

(1951) 02 CAL CK 0046
In the Calcutta High Court
Case No : Civil Rule No. 906 of 1950

Garibulla Mondal and Others

APPELLANT

Vs

Esmail Mondal and Others

RESPONDENT

Date of Decision : 21-02-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 153
Constitution of India, 1950 — Article 44

Citation : 55 CWN 682

Hon'ble Judges : Mookerjee, J;Guha, J

Bench : Division Bench

Advocate : Panchanan Pal and Murari Mohan Mitra, for the Appellant;Sudhir Kumar Acharjya, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, J.—This is an application in revision on behalf of the debtors, and is directed against an order passed by the Additional District Judge of 24 Pagens u/s 40A of the Bengal Agricultural Debtors Act. The relevant facts necessary for determining the matter in dispute may be shortly stated. In 1921 a conveyance was executed by the predecessor in interest of the debtors petitioners in favour of the predecessor in interest of the opposite parties in respect of a certain share in different plots of land. An agreement for reconveyance was also executed immediately thereafter by the purchaser in favor of the predecessor of the debtor. The dispute between the parties is as to whether these transactions were in essence a loan governed by the provisions of the Bengal Agricultural Debtors Act or not.

2. On the 2nd October. 1942. the predecessor in interest of the debtors petitioners applied before the special Debt Settlement Board at Basirhat u/s 8 of the Bengal Agricultural Debtors Act for the settlement of his debts treating the transaction referred to above as a loan. Some of the heirs of Farsed Mondal, the predecessor-in-interest of the opposite parties, were impleaded as creditors. An

ex parte order was passed and an award was is sued by the Debt Settlement Board. It was held that the transaction in question was a loan, and as the opposite parties had been in possession of the lands in dispute for over fifteen years. the debt had been satisfied. The opposite parties were accordingly directed to restore possession of the properties in question, The award was actually drawn up on the 6th February, 1946.

3. The further case of the debtors petitioners is that after the award had been signed, the Certificate officer was moved for giving effect to the same and possession was delivered in favour of the present petitioners by the Certificate officer in November, 1946 Subsequently the opposite parties moved the collector under Rule 91B of the rules framed under the Bengal Agricultural Debtors Act for granting permission to move the Debt Settlement Board for reviewing the decision made in 1946 On the requisite section being given by the Collector, an application for review was filed by the opposite parties before the Debt Settlement Board. The special officer, Debt settlement Board, dismissed the application. An appeal was preferred before the Appellate Officer who also affirmed the decision of the Board. The Additional District Judge, -24 pagans before whom the revision case u/s 40A of the Bengal Agricultural Debtors Act was preferred held that the opposite parties were entitled to agitate the points raised; in their application for review and accordingly, the order of the Appellate Officer was Set aside and the case sent back for re-hearing. It is against this order that the present Rule has been, obtained by the debtors.

4. On behalf of the petitioners it is urged that as after the award had been drawn up possession had already been delivered an application for review of the order leading to the award is not maintainable an law.

5. Section 44 of the Bengal agricultural Debtor Act provide:

Subject to any rules made under this Act-

(a) a Board may. on an application made by any person interested or of its own motion, review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

The relevant rules framed under this provision are rules 91A to 91D. Rule 91A provides that if an appeal has been preferred against the order in question, no application for review of the same order would be entertained. Rule 91B lays down that an application for review of an order under clause (a) of section 44 of the Act shall ordinarily be made within sixty days of the date of the decision or order:

Provided that no action shall be taken by a Board on an application for review made alter 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.

6. The procedure to be followed by the Collector when such an application for sanction is made is to be found in Rule 91C:

In deciding whether sanction should be given under Rule 91B or not, the Collector shall consider-

- (a) whether any material illegality or irregularity has occurred;
- (b) whether substantial injustice, hardship or difficulty has been occasioned; and
- (c) whether the applicant had good and sufficient reasons for not making the application within sixty days of the date of the decision of order of the Board as required under Rule 91B.

7. The question, whether a person is to be given an opportunity to make an application for review after the lapse of sixty days, is to be allowed to be moved or not, falls to be decided under Rule 91C by the Collector. In the present case, we have not before us the order by the Collector permitting the applicants to move the application for review. We must proceed on the basis that the Collector had considered all the particulars which he was required to do under Rule 91G.

8. On behalf of the petitioners it is contended that although clause (a) of section 44 of the Bengal Agricultural Debtors Act does not lay down any limitation or impose any restriction on the exercise of the powers by the Board when an application for review is made, such provision is to be read as being governed by what the learned Advocate says, "'the ordinary and usual rules for reviewing a decision by a tribunal'".

