
(1946) 04 CAL CK 0008
In the Calcutta High Court

Madaripur Commercial Bank Ltd.

APPELLANT

Vs

Lal Mohan Saha and Others

RESPONDENT

Date of Decision : 17-04-1946

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 37A
Money Lenders Act — Section 5(a)

Citation : AIR 1947 Cal 127

Hon'ble Judges : Chakravartti, J; Biswas, J

Bench : Full Bench

Judgement

Chakravartti, J.—This rule raises a question of general importance as to the true scope of Section 37A, Bengal Agricultural Debtors Act Of several points urged before the authorities below that single one was urged before this Court. The question arises out of the following facts. On 21-2-1924, the father of the opposite parties took a loan of Rs 12,000 from the petitioner bank on a mortgage of 15 items of property. On 9-6-1934 the bank obtained a final mortgage decree for a little over Rs. 20,000 and at a sale held on 21-2-1936, against the opposite parties who had been substituted for their father on his death it purchased 13 of the properties for a sum of Rs. 17,550 which naturally was set off against the decretal dues. The remaining two properties were purchased by one Lokenath Poddar for Rs. 4175. The sale proceeds were more than sufficient to satisfy the decree and the balance left was attached and taken away by some other creditors of the opposite parties. The petitioner bank obtained possession of the properties purchased by it on 2-12-1936.

2. Section 37A, which was introduced into the Bengal Agricultural Debtors Act by Act II (2) of 1942, came into force on 18-6-1942. On 14th December following, the opposite parties made an application before the Madaripur Special Debt Settlement Board for relief under the new section. They were adjudged agricultural debtors on 29-6-1943, but the petitioner appealed and was able to obtain from the Appellate Officer an order for a further and fuller consideration of the matter. That consideration took place on 19-12 1944, when the Board again

found the opposite parties to be agricultural debtors and they held against the contention of the petitioner that the purchase at the execution sale having been made not by the decree-holder alone, but by the decree-holder and a third party, Section 37A could not apply. An appeal from this order was dismissed by the Appellate Officer on 21-6-1945, who gave certain reasons for the view taken by him and an application u/s 40A only produced an extremely brief order by an Additional District Judge to the effect that the order of the Appellate Officer was "quite justified." The petitioner then moved this Court and obtained the present rule.

3. It was contended on behalf of the petitioner that the view taken by the authorities below was wrong and that Section 37A, having regard to all its terms, could apply only to a case where the decree-holder was the sole purchaser and the sale proceeds were exactly sufficient to meet the decretal dues. The inevitable answer of the opposite parties was that the terms of the section were plain and unqualified and full effect must be given to them, as they stood. Reference was also made to the amendment of Section 35 of the Act as showing that the Legislature did not at least intend to exclude cases where the decree had not been fully satisfied by the sale.

4. It is certainly true that where the language of an Act is plain, it must be construed according to that language, whatever the inconvenience or apparent hardship caused. But it is also true that the plain meaning of certain language is not necessarily its literal meaning and a secondary meaning may be equally plain. So it may be found that a statute, although it comprehends all things in the letter, has yet to be expounded as but limited to certain things, if effect is to be given to all its parts or if the system of rights and remedies it purports to regulate is to work smoothly, without confusion or without friction with other well-established law or without causing outrageous consequences. These are cases where the Legislature may legitimately be held to have intended a particular meaning, although it used words of a general import or to have contemplated a specific object, although it appeared to provide for all things in general.

5. Mr. Gupta contended that the present was such a case and that insistence on the literal meaning would lead to anomalies which the Legislature could not possibly have intended to create. On the other hand, if the sale contemplated by the section was taken to be only a sale at which the sole purchaser was the decree-holder and the price just sufficient to liquidate the decree, fair effect could be given to all its terms and no absurdities would result. This argument requires careful consideration. Speaking broadly, the scheme of the section is the following : "If any immovable property of any person" was sold in execution of a decree after 12-8-1935, such person may apply for relief under the section, if he was an agricultural debtor on the date of the sale and if "the property sold" was in the possession of the decree-holder on or after 20-12-1939. The other conditions are not material for the purposes of the present case. The Board to which such an application is made, shall then make an estimate of the average

