

CIVIL REVISION.

Before S. K. Ghose and Patterson J.J.

1937

April 14.

SATYENDRA MOHAN GHOSH

v

NIBARAN CHANDRA BASU.*

Agricultural Debtor—Application for debt settlement before the Board—Notice to Court where proceeding in connection with the debt is pending—Stay of proceeding—Bengal Agricultural Debtors Act (Ben. VII of 1936), ss. 7, 8, 34.

When an application is made by a debtor under s. 8 and the Board gives a notice thereof under s. 34 of the Agricultural Debtors Act to a civil or revenue Court before which a suit or proceeding in respect of the same debt is pending the Court is bound to stay such proceeding until the Board has passed final orders on the application. For the purpose of s. 34 it is not for the Court to decide whether the Board before which the application is made is specially empowered under s. 7 of the Bengal Agricultural Debtors Act or not.

CIVIL RULE obtained by the debtor.

The facts of the case and arguments in the Rule are sufficiently stated in the judgment.

Naresh Chandra Sengupta and Bama Prasanna Sengupta for the petitioner.

Beereshwar Bagchi and Nagendra Chandra Chaudhuri for the opposite party.

GHOSE J. This Rule raises a question of the construction of s. 34 of the Bengal Agricultural Debtors Act, VII of 1936. The opposite parties obtained a decree upon a mortgage against the petitioner and in pursuance of that decree they applied for execution by sale of the properties. On November 27, 1936, the petitioner made an application to the Debt Settlement Board in the district of Tippera established

*Civil Revision, No. 330 of 1937, against the order of Makhan Lal Mukherji, Third Subordinate Judge of Tippera, dated Dec. 18, 1936.

under the Bengal Agricultural Debtors Act under s. 8 of that Act. In that application the decretal debt in question was stated and included. Thereupon, the Debt Settlement Board gave notice to the Court under rule 73 of the rules framed under the Act. On receipt of the notice, the Subordinate Judge of the Third Court, before whom the execution case is pending, sent a letter to the Chairman of the Debt Settlement Board asking for information, among other things, as to whether the Board had obtained special powers under s. 7 of the Act. In reply the Chairman stated, among other things, that the Board had not got such special powers. On December 18, 1936, the Subordinate Judge passed the following order :—

Heard pleaders of both parties. The Board's letter does not show that it has been empowered under s. 7 of the Act. The sale must, therefore, take place and can't be stayed.

In accordance with that order the sale took place. Against the order the present Rule has been obtained. The opposite parties have filed a counter-affidavit alleging, among other things, that the application of the petitioner is intended to defraud creditors, that he is not a debtor within the meaning of the Bengal Act VII of 1936, nor does the decretal debt in question come within the purview of that Act, and further that "the Board not having been specially "empowered under s. 7 of the Act and its award not "being enforceable against the opposite parties it "would be useless to stay the sale." It is contended for the petitioner that the Court below acted without jurisdiction in refusing to stay the execution proceedings in spite of the notice that an application has been made under s. 8 of the Act in respect of the decretal debt. It is also contended that, for the purpose of s. 34 of the Act, it is immaterial whether the Board, before which the application has been made, has been specially empowered under s. 7 or not. Section 34 of the Act may be divided into two parts. The first part relates to the stage when

1937

*Satyendra Mohan
Ghosh*
v.
*Nibaran
Chandra Basu.*
Ghose J.

1937

Satendra Mohan
Ghosh
v.
Nibaran
Chandra Basu.
Ghose J.

an application under s. 8 has been made. The provision is that, where such an application has been made and the Board has given notice thereof to the Court, the proceedings before that Court shall be stayed. The second part refers to the stage when the application has been disposed of by the Board and the provision is that, where it has been disposed of in a certain way, the proceedings shall abate. In the present matter we are concerned with the first part and *prima facie* the condition prescribed by that part has been fulfilled, namely, that there is an application under s. 8, that such an application includes the decretal debt, relating to which the execution proceedings are pending, and that the Board has given notice thereof to the Court. The point is whether it is for the Court to go into the question as to whether the Board is competent to deal with the application. It seems to us that such an interpretation cannot be put upon the words of s. 34. Under s. 7 of the Act the Local Government may invest the Board with certain powers under certain provisions mentioned in that section. But these sections are not exhaustive of the powers exercised by the Board, as for instance under s. 19(1), cl. (a), which provides that when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor the Board shall embody such settlement in writing. Further where the Board finds that it cannot bring about an amicable settlement it may take action under rule 78 of the rules framed under s. 55 of the Act and submit to the Collector a report of the facts and a recommendation as to the action to be taken on which it will for the Collector to proceed under rule 79. In any case it cannot be said that the Board has not the power to dismiss the application. It may do so under s. 17 of the Act or even apart from that section. Appeals are provided for under s. 40. It is contended for the opposite parties that it is for the civil Court at this stage to decide whether the Board has the power to consider the application under s. 8. If that is so,

then under the second part of s. 34 also, when an order has been actually made by the Board, it would be the duty of the civil Court to go into the question as to whether that order had been properly made and thereby usurp the function of the appellate authority under s. 40 of the Act. It seems to us that for the purpose of s. 34 it is not for the civil Court to decide whether the Board, before which the application under s. 8 is made, is specially empowered. The conditions of the first part of s. 34 having been fulfilled the proceedings before the civil Court must be stayed until the Board has passed final orders on the application as contemplated by that section.

1937
*Satyendra Mohan
 Ghosh*
 v.
*Nibaran
 Chandra Basu.*
 Ghose J.

The Rule must, therefore, be made absolute with costs, hearing fee being assessed at one gold mohur.

PATTERSON J. I agree.

Rule absolute.

A. A.