

CIVIL REVISION.

Before Costello A. C. J. and Edgley J.

NRISHINGHA CHARAN NANDI CHAUDHURI

v.

KEDAR NATH CHAUDHURI.*

1937

July 21.

*Agricultural Debt—Existence of debt—Sale in execution of decree and set-off—
Notice from Debt Settlement Board, Validity of—Stay of proceedings—
Jurisdiction—Bengal Agricultural Debtors Act (Ben. VII of 1936),
s. 34.*

A notice under s. 34 of the Bengal Agricultural Debtors Act cannot be issued unless there is a debt in respect of which a suit or proceeding is pending in a civil or revenue Court.

Jaga Bandhu Shaha v. Rash Mani Dasee (1) followed.

Where, in execution of a decree, the decree-holder purchases the judgment-debtor's property for the decretal amount and a set-off is allowed, there is then no debt in existence even before "confirmation" of the sale and the Court has not to stay further proceedings in execution upon notice under s. 34 of the Act.

It is the duty of a Court to be satisfied that the notice, received by it under s. 34 of the Act, is a valid one before it allows the stay of a suit or other proceeding.

CIVIL REVISION issued in favour of the decree-holder.

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

Surajit Chandra Lahiri for the petitioner.

Gopendra Nath Das for the opposite party.

COSTELLO A.C.J. This matter affords some illustration of what may be the amazing and unexpected results of the Bengal Agricultural Debtors Act, 1936 (Bengal Act VII of 1936). It is not, in my opinion, putting the situation in too serious a light to say that the effects of the Act, unless the Courts are very careful to interpret its provisions with the

*Civil Revision, No. 955 of 1937, against the order of Beereshwar Prasad Bakshi, First Munsif of Kandi, dated May 21, 1937.

1937

*Nrishingha
Charan
Nandi Chau-*

dhuri

v.

*Kedar Nath
Chaudhuri.*

Costello A. C. J.

utmost strictness, may be to work untold hardship to persons to whom money is owing and to entail much injustice. This case is concerned indirectly with a decree which was obtained by one Rishendra Narayan Chaudhuri described as a *shebâit* of Sree Sree Raj Rajeshwar Bigrahaya Thâkur, of Mohanganj, Dinajpur, against one Kedar Nath Chaudhuri of Kandi in the district of Murshidabad. Nrishingha is the petitioner before us and as long ago as the year 1932 he instituted a suit for accounts against Kedar Nath Chaudhuri upon the footing that Kedar Nath Chaudhuri had been his *pâtwâri* entrusted with the duty of collecting rents, cesses and so forth and that Kedar Nath Chaudhuri had left the service of the plaintiff without rendering any or, at any rate, any proper, accounts. The suit was registered and numbered as Suit No. 312 of 1932 in the Court of the Munsif of Râiganj, district Dinajpur. The suit was contested on various grounds. Ultimately, a decree was made in favour of the plaintiff on May 22, 1933. That decree was affirmed on appeal by the Subordinate Judge. The defendant brought the matter to this Court in Second Appeal and that appeal by a judgment of this Court was dismissed on February 2, 1937. It, therefore, had taken about five years for the plaintiff to obtain a final decree for the amount due to him. That amount was round about Rs. 1,200. The plaintiff put the decree to execution—the decree which was really the decree of the High Court, and he asked that the decree should be satisfied by the attachment and sale of properties belonging to the judgment-debtor.

