

CIVIL REVISION.

Before Derbyshire C. J. and Mukherjea J.

JAGA BANDEHU SHAHA

v.

RASH MANI DASEE.*

1937

May 10.

Stay of proceedings—Application for possession by auction-purchaser, Stay of—Bengal Agricultural Debtors Act (Ben. VII of 1936), ss. 8, 13(1), 34.

Where part of a debt due by an agriculturist has been satisfied by the sale of his property, in execution of a decree against him, and such sale has been duly confirmed, an application by the auction purchaser, for delivery of possession, is not a proceeding in respect of or for the recovery of a portion of a debt within the meaning of s. 34 of the Bengal Agricultural Debtors Act, and such application may not be stayed in view of a notice under s. 34 of the Bengal Agricultural Debtors Act.

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Application by the judgment-debtor.

The facts of the case and arguments advanced in the Rule appear from the judgment.

Bhagirath Chandra Das for the petitioner.

Sacheendra Kumar Ray for the opposite party.

DERBYSHIRE C. J. In this matter a Rule had been obtained under s. 115 of the Code of Civil Procedure for the purpose of considering whether the Fifth Munsif of Dacca had either failed to exercise his jurisdiction or exercised his jurisdiction improperly.

The circumstances were these: One Rash Mani Dasee and two other persons had obtained a decree against the judgment-debtor Jaga Bandhu. The property of Jaga Bandhu was put up to sale in execution

*Civil Revision, No. 527 of 1937, against the order of Amulya Kumar Guha, Fifth Munsif of Dacca, dated Feb. 10, 1937.

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of that decree. The judgment-creditors bid and bought the property for about Rs. 700. The debt at that time was for something over Rs. 800. Jaga Bandhu brought a suit to have the sale of the property declared null and void. That suit was dismissed for non-prosecution and the confirmation of the sale followed in the usual way. Those proceedings were in Possession Case No. 42 of 1933. After that the decree-holders started Execution Case No. 73 of 1936 to realise the remainder of the decretal amount. The decree-holders apparently did not get possession of the land they had bought at the auction sale as proceedings were drawn out and eventually, in 1936, the Bengal Agricultural Debtors Act came into operation and the debtor who claimed to be an agriculturist took steps under that Act to have his affairs dealt with by a Settlement Board. That Settlement Board forwarded a notice to the Court in which the above execution proceedings were still pending.

The notice was in this form :—

I am giving notice under s. 34, Bengal Agricultural Debtors Act, 1935, that the Board has received an application under ss. 8 and 13(1) of the Act which includes a debt payable by one Jaga Bandhu Shaha, son of late Dasa Rath Shaha of Arania, in respect of which, between the decree-holders Rash Mani Dasya, Bijay Chandra Shaha and Birendra Chandra Shaha, and the judgment-debtor, aforesaid Execution Case No. 42 of 1933 and Miscellaneous Case No. 37 of 1936 are pending in your Court.

Miscellaneous Case No. 37 of 1936 is the same as No. 73 of 1936. The learned Munsif proceeded to deal with the matter according to law and, in so doing he stayed the proceedings in Miscellaneous Case No. 73 of 1936, but declined to stay them in the Case No. 42 of 1933. In the Case No. 42 of 1933, the only matter pending now is claim for possession of the property purchased by the decree-holders. Case No. 73 of 1936 is an ordinary execution case for, as I have stated earlier, the balance of the money owing after the decree-holders had purchased the property put up for sale.

The provisions of the Bengal Agricultural Debtors Act are somewhat novel. This Act was

passed for the purpose of enabling the debts of agriculturists in Bengal to be dealt with in such a way that the debtors could have some hope of paying their debts. For that purpose, Boards were brought into being and given powers, limited it is true, of adjusting the indebtedness between the parties.

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Section 2(8) defines "debt" as including :—

All liabilities of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a civil Court or otherwise, and whether payable presently or in future, but does not include

Then follow a number of liabilities which are excluded from the meaning of the word "debt." We are not concerned with these exceptions.

Section 8 provides :—

Subject to the provisions of s. 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within five years after the first Board is established.

With s. 9, we are not concerned.

Section 13(1) provides for further statement of debts by the debtor and creditors.

Section 34 provides :—

When an application under s. 8 or a statement under sub-s. (1) of s. 13 includes any debt in respect of which a suit or other proceeding is pending before a civil or revenue Court, the Board shall give notice thereof to such Court in the prescribed manner, and thereupon the suit or proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon, and if the Board includes any part of such debt under cl. (d) of sub-s. (1) of s. 25 in the award, or the Board decides that the debt does not exist, the suit or proceeding shall abate so far as it relates to such debt.