annual receipts which may be considered to have been derived from the property during the 5 years from 1934 to 1938 and proceed to make an award, consisting of the amount payable by the debtor and of directions as to how it should be paid. The amount shall be "the amount of the decree in execution of which the property was sold," together with costs as also compensation for improvements, if any made, less half the receipts derived from the property by the decree holder during the period of his possession according to the estimate made by the Board. The method of payment to be directed is that the debtor shall pay annually to the decree-holder half the value of the annual receipts, as estimated, together with the rent payable to the landlord on account of the property concerned, such payment to continue till the debt is extinguished or till twenty years have expired from the date of the award, whichever happens earlier. When an award has been made, the debtor may present a copy of it to the Court at whose order the property was sold and that Court shall thereupon direct that "the sale" be set aside and the debtor restored to possession.

6. Mr. Gupta contended that these provisions could not, reasonably be applied to a case where a third party has also purchased some property of the debtor at the same sale and the proceeds had been received by the decree-holder in satisfaction of a part of his decree; nor to a case where the decree-holder had purchased the properties at a price higher than the decretal amount and the surplus amount had naturally been taken away by the debtor. They were inappropriate, to the first case, because the section did not include, among the deductions allowable from the decretal amount in fixing the amount of the award, the sum received by the decree-holder from the proceeds of a sale to a third party and the consequence of applying the section to such a case would be that the debtor would neither be able to recover the property from the third party, nor get any credit for its price which had been received by the decree-holder but would have to pay back the full amount of the decree. The section was inappropriate to the second case, because it did not include, among the allowable additions to the decretal amount, the surplus taken away by the judgment-debtor. In the first case, the decree-holder would make a profit of the amount received from the purchase by the third party; in the second case the judgment-debtor would make a profit of the surplus amount taken away by him.

7. Mr. Gupta contended further that the provision that the debt should in any event be deemed to have been extinguished after 20 years indicated that the Legislature had in view sales which had just sufficed to discharge the decree. If the decree-holder took the property as equivalent in value to the decretal amount, there could be no injustice in limiting him to 20 years' income, since 20 years' purchase was the common measure of the price of landed property in Bengal; but there would be gross injustice if the section was also applied to a case where the decree-holder had purchased a small property for a fraction of the decretal amount and he was asked to rest content with 20 years' income of that property, although it might fall grievously short of even the principal amount. Such injustice could not have been intended. These are weighty

considerations and the construction of the section suggested on their basis is certainly an attractive one. But we are unable to agree that they are decisive and can be allowed to override what the section otherwise suggests.

8. In the first place, Section 35, as amended, makes it clear beyond argument that the Legislature did contemplate a case, where the decree had not been fully satisfied by the sale. That section now provides that no decree of a civil Court shall be executed for the recovery of a debt included in an application u/s 8 or Section 87A till the application has gone out of the way in one of the modes mentioned. It is therefore clear that there can be an application u/s 37A in a case where, in spite of a sale, a part of the decretal debt is subsisting. The contention that the section is limited to a case where the sale fetched exactly the decretal amount must accordingly be put on one side. In the next place, of the two difficulties of applying the section to all sales, pointed out by, Mr. Gupta, the first is strictly speaking, unreal and need not occur if the debtor does not wish to be subjected to it. It is entirely optional with him to make or not to make an application u/s 37A and if he considers that an adjustment of his debt under the section, involving a loss of the sum which the third party purchaser paid, will not be to his advantage, he need not apply under the section and need not suffer the loss at all. The fact that this loss may occur in certain cases can, therefore, be no ground for holding that the Legislature did not intend the section to apply to all sales.

9. The same consideration does not apply to the second difficulty suggested, but yet its force as pointing to a limited construction of the section does not appear to us to be sufficient. It can be avoided only by limiting the section to sales at which the decree-holder was the sole purchaser and which fetched exactly the decretal amount, but the section, in one respect, is clearly not so limited and does cover cases where the sale proceeds were not sufficient to discharge the decree. It may also be observed that cases where the purchaser is the decree-holder and he pays more than the decretal amount are so rare as to be almost unknown. Lastly, it appears to us that where the situation pointed out by Mr. Gupta occurs, the decree-holder will not be wholly without a remedy in respect of the surplus amount taken away by the judgment-debtor. There is no reason why he should not have a right under the general law to recover this sum from the debtor as money paid for a consideration which has afterwards failed or on the principle of restitution or on some similar ground. The second difficulty suggested by Mr. Gupta cannot, in our view, be sufficient for ascribing to the section a limited intention.

