

(1940) 04 CAL CK 0043
In the Calcutta High Court

Pyari Mohan Manjhi and Another

APPELLANT

Vs

Moulvi Hashan Ali Khan Armanali Khan and Others

RESPONDENT

Date of Decision : 25-04-1940

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 55
Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : AIR 1941 Cal 251

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This rule has been obtained by the judgment-debtors and arises out of rent execution case No. 405 of 1939. During the course of the proceedings the petitioners applied to a Debt Settlement Board and a notice u/s 34, Bengal Agricultural Debtors Act, reached the Court on 21st July 1939. The Munsif disregarded it and the proceedings went on. A sale was held on 10th August in spite of the protests of the petitioners and the property was purchased by opposite parties 3 to 7. Petitioners then filed the application which has given rise to this rule. It was dismissed. The sale was eventually confirmed on 23rd September and, as the price fetched was greater than the demand, the execution case was dismissed on full satisfaction. The ease of the petitioners is extremely simple. Their contention is that the Munsif acted without jurisdiction in ignoring the notice from the Debt Settlement Board and that the sale held was a nullity. But difficulty arises as to the procedure which he should follow in order to obtain relief.

2. I am bound to say that I find some difficulty in understanding the reasons which induced the Munsif to ignore the notice. u/s 55, Bengal Agricultural Debtors Act, the Local Government may make rules to provide for the manner of giving notices u/s 34. Under those powers a form is prescribed, form No. 15, and the notice was in that form. The form correctly gives the number of the execution case which was to be stayed. There were two decree-holders, one of whom is a trustee for the other. The notice mentioned the name of the trustee

only. There were two judgment-debtors, the present petitioners. The notice also mentions the name of another brother. In other words there was an omission of one decree-holder and an addition of a person who was not a judgment-debtor. These are mere formal defects which could not possibly affect the validity of the notice. It has not been and could not be suggested that there was any other pending case to which the notice really referred. There is no doubt whatever that the notice referred to this case and it was the duty of the Munsif to stay further proceedings. In dealing with the petitioners' application the learned Munsif had some difficulty in deciding whether it was an application u/s 47 or Section 151, Civil P. C, or whether it was an application in review. He finally decided that it was none of them and that the only course open to the petitioners was to move this Court.

3. The relief which I can now on this rule grant to the petitioners lies within a very narrow compass. They are certainly entitled to a stay of any further proceedings in connexion with the execution. But that relief would be infructuous for two reasons. In the first place they want relief against the sale and in the second place there is nothing further to be stayed. The result is that no useful purpose would be served by staying further proceedings. It is impossible for me to give any relief with regard to the sale. The petitioners are certainly entitled to raise the question in an application u/s 47 to ask for a declaration that the sale has not affected their title. There can be no doubt that the application filed by them was one under that section. There was therefore an appeal to the District Court and it will not be open to this Court to interfere in revision. The second difficulty lies in the fact that the dispute is now not between the petitioners and the decree-holders but between the petitioners and a third person namely the auction-purchaser. In that view they can only obtain relief in a regular suit. If however they are of the opinion that the application u/s 47 was competent their proper course is to appeal against the Munsif's decision. The rule is accordingly discharged. I make no order as to costs.