These properties were situated within the jurisdiction of the First Munsif at Kandi and accordingly the decree was sent to that Court, that is to say, the Court of the First Munsif for execution. The properties were put up for sale on April 16, 1937, and the judgment-debtor then petitioned for a stay of the sale, pending the bringing by him, as he put it, of a stay order from the Debt Settlement Board at

Dinajpur to which he had applied presumably under the provisions of s. 8 of the Bengal Agricultural Debtors Act, 1936. The Munsif of Kandi rejected that application on the ground that the properties under attachment were situated within the jurisdiction of the Court of the Munsif at Kandi, district Murshidabad, and that no Settlement Board of the district of Dinajpur had jurisdiction to deal with the matter. Subsequently, that is to say, on April 19, 1937, an order was made permitting the decree-holder to bid at the sale. The sale took place on the same day and the decree-holder purchased the property for the sum of Rs. 1,200. He then applied to be allowed to set-off the purchase price as against the sum due to him under the decree. The set-off was allowed. The matter was recorded in the order sheet in these terms:—

1937
 Nrisingha
 Charan
 Nandi Chau-
 dhuri
 v.
 Kedar Nath
 Chaudhuri.
 Costello A. C. J.

Decree-holder auction-purchased judgment-debtor's property at Rs. 1,200 and applied for set-off. Set-off allowed. Put up on May 21, 1937, for confirmation of sale.

So the position was that, on April 19, 1937, the decree-holder had been allowed to exchange the debt due to him for the purchase price of the property which he was buying. In other words, instead of having to pay Rs. 1,200 as purchase money for the properties of the judgment-debtor, the decree-holder gave up the debt due to him. On May 11, 1937, a notice was received in the Court of the Munsif from the Debt Settlement Board, a notice which had been served, or, at any rate, sent under the provisions of s. 34 of the Bengal Agricultural Debtors Act, 1936. It is important that we should observe the exact phraseology of that section. It is in these terms:—

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.

1937

*Nrishingha
Charan
Nandi Chau-
dhuri*

*Kedar Nath
Chaudhuri.*

Costello A. G. J.

Having received the notice on May 11, 1937, the Munsif of the First Court at Kandi, on May 21, 1937, records this decision:—

Section 34 of the Bengal Agricultural Debtors Act, 1936, provides that 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.

That was, of course, merely quoting the section. Then follows this order:—

Further proceedings of this execution case must, therefore, be stayed. The question whether Maligaon Debt Settlement Board has any jurisdiction to entertain the judgment-debtor's application cannot be determined by this Court. Hence it is ordered: Let further proceedings of this execution case be stayed till the disposal of judgment-debtor's application by Maligaon Debt Settlement Board. Judgment-debtor's application under O. XXI, r. 90, C. P. C., be put up after receipt of the said Board's decision.

The judgment-debtor's application there referred to had been made on May 17, 1937, on which date the learned Munsif recorded this order:—

Judgment-debtor's petition for stay of proceedings and that under O. XXI, r. 90, C. P. C., be put up on May 18, 1937, in presence of pleaders on both sides.

On the 18th he recorded this order:—

Heard pleaders of both sides. To May 21, 1937, for orders.

When the 21st May arrived, the learned Munsif made an order staying all proceedings on the footing that the judgment-debtor was *prima facie* at any rate a debtor within the meaning of the Bengal Agricultural Debtors Act. The present proceedings are directed against the order which the learned Munsif made on May 21, 1937. It has been argued by Mr. Lahiri on behalf of the petitioner (who is, of course, the decree-holder) that the learned Munsif ought not to have stayed the proceedings, because, at the time when the notice was received by him, there was no debt in existence, at any rate so far as the Court of the Munsif was concerned. Mr. Lahiri has also argued that s. 34 does not apply, in the circumstances of this case, because, at

the time when the Board gave notice or purported to give notice to the Court of the Munsif, there was then neither a suit nor any other proceeding pending before the Court concerning any debt which had been or might have been included in the application made by the judgment-debtor under s. 8 of the Act. Mr. Lahiri has contended that the effect of the order of April 19, 1937, allowing the set-off was to extinguish the debt which up to that time had been due from Kedar Nath to Risheendra upon the basis of the decree affirmed by this Court on February 2, 1937. We think that that contention is correct. At the time when the notice was issued there was a lull, if I may so put it, in the proceedings which had been in progress in the Court of the Munsif. On April 19, 1937, the sale had taken place, the purchase price had in effect been paid by the set-off and all that remained to be done was for the sale to be confirmed. It may no doubt be the case that the execution proceedings were still in existence but they were not pending in respect of any debt. The debt had disappeared, at any rate temporarily, and on May 17, 1937, different proceedings were instituted, namely, proceedings on the part of the judgment-debtor under the provisions of O. XXI, r. 90 of the Civil Procedure Code. It may be that as a result of those proceedings the debt might eventually have been revived but it certainly was not in existence at any time between the 19th April and the 17th May.