10. Nor can be the hardship that in a case where only a small property was sold, half its income for twenty years may bring the decree-holder only a trifling sum and yet he must submit to an extinction of the entire debt. In this respect, the intention of the Legislature to create the hardship is deliberate and clear. As pointed out already, the section must be taken to apply to cases where a part of the decree remained unsatisfied after the sale and since the "decree-holder must

in all cases be content with half the 20 years" income of the property sold, the hardship of losing a part of his just dues will inevitably be caused to him in most, if not all, of these cases. It seems curious that for cases where no sale has taken place, the Act should contain no provision for thus dismissing the decree-holder with twenty insufficient instalments, whereas if he executed the decree and purchased some property of the debtor himself he should be in a worse position. If it be paid that the intention of the Legislature was to give the debtor the same measure of relief as under the Money-Lenders Act, as Sub-section (3) of the section would suggest, then too the provision contained in Section 5(a) is not explained, because, under the Money-Lenders Act, payment of the entire debt, as determined, is provided for by the instalments and the creditor is not consigned to half the 20-years" income from some property, however paltry it might be. These considerations, however, are of no avail, because we are not concerned with the policy of the Legislature. Its awareness of the obvious hardship and its intention to create it are unmistakable and it is therefore impossible to make this hardship a reason for reading a limited meaning in the enactment, as a matter of construction.

11. In our opinion, the governing words of the section are "when any immovable property of any person has been sold" with which it opens. But for the adjective "any", it might have been said with perfectly good reason that when the section spoke of "the sale" or "the property sold", it meant the whole sale or the whole of the property sold. Under that construction, there could be no room for taking the sale contemplated by the section to mean a sale, so far as the decree-holder was the purchaser or for taking the property sold to mean only the property purchased by the decree-holder and still in his possession. But the use of the word "any" makes the language of the section appropriate also to cases where the property sought to be recovered is only that among the properties sold which was purchased by the decree-holder and the sale assailed is only a part of the sale being that part with which the decree-holder is concerned. It is true that where the section speaks of "the sale" or "the property sold", it does not use any qualifying words, but it is quite obvious that these expressions must be read along with the words "any Immovable property" and so read "sale" would mean the sale of that immovable property and "the property sold" would mean that one of the properties sold at the sale which the decree-holder purchased and which only can be recovered and it is sought to recover. It may be said that such meaning of the words, assuming it is admissible as a matter of grammatical construction, would render the section ineffectual, because a sale cannot be set aside in part. The answer to that objection is that when there is a sale of separate properties in separate lots, there are in fact so many separate sales and there is no legal bar to setting aside one or some of them. But even if this is not permissible under the general law, Section 37A itself creates a statutory authority for a partial setting aside of sales in cases covered by it.

12. For all these reasons we are of opinion that Section 37A cannot be read as limited to cases where the sole purchaser at the sale was the decree-holder and

the sale proceeds were exactly sufficient to satisfy the decretal amount. It covers a case where certain properties were purchased by a third party at the same sale and the sale proceeds were either more or less than the decretal amount. We must, however, observe that if the section must be construed according; to its language, it must be so construed for all purposes. There is no warrant for the view taken by the Appellate Officer and accepted by the Judge, that the amount received by the decree-holder, from the proceeds of the sale of certain other properties to the third party at the same sale, can also be deducted from the decretal amount in fixing the quantum of the award. Whatever may be the rights of the debtor to recover this sum in other ways, assuming there may be such rights, it cannot be deducted in making an award u/s 37A. The opposite parties will therefore not be entitled to a deduction of, that portion of Rs. 4175 paid by the third party purchaser, which went to the decree-holder in satisfaction of his decree. Subject to the observation made above, the rule is discharged^ but we make no order as to costs.

Biswas, J.

I agree.