

(1947) 06 CAL CK 0007
In the Calcutta High Court
Case No : Civil Rule No. 246 of 1947

Golapjan Bibi and others

APPELLANT

Vs

Sarif Ahmed and others

RESPONDENT

Date of Decision : 25-06-1947

Acts Referred:

Citation : (1947) 06 CAL CK 0007

Judgement

Harries, C.J.—This is a petition for revision of an order of a learned District Judge upholding an order of an Appellate Officer who upheld an order of a Board in a debt settlement matter.

2. The debtors, the present opposite parties, made an application to the Board in respect of a mortgage-debt. In the application it was clear that they had been indebted as usufructuary mortgagors and that the mortgage had been paid off by the usufruct which the mortgagee had enjoyed for a period of time. They, therefore, stated that there was really nothing due under the mortgage and that they were entitled to the return of the mortgaged property.

3. An objection was taken before the Board that as no debt was admitted the Board had no jurisdiction and that the application should be dismissed. The Board thought that the application was badly drafted and they suggested that there should be an amendment showing a nominal debt of Rs. 5. Eventually the Board acceded to the application.

4. There was an appeal to the Appellate Officer and in his view no amendment of the application was necessary and that on the application as it stood the debtors were entitled to ask the Board for relief. On revision the learned District Judge took the same view.

5. Before me it has been argued that the Board was bound to dismiss this application because no debt was admitted. Reliance was placed upon a Bench decision of this Court in *Srikanta Kamar and Another Vs. Atul Krishna Biswas and Others*, in which it was held that an application before a Debt Settlement Board

in which the applicant does not admit his liability for any debt whatsoever, even though he may have specified a debt, at the same time denying liability for the same, is not maintainable by the Board; and any order passed on such application is void. There is a decision to the same effect by a single Judge of this Court, namely, *Rahim Bux Talukdar and Another Vs. Kanakalata Choudhurani*, .

6. It is to be observed that in both these cases the debt which the applicant debtor mentioned was a decretal debt. He mentioned the decree and then stated that he was not liable. In other words, he went to the Debt Settlement Board to ask them to settle the debt and in the same breath said that there was no debt to settle. In such circumstances it is not surprising that this Court has held that the application must be dismissed. How can a debtor ask a Debt Settlement Board to settle a debt the existence of which he himself denies?

7. The present case, however, is very different. A usufructuary mortgagor can go to a Debt Settlement Board, ask them to take an account and ask them to deliver possession to him if it is found that the mortgagee has been repaid from the usufruct. If the Board is of opinion that the mortgage has been discharged it will order possession to be given to the debtor applicant.

8. The argument in the present case is this that if a usufructuary mortgagor states the true facts in his petition namely, that the mortgage has been discharged by the usufruct his application must be dismissed. On the other hand, if he quite falsely alleges that Rs. 10 is still due from him, the application would be in order and if on taking an account the Board found that nothing was due from the applicant an order for possession in his favour could be passed; in short the Board would have jurisdiction to deal with the matter if the applicant misstated the facts but would have no jurisdiction to deal with the matter if the applicant stated the facts correctly. Surely that cannot be the effect of the Bench decision to which I have made reference. That Bench decision and the single Judge decision must be confined to the particular facts of the case, namely, that in each case there was an application to settle a debt, the very existence of which was denied.

9. In the present case there is an application to the Court to deal with a usufructuary mortgage which, according to the applicant, has been discharged by the receipt of the usufruct for a period of time. That is an application which the Board can deal with and must deal with and it would be monstrous if the Board were bound to dismiss the application merely because the debtor had quite truly stated that the usufruct for a period of time had discharged or more than discharged the debt.

10. In my judgment the view of the learned District Judge and the appellate Officer cannot possibly be assailed and that being so, this petition fails and is dismissed. The rule is discharged with costs.