This case approximates to the case which was before the Chief Justice and Mukherjea J. on the 10th May last,—the case of *Jaga Bandhu Shaha v. Rash Mani Dasee* (1). The head-note of that case is as follows :—

In order that a notice under s. 34 of the Bengal Agricultural Debtors Act may be given, there must be a debt in respect of which some proceedings are pending in a civil Court. Where in execution of a decree, the decree-holder purchases the property of the judgment-debtor and the sale is confirmed under O. XXI, r. 92 of the Civil Procedure Code, the decree is satisfied to the extent of the purchase money. Therefore a proceeding for delivery of possession of such property started by the decree-holder is not a proceeding in respect of a debt and consequently the Court cannot stay such proceeding on a notice under s. 34 of the Agricultural Debtors Act.

(1) (1937) 41 C. W. N. 924 ; I. L. R. [1937] 2 Cal. 625.

1937

*Nrishingha
Charan
Nandi Chau-
dhuri*
v.
*Kedar Nath
Chaudhuri.*

Costello A. C. J.

1937

*Nrishingha
Charan
Nandi Chau-
dhuri*
v.
*Kedar Nath
Chaudhuri.*

Costello A. C. J.

Now, if in the present instance the position had been that the sale which took place on April 19, 1937, had been formally confirmed under the provision of O. XXI, r. 92 of the Civil Procedure Code, this case would have been to all intents and purposes, identical with the case which was considered by the learned Chief Justice and Mukherjea J. But there is, of course, this distinction that in the matter we are now considering the proceedings had not quite reached the stage at which the sale was confirmed. The sale had taken place, the decree-holder as the purchaser was allowed a set-off. The price had, therefore, been paid, with the consequence the debt had been obliterated. All that remained to be done was for the sale to be confirmed and the purchaser put into possession. Stating the matter in another way it comes to this: We are considering a situation in execution proceedings which is one stage further away from the termination of those proceedings as compared with the situation which had to be considered by the Chief Justice and Mukherjea J. in other similar proceedings. We have to decide whether in those circumstances we can say that the matter is sufficiently analogous to the case of *Jaga Bandhu Shaha v. Rash Mani Dasee (supra)* to enable us to hold that the precise conditions contemplated by the provisions of s. 34 of the Act did not exist: the conditions laid down in that section which entail that a civil Court has to stay its hand pending some decision of a Debt Settlement Board.

We are of opinion that, in the circumstances of this case, the conditions necessary to attract the operation of the Act did not obtain, and therefore, the learned Munsif was wrong in taking the view that he was obliged to stay all further proceedings in his Court pending some adjudication by the Maligaon Debt Settlement Board. I said at the outset that this case gives some idea of the amazing results which may arise out of the operation of the Bengal Agricultural Debtors Act. In the present instance, as

far as we can see, there was nothing more, or very little more, than the judgment-debtor's own assertion to warrant the assumption that he was a debtor within the meaning of the Act, that is to say, within the definition given in s. 2(9) of the Act, which says:—

1937
 Nrisingha
 Charan
 Nandi Chau-
 dhuri
 v.
 Kalar Nath
 Chaudhuri.
 Costello A. C. J.

“ ‘Debtor’ means a debtor whose primary means of livelihood is agricul-
 ture and . . . ” (I emphasise the word *and*) “ who (a) is a *rāiyat* or an
 under-*rāiyat*, or (b) cultivates land himself or by members of his family or
 by hired labourers or by *dāhiars*, *bargādārs* or *bhāgdārs*; and includes a
 group of persons who join in making an application under the provisions
 of sub-s. (1) of s. 9.”

