoring the said notice the learned Subordinate Judge held the sale of the defaulting tenure on the 21st June, 1940. The Appellants preferred an appeal to the District Judge. The learned District Judge by his order dated the 27th September, 1940, agreed with the learned Subordinate Judge. Against his order, the Appellants have preferred the present appeal. Two questions have to be considered in this appeal. (1) Whether the Malda Debt Settlement Board had jurisdiction to entertain the application of the Appellants made before it under sec. 8 (1) of the Bengal Agricultural Debtors Act; and (2) if

that Board had no jurisdiction, could the Civil Court ignore the notice issued by that Board under sec. 34 of the Act?

2. At the time when the Appellants made their application before the Debt Settlement Board under sec. 8, sec. 9 of the Bengal Agricultural Debtors Act had not been amended. It was amended by Act VIII of 1940 which by virtue of Notification No. 1502 (R. I.) dated the 9th July, 1940, issued the Local Government, came into force on the 11th July, 1940. As the law stood before the said amendment of sec. 9, an agricultural debtor who was jointly liable for arrears of rent with his co-sharers could not make an application before any Debt Settlement Board. An application which included a debt due on account of arrears of rent had to be made by all the tenants jointly. The amending Act VIII of 1940 has changed the law. By reason of the newly enacted sub-sec. (3) of sec. 9 of the Bengal Agricultural Debtors Act, one of several tenants can make an application on or after 11th July, 1940, for settlement of his debts including debt due on account of arrears of rent provided he includes not only his share but the whole amount of the arrears of rent in that application. As the application which we have in question was made before the 11th July, 1940, it must be considered according to the law then in force. An application of the nature which has been made by the Appellants is an application which could not be made as the law stood at the time before any Debt Settlement Board. Even if he had made a new application in the form required under sec. 9 (3) after the 11th July, 1940, when that sub-section came into force he would have to include the whole of the decretal amount in his application and as the decretal amount exceeded the sum of Rs. 5,000 even that application could not have been made without the sanction of the Collector. The learned Subordinate Judge and the District Judge on appeal are accordingly right in holding that the application was one which the Debt Settlement Board of Malda could not entertain in law.

3. The next question, therefore, assumes importance. It has been laid down by two Division Benches of this Court in the cases of Chowdhury Mohammed Ibrahim v. Sabur-jan Bewa 47 C. W. N. 796 (1943) and Abinash Chandra Biswas v. Nakul Ruhidas 47 C. W. N. 891 (1943). that the Civil Court has jurisdiction to determine whether a Debt Settlement Board had jurisdiction to entertain the particular application and if it came to the conclusion that the Debt Settlement Board had no jurisdiction it could ignore a notice under sec. 34 issued by the Board. That is also the principle underlying Nur Mia v. Noakhali Nath Bank, Ltd. 43 C. W. N. 322 (1938). The facts of the case reported in 47 C. W. N. 196 are similar to the facts of this case. In the case of Jadn Mondalani v. Sm. Sarajini Choudhurani 47 C. W. N. 888 (1943), a Division Bench of this Court was inclined to the view that it was for the Debt Settlement Board only and not for the Civil Court to consider whether an application could be entertained by a Debt Settlement Board or not. In that case, an application made by a debtor who went to a Debt Settlement Board, was once dismissed for default under sec. 13 (3) of the Act. The debtor again applied to a different Board under sec. 8 for the settlement of his debts. A notice under sec. 34 was issued on the Civil Court by

the last-mentioned Debt Settlement Board. That notice was ignored by the Civil Court. It proceeded with the execution. Against the order of the Civil Court by which the said notice was ignored this Court was moved and a Rule was obtained. That Rule was made absolute. In that case, sub-sec. (5) of sec. 8 was construed and reliance was placed on the following words used in that subsection, namely, " A Board may for good and sufficient reason entertain a further application in respect of any debt...", and it was held that it would be for the Board and not for the Civil Court to determine whether a second application for settlement of debt should be allowed or not. So far as that part of the decision is concerned, nothing can be said against it but we do not quite follow the reasoning when the exception mentioned in sub-sec. (5) of sec. 8 was being considered. In this state of the authorities, we prefer to follow the decision in the case reported in Chowdhury Mohammed Ibrahim v. Saburjan Bewa 47 C. W. N 796(1943). and in the case reported in Abinash Chandra Biswas v. Nakul Ruhidas 47 C. W. N. 891 (1943). and hold that the Civil Court had jurisdiction to determine whether a Debt Settlement Board had jurisdiction to entertain a particular application, but subject to the provisions of sec. 20 of the Bengal Agricultural Debtors Act as amended.

The result is that this appeal is dismissed with costs, hearing-fee, one gold mohur.