
(1944) 11 CAL CK 0009
In the Calcutta High Court
Case No : Civil Revision Case No. 1302 of 1944

Maharajadhiraj Dr. Sir Kameswar Singh	APPELLANT
Vs	
Naran Chandra Dutt and Others	RESPONDENT

Date of Decision : 17-11-1944

Acts Referred:

Citation : (1944) 11 CAL CK 0009

Judgement

Mukherjea, J.—The only question that requires consideration in this case is whether the learned District Judge in making the order under sec. 40A of the Bengal Agricultural Debtors Act was right in holding that the Opposite Parties had fulfilled the conditions of sec. 37A of the Act and were consequently, entitled to reliefs under that section. It is not disputed that the immovable property belonging to the Opposite Parties was sold after the 12th day of August, 1935, in execution of a certificate under the Bengal Public Demands Recovery Act relating to a debt, other than a certificate for the recovery of an amount payable under an award. It is also admitted that at the date of sale, the Opposite Parties were debtors, and that the property sold was in possession of the decree-holder on or after the 20th day of December, 1939.

2. The controversy really centres round the point as to whether any of the alternative conditions which are specified in cl. (b) of sec. 37A (1) of the Bengal Agricultural Debtors Act has been complied with. The District Judge is of opinion, that cl. (b) (i) was fulfilled inasmuch as no ordinary Debt Settlement Board was established for the local area at the time when the sale took place. The Debt Settlement Board as well as the Appellate Officer were of opinion that as a Special Board was in existence which had jurisdiction over the entire Sub-Division where the debtors resided and it was open to the latter to approach the Special Board for obtaining relief under the Act, this condition was not fulfilled.

3. In our opinion, there is much to be said in favour of the view put forward by the Appellate Officer, and if, as a matter of fact, the debtors could have obtained relief from the Special Board, it is difficult to see why they should be given a

fresh opportunity under sec. 37A of the Bengal Agricultural Debtors Act. We think, however, that the condition laid down in cl. (b) (iii) has been fulfilled in the present case. It is not disputed that the sale took place, before the commencement of the Bengal Agricultural Debtors (Amendment) Act of 1940. The debt was undoubtedly one for arrears of rent in respect of which several persons were jointly liable. That the debtors have combined together in one single application does not, in our opinion, make any difference. Mr. Das argues that it was possible for the Opposite Parties to obtain relief under the old sec. 9 as it stood before the amendment of 1940. It is true if they had all joined together, they might have obtained some relief. We do not know whether at that time they were in a position to combine together for the purpose of making an application under that section. At any rate, having regard to the clear language of cl. (b) (iii) of sec. 37A (1) of the Bengal Agricultural Debtors Act, we do not think that it is permissible to indulge in any speculation as to what things might have been if certain things happened at that time. According to the clear language of the section, we think that this condition has been sufficiently fulfilled, and consequently, the debtors are entitled to relief under sec. 37A of the Act. The result is that this Rule is discharged. We make no order as to costs in this Court.

Ellis, J.

I agree.