It is also to be observed that, in the present instance, the amount in issue was the comparatively substantial sum of Rs. 1,200. What apparently happened was that the debtor, as a last and desperate effort to avoid paying his just debts—which he had been ordered to pay by a decree of the High Court—rushed off to a Board set up under the Bengal Agricultural Debtors Act and upon the assertion that he was a “debtor,” managed to induce the Board to send a notice which, but for the fact that the purchaser at the sale happened to be a decree-holder with permission to set-off the debt against the purchase price, would have enabled the debtor to secure a holding-up of all the proceedings in execution until it pleased this Agricultural Debt Settlement Board to decide whether or not the judgment-debtor was a “debtor” within the meaning of the Act. It is, almost by pure accident or rather by a fortuitous conjunction of circumstances, that we are in this case able to say that there was no debt and so the Munsif was wrong in staying the proceedings. I think this case ought to be regarded as a warning of the kind of thing which may happen in the future and an index of how the provisions of the Agricultural Debtors Act may be taken advantage of by dishonest debtors with the object of defeating or delaying the just claims of their decree-holder creditors. The Rule will be made absolute, hearing fee being assessed at two gold mohurs.

1937

Nrishingsha
Charan
Nandi Chau-
dhuri

v.
Kedar Nath
Chauthuri.

EDGLEY J. I entirely agree with the observations which have been made by my Lord, the Acting Chief Justice, and the conclusions at which he has arrived.

The provisions of the Bengal Agricultural Debtors Act are so drastic and interfere to such a large extent with the ordinary rights of decree-holders and creditors that it is obvious that they must be very carefully and strictly interpreted.

During the course of his argument, Mr. Das, who appeared for the opposite party, placed some reliance upon ss. 18 and 20 of the Act and, having regard to the provisions of these sections, he argued that the learned Munsif had no jurisdiction to decide for himself whether the debt actually existed at the time when the notice under s. 34 of the Act was served. He maintained that all questions relating to the existence or non-existence of the debt should be determined by the Board. Section 18(1) provides that if there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount. Section 20 of the Act goes on to say that if any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not, the Board shall decide the matter. It seems, however, to be clear from the language of these sections and also from the context in which they appear that they relate primarily to questions relating to the existence or non-existence of debts which have been mentioned in applications made to the Board under s. 8 and with regard to which some question or dispute has been raised before the Board itself. In my opinion, these sections as they stand, do not debar the civil Court from satisfying itself that the valid requirements of any notice which may be issued under s. 34 of the Act actually exist and, in my view, it is, in fact, the duty of a civil Court not to stay proceedings on receipt of a notice which purports to be a notice under s. 34 of the Act, unless the Court is satisfied that the notice in question is really a valid notice.

Section 34 of the Act requires that the debt in respect of which a notice under this section may be issued should be included in the application under s. 8 or in the statement which may have been filed under sub-s. (1) of s. 13 of the Act. It also requires that there should be a suit or proceeding pending in respect of that debt before the Court at the time when the notice is issued. It, therefore, would appear to follow that the debt must actually be in existence at the time when the notice is issued under s. 34 of the Bengal Agricultural Debtors Act.

In this particular case, it is clear that, having regard to the order dated April 19, 1937, the alleged debt had been entirely wiped out at any rate for the time being and that this must have been the position appears also clear from the provisions of O. XXI, r. 72(2) of the Code of Civil Procedure.

What was actually pending before the civil Court at the time when the notice was issued and received was, in fact, not a proceeding in respect of the debt but was a proceeding in respect of the confirmation of the sale which had been held on April 19, 1937. This being the case, I do not think that the learned Munsif had any jurisdiction to stay proceedings on receipt of the notice from the Debt Settlement Board, which purported to be under s. 34 of the Bengal Agricultural Debtors Act and I, therefore, agree that this Rule must be made absolute.

Rule absolute.

G.K.D.

1937

*Nrisingha
Charan
Nandi Chau-
dhuri*

v.

*Kedar Nath
Chaudhuri.*

Edgley J.