
(1939) 01 CAL CK 0002
In the Calcutta High Court

Revati Mohan Roy

APPELLANT

Vs

Bhik Chand Bhuian

RESPONDENT

Date of Decision : 13-01-1939

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1939 Cal 343

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In this case, the petitioner had instituted an account suit against the opposite party. His case was that the opposite party, Bhik Chand Bhuian, had worked as his Naib, that he had failed to render proper accounts of the collections and that a considerable sum of money amounting to about Rs. 1000 was due from him to the petitioner. The opposite party filed a written statement in the suit, in which he contended that there was no relationship of principal and agent between the parties, that he had already rendered proper accounts to the petitioner and that, if accounts were taken, it would be found that money was actually due from the petitioner to the opposite party. After filing the written statement the opposite party made an application to the Nasimpur Debt Settlement Board u/s 8, Bengal Agricultural Debtors Act. The Board thereupon issued a stay order u/s 34 of the Act and on 2nd May 1938, the Munsif, Second Court of Narayanganj, stayed all further proceedings in the account suit. The petitioner then filed an application in the Court of the Munsif u/s 151, Civil P.C. In that application he maintained that the liability of the opposite party which was the subject-matter of the account suit was a contingent liability and was therefore not a liability which could be investigated by the Debt Settlement Board under the Bengal Agricultural Debtors Act. He therefore contended that the Civil Court had no jurisdiction to stay further proceedings in the suit in pursuance of a notice u/s 34 of the Act. The learned Munsif, without investigating the question whether or not the alleged liability fell within the scope of the Bengal Agricultural

Debtors Act, rejected the petitioner's application u/s 151, Civil P.C., on the grounds that his only remedy was to move the Appellate Court constituted under the provisions of the Bengal Agricultural Debtors Act, in order to obtain a rescission of the order of the Debt Settlement Board. The first point for consideration in this case is whether or not the procedure adopted by the Munsif in rejecting the petitioner's application u/s 151, Civil P.C., was correct. The learned Munsif in his order dated 11th June 1938, stated that the contention of the applicant was that the debt due from the opposite party was an unascertained debt. From a reference to the petition filed by the petitioner, however, it would appear that the petitioner's main contention on this point was misunderstood by the learned Munsif. In the petition he laid particular emphasis upon the contention that the alleged debt was a contingent liability. If he had been able to sustain this contention, it is clear that the liability in question would have been a protected liability under the provisions of Section 2(8)(i), Bengal Agricultural Debtors Act, and - would therefore have been entirely beyond the scope of the provisions of the Act. This being the case, as the petitioner had expressly raised a question before the Munsif as to whether the alleged liability fell within the scope of the Act or not, it was clearly the duty of the Munsif to investigate this matter and give his decision on this point before rejecting the petitioner's request that the stay order u/s 34 of the Act might be abrogated. If the learned Munsif had decided that the liability of the opposite party fell outside the scope of the Act, he would have had jurisdiction to rescind the stay order and proceed with the trial of the account suit under the ordinary provisions of the law. The jurisdiction of Civil Courts in connexion with applications of this nature was recently discussed in considerable detail by S.K. Ghose and Mukherjea JJ. in Civil Revn. No. 937 of 1938 and Ref. No. 5 of Nur Mia and Another Vs. Noakhali Nath Bank Ltd., under Order 46, Rule 1, Civil P.C. In his judgment in that case, S.K. Ghose J. stated that he was of opinion

that it is for the Court on receipt of notice u/s 34 to decide the question, not only that there is a proceeding pending before it, but also that the subject-matter of that proceeding is a debt as defined in the Act. If the Court finds it is not such a debt, then the notice u/s 34 cannot operate so as to stay the proceedings in the Civil Court.