9. It is well settled, that unless review is provided by any statute, a tribunal cannot review its own judgment except in very exceptional circumstances. If, on the other hand, there be a specific provision in a special statute authorizing the tribunal in question to review its decision, that provision has to be interpreted to find out what the limitations of that tribunal are in the exercise of its jurisdiction in entertaining an application for review.

10. A strenuous attempt was made on behalf of the petitioners to attract the provisions contained in Order XLVII, rule 1 of the CPC and to try to import restrictions which are contained in that rule in the Code for the purpose of interpreting the powers of the Board under clause (a) of section 44 of the Bengal Agricultural Debtors Act.

11. In the first place, it is quite apparent that the powers which have been given in the CPC for reviewing a decision by a Court are very restricted, and as has been repeatedly explained both by this Court as also by the Judicial Committee, the rules as contained in Order XLVII, rule 1, are to be strictly interpreted; it is not competent for the Court to override those provisions if the application be one under the Civil Procedure Code. It is not however permissible to introduce any extraneous rules or limitations which may have been imposed in other statutes for limiting the powers of the Debt Settlement Board as given under clause (a) of section 44 of the Bengal Agricultural Debtors Act. There being no limitations imposed either in the Special Statute or the rules framed there under, it is open to the Board to consider on the merits the application which may be filed for

review.

12. It is further urged that the stage at which an application for review can be entertained is only before the order in question has been given effect to. But we do not find -any such limitation "imposed in the provisions contained either in clause (a) of section 44 of the Bengal Agricultural Debtors Act, or in the Rules framed under that Act.

13. We should however make it clear that It is not Our intention to express any opinion as to what should be decision of the Board so far as the application for review is concerned. It will not only be open to the Board, but it will be necessary to consider when entertaining the application of this nature to consider whether the application should be granted or not; particularly in view of the lapse of time which has taken place or for other relevant circumstance Reference may in this connection be made to the very wide powers which are given to a Court under sections 152 and 153 of the CPC for amending judgments or decrees or orders passed by the Court. There had been occasions when in spite of the fact that an error was detected, the Court refused to exercise the power given under the said sections because the interest of third parties had come into the picture, or for such other Sufficient reasons. The jurisdiction which is vested in the Board under clause (a) of section 44 of the Bengal Agricultural Debtors Act is a discretionary one and that discretion has to be exercised on a consideration of all the relevant materials and circumstances. The fact that the award has been implemented is, however, not sufficient by itself to justify throwing, out the application for review without a consideration of the merits.

14. A further ground was urged on behalf of the petitioners that the only reason given by the creditors in support of their application for review was that the notices had not been served on them before the award had been made. It is contended that under the first proviso to sub section (2) of section 13 of the Bengal Agricultural Debtors Act, a specific provision is made for giving an opportunity to a patty to move the Board if notices had not been served. When there is a specific provision in the proviso to subsection (3) of section 13, clause (a) of section 44 of the Bengal Agricultural Debtors Act would not be attracted. In other words, an application, if it were to be moved, would come under the proviso to sub-section (3) of section 13, and no application would lie for review of the order under clause (a) of section 44 of the Act.

15. The first proviso to sub-section (3) of section 13 of the Bengal Agricultural Debtors Act lays down that when an order under sub-section (2) or sub-section (3) has been made the same-

May be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor-----had no knowledge of the notice under sub-section (1) or that he has complied with it.....or that he had Sufficient reason for non-compliance.

16. In the first place, the word used in this proviso to sub-section (3) of section 13 is a "review" of the order complained of. If it be taken that the proviso is referring to proceedings for review as contained in clause (a) of section 44, then there is no substance in the argument advanced on behalf of the petitioners. On the other hand, if the proviso be taken, and the language used in this proviso is capable of that" interpretation, that the application referred to in this proviso can be made only up to the point of time which is anterior to the disposal of the proceedings by the Debt Settlement; Board, then in that case there could be no objection to the provisions contained in clause (a) of section-14 of the Bengal Agricultural Debtors Act being attracted to a case where the proceedings have already been disposed of by the Board. In either view, therefore, there can be no valid objection to a person making an application for review under clause (a) of section 44 of the Bengal Agricultural Debtors Act for reviewing a final order which had been passed by the Board without service of relevant notices.

17. The grounds urged fail, and this Rule is accordingly discharged. We have indicated already that we do not express any opinion as to the merits of the application and also to what extent the circumstances relied upon by the petitioners in this Court would affect the merits of the case when the application is considered by the relevant authority concerned. In the circumstances of this case there will be no orders for costs in this Court.

Guha, J.

I agree.