It was contended before the learned Munsif, as it is contended before us, that under that section on receipt of the notice which I have read out, the learned Munsif ought to have stayed both these proceedings. I think it is necessary to look at the position which arose when the judgment-creditors bought the judgment-debtor's property at the auction and subsequently when proceedings were taken to set aside the sale which failed.

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Order XXI, r. 92(1) of the Code of Civil Procedure says :—

Where no application is made under r. 89, r. 90 or r. 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

Section 65 of the Code of Civil Procedure says :—

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

It appears to me, applying O. XXI, r. 92 and s. 65 to the facts of that auction sale and the proceedings to set it aside in 1933, that the property of the judgment-debtor sold at auction and purchased by the decree-holders vested in the decree-holders from the time of the sale. That being so, a part of the debt of the judgment-debtor to the judgment-creditors was at the time satisfied, *i.e.*, to the extent of Rs. 700 or so.

It is true they had not yet obtained possession of the land at the time the notice under s. 34 of the Bengal Agricultural Debtors Act was sent to the Court. In my view, however, that does not make any difference.

Case No. 73 of 1936 was in respect of the balance of the debt that remained owing after the auction-sale. That balance was still owing and Case No. 73 of 1936 is in respect of that debt. In my view, the learned Munsif was right and acted in accordance with the provisions of s. 34 of the Bengal Agricultural Debtors Act when he stayed those proceedings in Case No. 73 of 1936 upon receipt of that notice.

As regards Case No. 42 of 1933, the matter is different. Here the debt was satisfied and the proceedings were not in respect of a debt,—that is in a suit, or in satisfaction of a debt—that is in the ordinary execution proceedings. The proceedings at the date of the receipt of the notice under s. 34 were in

respect of possession and were not founded upon a debt such as is necessary, in my view, to enable s. 34 to take effect. That debt had previously been satisfied.

In my view, therefore, the learned Munsif, in declining to stay the proceedings in Case No. 42 of 1933 and in ordering a stay in Case No. 73 of 1936, acted in accordance with the provisions of s. 34 of the Bengal Agricultural Debtors Act. For these reasons, I am of the opinion that this Rule must be discharged with costs, hearing fee two gold mohurs.

MUKHERJEA J. I agree with my Lord the Chief Justice in the decision and the reasoning and I would like to add only a few words.

The facts of the case are not disputed and the whole controversy centres round the short point as to whether a proceeding for delivery of possession started by an auction-purchaser is really a proceeding in respect of a debt that was wiped off by the auction-sale. In my opinion, the answer to the question must be in the negative. The condition precedent for giving the Board a jurisdiction to issue a notice under s. 34 of the Bengal Agricultural Debtors Act, 1935, is the inclusion of a debt in the petition under ss. 8 and 13 of the Act in respect of which a suit or proceeding is pending either in the civil or in the revenue Court. In the case before us the sale took place in 1935 which wiped off a major portion of the debt. The decree-holders obtained a set-off for this amount and the sale was duly confirmed after a suit to set aside the sale commenced by the judgment-debtor had been dismissed. The auction-purchasers' title had been absolute at the time when the Act was passed and this portion of their debt had no existence when the application under ss. 8 and 13 of the Bengal Agricultural Debtors Act was made. The proceedings so far as it was in connection with Execution Case No. 42 of 1933, that was still pending, was only for delivery of possession to the decree-holders auction-purchasers; and although that may be a proceeding in execution within the meaning

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of s. 47 of the Code of Civil Procedure as held in the Full Bench case of *Kailash Chandra Tarapdar v. Gopal Chandra Poddar* (1), it was certainly not a proceeding in respect of or to recover a portion of the debt which alone would bring the case within s. 34, Agricultural Debtors Act. This section contains a provision which is ancillary to the settlement of the debt which is the main object of the Act and for which an application has got to be made under s. 8. If the debt was already satisfied by the auction-sale which took place prior to the passing of the Act, the Board obviously would have no jurisdiction to revive that debt by setting aside the execution sale and no question of settling a debt can arise when the debt itself has got no existence. The result of the proceeding for delivery of possession would not affect that portion of the debt in any way. That the legislature did not contemplate a proceeding like the one to come within s. 34, Agricultural Debtors Act, is apparent from the concluding lines of the section which lay down that—

If the Board decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

In my opinion, this makes it clear that the suit or proceeding must be one for recovery of a debt, for otherwise there will be no sense in saying that these proceedings would cease when the Board would make an award negating the existence of the debt itself. For these reasons, I am of the opinion that the view taken by the Court below is right and that the Rule must be discharged.

Rule discharged.

(1) (1926) I. L. R. 53 Cal. 781.

S. M.