

(1940) 07 CAL CK 0034
In the Calcutta High Court

Hemendra Nath Roy Chowdhury

APPELLANT

Vs

Purna Charan Hauli and Others

RESPONDENT

Date of Decision : 11-07-1940

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1940 Cal 549

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—This appeal arises with reference to an application riled by the decree-holder u/s 47, Civil P.C., in which ha asked that an order staying the execution proceedings u/s 34, Bengal Agricultural Debtors Act, should be vacated. The application was rejected by the learned Munsif and the decision of the trial Court was affirmed on appeal by the learned District Judge of Khulna. It appears that the decree-holder had instituted a suit against the judgment-debtors for non-payment of their share of the bhag produce due in respect of a certain plot of land with an area of 40 bighas. His case was that the owner's share of the produce amounted to 169 maunds of paddy and a certain quantity of straw and he claimed Rs. 770 as the pries of the produce, including interest. On con-test he obtained a decree for Rs. 292-8-0, which, in the view of the Court which passed the decree, represented the proper price of the bhag produce due to the decree-holder. This decree was obtained on 28th March 1938 and the decree-holder applied for execution on 17th June 1938. Thereafter, the judgment debtors applied to the Debt Settlement Board and a notice was issued u/s 34, Bengal Agricultural Debtors Act, on 21st September 1938, whereby further execution proceedings were stayed. It seems to have been urged before both the Courts below that the provisions of the Bengal Agricultural Debtors Act had no application in respect of a liability of this sort, but this contention was not accepted as it was held that the Act did not exclude a decretal debt although the claim in the original suit was for bhag produce.

2. The main point for consideration in connexion with this appeal is whether or not a decree such as the decree-holder was seeking to execute is exempted from the operation of the Act by reason of the provisions of Section 2(8)(iii) of the Act. This sub-section provides that

"debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future but does not include...(iii) any share of the produce of land payable on account of land cultivated under the system known as adhi, barga or bhag.

3. There can be no doubt that if, according to the terms of the decree, a certain share of the produce of the land had been made payable to the decree-holder, the liability thereunder would have been clearly exempted from the operation of the Act. It must however be remembered that the amount of money which was decreed was considered by the Court which passed the decree to be the cash equivalent of the share of the produce due to the decree-holder and it therefore follows that this cash liability is really a liability in respect of a share of the produce of the land, to which reference is expressly made in Section 2(8)(iii) of the Act. It is argued that the decree which the appellant was seeking to execute must be regarded as a debt within the meaning of the Act in view of the proviso to Section 18 which is in the following terms:

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

4. Admittedly, a Debt Settlement Board has exclusive jurisdiction to decide a question with regard to the existence of the amount of a debt which falls within the scope of the Bengal Agricultural Debtors Act, but it was pointed out by this Court in *Nur Mia and Another Vs. Noakhali Nath Bank Ltd.*, :

The Civil Court after receipt of notice u/s 34, Bengal Agricultural Debtors Act, has jurisdiction to enter into the question whether the debt, in respect of which the proceeding is pending before it, is a debt within the meaning of Clause (8) of Section 2 and, if it finds that it does not come within that definition, it should not stay proceedings in pursuance of the notice.

5. In my view, the liability of the judgment debtors under the decree dated 28th March 1938 did not represent a debt within the purview of the Bengal Agricultural Debtors Act and it, therefore, follows that the provisions of Section 18 of the Act can have no application to a debt of this nature. It is also argued on behalf of the respondent in this case that the language of Section 2(9) of the Act may be taken to indicate that a bargadar comes within its scope. I am not prepared to accept this argument. According to the Preamble of the Act the intention of the Legislature was to provide for the relief of indebtedness of agricultural debtors and from the general scheme of the Act one of its intentions seems to be to protect the raiyats, under-raiyats and other cultivators

who have an interest in land from becoming indebted to such an extent that their holdings or interest in the land may have to be sold for the purpose of liquidating the debts which they have incurred. Sub-section (9) states that

"debtor" means a debtor whose primary means of livelihood is agriculture and who (a) is a raiyat or an under-raiyat, or (b) cultivates land himself or by members of his family or by hired labourers or by adhiars, bargadars or bhagdars.

6. If this sub-section be read together with Sub-section (8)(iii) of the Act it would appear to have been the intention of the Legislature to exclude from the operation of the Act adhiars, bargadars or bhagdars presumably because these people have no interest in the land, which it was necessary to protect by means of special legislation. From the provisions of Section 3(17), Ben. Ten. Act, it would appear that these people are persons who cultivate the land of another person on condition of delivering a share of the produce to that person. It would, therefore, appear that the reference in Sub-section (9)(a) to a person "who cultivates land himself" must mean a person other than a raiyat or an under-raiyat who has some interest in the land, which would entitle him to employ hired labourers, adhiars, bargadars or bhagdars for the purpose of cultivating it, but such hired labourers and the other persons mentioned would not themselves be included within the definition of "debtor." Having regard to the considerations mentioned above, I am of opinion that the respondents do not come within the scope of the Bengal Agricultural Debtors Act of 1935 and in these circumstances the learned Munsif should not have stayed proceedings on receipt of the stay order, dated 21st September 1938, from the Debt Settlement Board of Kailasgunge. This appeal must, therefore, be allowed with costs throughout. The decision of the lower Appellate Court affirming that of the first Court is set aside and it is directed that execution do proceed. The hearing-fee in this appeal is assessed at two gold mohurs. Leave to appeal under Clause 15 of the Letters Patent is refused.