
(1940) 05 CAL CK 0021
In the Calcutta High Court

Upendra Narayan Bose

APPELLANT

Vs

Shib Chandra Dhang and Others

RESPONDENT

Date of Decision : 06-05-1940

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 34

Citation : AIR 1941 Cal 116

Hon'ble Judges : Derbyshire, C.J.; B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—The appellant before us is one of the three judgment-debtors against whom a joint mortgage decree was obtained by the respondents. The decree-holders put that decree into execution in title Execution Case No. 15 of 1938 and thereupon the judgment-debtors, other than the appellant, approached the debt settlement board and got a notice issued by the latter u/s 34, Bengal Agricultural Debtors Act, staying the execution proceedings. The decree-holders thereafter abandoned that execution case and started another which is the present Execution Case No. 38 of 1939, and which is directed against the appellant only who was not an applicant before the board. To this the appellant objected and his contention in substance was that no proceeding in respect of the debt could continue after this notice was issued and it was immaterial as to whether or not one of the joint judgment-debtors was an agriculturist. The subordinate Judge negatived this contention and directed that the appellant's share in the mortgage property be sold in execution of the mortgage decree. It is against this order that the present appeal has been obtained. I think that the decision of the Court below is right and the subordinate Judge was quite justified in refusing to stay the execution proceedings which were started against the appellant alone who was not an applicant before the board and for whose benefit no notice by the debt settlement board was or could be issued u/s 34, Bengal Agricultural Debtors Act.

2. This identical question came up for determination before a Division Bench of

this Court in the case reported in *Abu Taher Bazlul Rashid v. Chandra Moni Saha* ("39) 43 CWN 318, and it was held there that where some of the parties to a proceeding who were jointly liable for a debt applied to a debt settlement board for the settlement of their debt and the board issued a notice u/s 34, Bengal Agricultural Debtors Act, to the Court to stay proceedings, the proceedings so far as they related to the applicants before the board only must be stayed and they should continue so far as the other parties were concerned. This is clear from the provisions of Section 9 (2), Bengal Agricultural Debtors Act, which empowers the debt settlement board to settle the debt only so far as the applicant is concerned and leaves in tact the debt and the liability of the co-debtors. The object of the Bengal Agricultural Debtors Act is to give relief to a certain class of debtors, and it would be manifestly inconsistent with the provisions of the Act if the benefit of its provisions were extended to persons who are not debtors at all within the meaning of the Act.

3. The learned advocate who appears for the respondents has argued before us that, at any rate, he should be liable not for the whole debt but for a proportionate share only. This argument is not sound. All the mortgagors were jointly and severally liable for the entire mortgage debt under the decree. It is true that owing to the operation of the Bengal Agricultural Debtors Act two-thirds of the property cannot now be sold. But the mortgagee decree-holder is not at all responsible for this situation. He has neither released any one of the judgment-debtors nor has he purchased himself any portion of the mortgaged property. Under these circumstances no question of apportionment of the debt or piecemeal redemption can probably arise. The result, therefore, is that the appeal is dismissed with costs, the hearing fee being assessed at two gold mohurs. Let the record be sent down as early as possible.

Derbyshire, C.J.

4. I agree.