

ORIGINAL CIVIL.

Before Mc Nair J.

A. MILTON & CO., LTD.

v.

OJHA AUTOMOBILE ENGINEERING CO.*

1938

May 17, 19.

Execution of Decree—Money decree—One of two judgment-debtors "protected" under the United Provinces Encumbered Estates Act, 1934—Receiver in execution, if can be appointed over the property in the United Provinces of the other judgment-debtor—Jurisdiction—United Provinces Encumbered Estates Act (U. P. XXV of 1934 as amended by U. P. IV of 1935), s. 7 (1) (a).

The plaintiff obtained a money decree in the Calcutta High Court against G. and D., who were partners in a firm, and had the decree transmitted to the Subordinate Judge's Court at Etawah in the United Provinces, for execution against D.'s property situated there. D.'s property was, thereupon, sold in execution at Etawah, and the plaintiff-decree-holder purchased it. Thereafter, upon D.'s application, the Subordinate Judge at Etawah declared the execution-proceedings null and void under s. 7 of the United Provinces Encumbered Estates Act, 1934, and set aside the sale, on the ground that G., who was also liable under the money decree, had, before the sale, applied for protection under that Act. The plaintiff-decree-holder then applied to the High Court which passed the decree for appointment of a receiver in execution over the same property of D.

Held: (1) that s. 7 of the Act did not apply to any Court outside the United Provinces, and

(2) that the said declaration and order of the Subordinate Judge of Etawah did not fetter the jurisdiction of the High Court to execute the decree against D.'s property in the United Provinces by appointment of a receiver over such property with liberty to him to sell it.

APPLICATION in Chambers for appointment of a receiver in execution.

The facts material for this report appear from the judgment.

The relevant sections of the United Provinces Encumbered Estates Act, 1934, are as follows:—

4. (1) At any time within one year after the date on which this chapter comes into force any landlord who is subject to or whose immovable property or any part thereof is encumbered with private debts, may make an application in writing to the Collector of the district in which his land or any portion of his land is situated stating the amount of such private debts and also of his public debts both decreed and undecreed and requesting that the provisions of this Act be applied to him:

*Application in Original Suit No. 2281 of 1929.

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6. When an application has been duly made according to provisions of section 4, the Collector shall forthwith pass an order that it be forwarded to the Special Judge and shall furnish the applicant free of cost with a certified copy of the order. He shall then forward the application to the Special Judge and shall inform him of such public debts outstanding against the landlord as may be laid down in rules framed by the Provincial Government in this behalf.

7. (1) When the Collector has passed an order under section 6 the following consequences shall ensue :

(a) all proceedings pending at the date of the said order in any civil or revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued ;

B. C. Ghose and *S. B. Sinha* for the applicant, A. Milton & Co., Ltd. The decree was against both D. and G. Of them G. alone had applied for protection under the United Provinces Encumbered Estates Act, 1934. There is nothing in s. 7 of the Act which prevents the property, which is owned separately by D., from being taken in execution of the decree. Clause (a) of s. 7(1), furthermore, applies only to Courts in the United Provinces. It does not prevent the Calcutta Court from executing the decree, if it can, without the assistance of the Court in the United Provinces, such as by the appointment of a receiver in execution.

B. K. Chaudhury for the judgment-debtor D. Having regard to cl. (a) of s. 7(1) of the Act the decree cannot be executed against D., because D. and G. are joint-debtors, and G. has applied for protection under the Act and an order has been passed under s. 6. The provisions of that clause are very wide and forbid all proceedings in execution in respect of a debt to which a landlord who has applied for protection under the Act is subject : *Inam-Ullah v. Babu Ram* (1). The circumstances that D. himself has not applied for protection and that execution is sought against D.'s separate property do not help the applicant. The question is, whether the

(1) I. L. R. [1937] All. 561.

debt, in respect of which execution is sought, is also owed by someone who has applied for protection under the Act. Here the debt is owed by G. as well as by D. If one of them has applied for protection, you cannot proceed in a civil Court to enforce payment of such debt at all.

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Ghose, in reply.

Cur. adv. vult.

MCNAIR J. This is an application by a decree-holder for the appointment, in execution, of a receiver of the right, title and interest of one of the judgment-debtors in a mortgage executed in his favour in 1934, and for liberty to the receiver to sell such right, title and interest.