2. Mukherjea J. agreed with the conclusion of S.K. Ghose J., and in doing so, he made the following observations:

It has already been held in a series of cases by this Court, vide the cases in Jagabandhu, Gobinda Chandra, Probhat Chandra Roy Choudhuri Firm Vs. Bhusai Bepari and Others, , Ramendra Nath Mondal Vs. Dhananjoy Mondal, and Jatindra Mohun Mandal v. Elahi Bux 42 C.W.N. 5360, that when a debt is satisfied by an execution sale and no proceeding in respect of a debt can be said to be pending before a Civil Court, the Court is not bound to stay any proceeding by way of confirmation of sale or otherwise even if this proceeding is expressly mentioned in the notice u/s 34, Bengal Agricultural Debtors Act. I think that it is equally

correct to say that the Court can refuse to stay a proceeding; or a suit if it is satisfied upon enquiry that there is no proceeding or suit pending before it which is in respect of any debt as defined by the Bengal Agricultural Debtors Act.

3. Further in dealing with the functions of the Debt Settlement Board u/s 18(1) of the Act, the learned Judge after quoting the Section says:

In my opinion, the word "debt" here has the same meaning that is given to it by Section 2, Clause (8) of the Act, and the enquiry contemplated by this Section is not one as to whether the liability amounts to a debt at all within the meaning of the Act, but whether a debt as defined by the Act and which is alleged by the party to exist as a fact; and if so, what is its amount.

4. I am in entire agreement with the conclusions at which the learned Judges have arrived in the case cited above. It follows therefore that in refusing to investigate the question whether or not the liability with which we are concerned in this case was a contingent liability, the learned Munsif adopted an erroneous procedure and in fact failed to exercise the jurisdiction vested in him by law. The question however remains; for consideration whether this liability is really a contingent liability as contended! by the learned advocate for the petitioner, or is a liability which falls within the scope of the Bengal Agricultural Debtors Act. It is argued on behalf of the petitioner that a liability, such as this, is in any event an unascertained liability which, after the conclusion of the trial of the account suit may not be found to exist at all. From this point of view, it is urged; that the liability, if any, may be regarded in some degree as contingent of the result, of the account suit. I am however of opinion that a liability of this sort cannot be regarded as a contingent liability within the meaning of Section 2(8)(i), Bengal Agricultural Debtors Act. From the nature of the plaint which was filed in the account suit, it would appear that, if the alleged liability exists at all, it must be a present liability although the precise amount thereof has not been ascertained. The expression "contingent liability" has not been defined in the Bengal Agricultural Debtors Act. In order to ascertain what is meant by the expression "contingent" reference may usefully be made to the definition of "contingent contract" in Section 31, Contract Act, which is as follows:

A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

5. Further in Section 21, T.P. Act, "contingent interest" is defined as follows:

Where on a transfer of property an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property.

6. Reference may also be made to the meaning of the expression "contingent" as given in Stroud's Legal Dictionary, which is as follows:

Anything is contingent when it is liable to failure on the happening or non-

happening of an event, condition or state of things.

7. The underlying idea in connexion with the use of the expression "contingent" in Section 2(8)(i), Bengal Agricultural Debtors Act, seems to be that the liability in question, which is one of the protected liability under the Act, must depend upon some prior occurrence or condition. It cannot be said that the liability, if any, of opposite party to the petitioner, fulfils this requirement. As already pointed out, this liability may possibly be unascertained, but, if it exists at all, it is a present liability which does not in any way depend upon the happening of any other event or the fulfilment of any other condition. The result is that in my opinion, although the learned Munsif was not right in refusing to investigate the question whether the subject-matter of the account suit was or was not excluded from the operation of the Bengal Agricultural Debtors Act, it nevertheless appears on a consideration of the matter that this liability, such as it is, cannot be regarded as a contingent liability and that the debt represented by this liability must be regarded as falling within the scope of the Bengal Agricultural Debtors Act. The stay order u/s 34 of the Act, must therefore be maintained. This rule is accordingly discharged. I make no order as to costs in the rule.