

(1938) 01 CAL CK 0024
In the Calcutta High Court

Raja Jagat Kishore Acharjya Chaudhury	APPELLANT
Vs	
Hazrat Ali Bepari and Others	RESPONDENT

Date of Decision : 26-01-1938

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 34, 9(1)(b)

Citation : AIR 1938 Cal 447

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In this case a rule was obtained calling upon the opposite party to show cause why the orders of the learned Second Munsif of Mymensingh dated 17th March 1937 and 11th June 1937, should not be set aside. According to these orders the learned Munsif had directed that certain execution proceedings should be stayed In pursuance of a notice u/s 34, Bengal Agricultural Debtors Act, 1935. It appears that on 13th July 1936 the petitioner obtained a decree for rent against the opposite parties in respect of a sum of Rs. 383-4.6. He then put the decree into execution in Execution Case No. 90 of 1937, and 17th March 1937 was fixed for the sale of the holding in respect of which the rent was due. It then appears that two of the judgment-debtors applied to the Debt Settlement Board at Kanihari for the Settlement of their debts under the provisions of the Agricultural Debtors-Act, 1935. The Board thereupon sent a, notice to the Munsif u/s 34 of the Act, and as a result of this notice the learned Munsif passed the order against which this Rule was obtained.

2. The main point urged by the learned advocate for the petitioner in this case is that the application to the Debt Settlement Board which was filed by judgment-debtors 1 and .6 was not a valid application having regard to the provisions of Section 9 (1) (b), Bengal Agricultural Debtors Act which provides that in the case of a debt for which two or more persons are jointly liable all the debtors should join in making the application. He contends therefore that it was the duty of the Munsif to satisfy himself that the application made to the Debt Settlement Board

by the judgment-debtors 1 and 6 was a valid application, before he stayed the execution proceedings in his Court in pursuance of the notice issued u/s 34 of the Act. The procedure which should be followed by a Debt Settlement Board, after the receipt of an application for the settlement of debts has been laid down in Section 12 of the Act. Sub-sections (1) and (2) of Section 12 state that the Board shall pass an order fixing a date and place for consideration of the application and give notice of such order to all persons whose names and addresses are given in the application. It follows therefore that in the normal course of events the decree-holder would receive a notice to the effect that an application for the settlement of the alleged debts had been made to the Debt Settlement Board and he would then be at liberty to raise before the Board any question with regard to the validity of the application itself. If the Board passed a wrong order with regard to this matter it would then be open to the decree-holder to appeal to the appellate officer u/s 40 (1) (d) of the Act on the ground that the Board had failed to perform its functions properly or had abused its powers. Under Sub-section (6) of Section 40 the orders of the appellate officer would be final.

3. Having regard to what is stated above, it seems to me that the general scheme of the Act is that all matters such as those with which we are concerned in the present case should be agitated before the Debt Settlement Board and not before the Civil Court. With regard to the provisions of Section 34 of the Act it appears that if the Civil Court is satisfied that an application for the settlement of debts has in fact been made to a Board and that such application actually includes a debt in respect of which a suit or other proceeding is pending before the Civil Court such Court has no option but to stay the suit or proceeding under the provisions of this section. In the case now before me it is clear that such an application had actually been made, and there is no dispute with regard to the existence of a debt. In these circumstances, I am of opinion, that the decision of the learned Munsif is correct. This rule must therefore be discharged. No order is made with regard to costs in this Rule.