The decree-holder sued in 1929 and obtained a consent decree in December, 1932, by which the matters in dispute were submitted to a referee. The referee found in favour of the plaintiff who was given a decree for Rs. 13,847-15-3 with interest and taxed costs Rs. 3,773-10.

The decree was against the defendant firm and execution was ordered against the partners Ojha Dario Singh (who opposes this application), Ojha Shiva Prasad and Ojha Gurdial Singh.

The decree was transmitted for execution to the Court of the Subordinate Judge of Etawah in the United Provinces.

The decree-holder in 1936 applied in Etawah for execution by attaching the interest of Dario Singh in a mortgage debt executed in his favour by Shyam Sunder.

Dario objected denying that he was a partner in the firm, and applied to the High Court, for the recall of the decree.

On January 12, 1937, terms of settlement were entered into. Dario admitted that he was a partner and the defendant firm consented to a decree for Rs. 10,000 in full settlement of the plaintiff company's claim and costs, provided that the amount was paid within six months.

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Dario undertook not to alienate or realise any amount due under the mortgage but, as the mortgagee, he was to be at liberty to sue and bring the mortgaged property to sale in execution of a mortgage decree.

Dario only paid Rs. 2,500 towards the decretal amount and the plaintiff company brought his interest in the mortgage to sale and purchased it for Rs. 15,000 on January 3, 1938.

On January 6, 1938, Dario applied to the Etawah Court to set aside the sale under s. 7 of the United Provinces Encumbered Estates Act, 1934, as Gurdial Singh, one of his joint-debtors, had applied for protection under that Act.

The Subordinate Judge on February 11, 1938, set aside the sale.

There is no doubt that Dario's application in Etawah was contrary to the terms of settlement of January 12, 1937, but the question which I have to decide is whether the relief now sought is permissible in view of the decision of the Subordinate Judge of Etawah which declared the execution proceedings null and void under s. 7 of the United Provinces Encumbered Estates Act, 1934.

That Act enables a debtor to apply to the Collector for protection under the Act. The Collector forwards the application to the Special Judge who enquires into the claims and may pass decrees and send them to the Collector for execution according to the scheme of the Act.

In the present case Dario has not applied to the Collector for protection under the United Provinces Encumbered Estates Act, 1934, but such an application has been made by his partner Gurdial. It is argued, that this is immaterial, for Gurdial and Dario are joint debtors. Their debt, however, is both joint and several. And I can see no reason why property which Dario owns should not be taken in execution by his creditors, merely because Dario's partner has sought protection under the United Provinces Encumbered Estates Act, 1934.

The full facts, however, are not before me, nor have I had the advantage of seeing the judgment of the learned Subordinate Judge of Etawah, and I have neither the materials nor the desire to question the correctness of the order which he has made. That order, however, in no way fetters the jurisdiction of this Court and there can be no doubt that the United Provinces Encumbered Estates Act has no applicability outside the Province in which it was enacted. The learned counsel for Dario, if I understood his argument aright, contended that s. 7 of that Act restricted all proceedings in respect of a debt in which a protected debtor might be interested, and forbade any fresh process in execution being issued by any Court whether within or without the United Provinces. That was the manner in which, as I understood him, he invited me to construe the last three lines of s. 7(1) (a) of the Act.

Dario, as I have already said, is not a protected debtor, and the sub-section to which he has referred appears to me to refer quite clearly to a "fresh process "in execution" to be issued by a Court in the United Provinces. The Act must have a local application, and the words of the section do not, in my opinion, profess to apply to any Court other than a Civil or Revenue Court in the United Provinces.

There is nothing in the Act which prevents this Court from appointing a receiver as prayed. The receiver is sought to be appointed not over any immoveable property but over the interest of Dario in a mortgage executed by Shyam Sunder. Whether the receiver will or will not be able to sell the debtor's interest is not a matter with which I am now concerned. I am satisfied that he can be appointed with liberty to sell.

There will be an order in terms of the summons.

Application allowed.

Attorneys for applicant: *Leslie & Hinds.*

Attorney for respondent: *J. R. Halder.*

P. K. D.

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