

## CIVIL REVISION.

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

BHAGABAN DAYAL SHAHU

v.

CHANDU LAL.\*

1937

July 14

*Agricultural Debt—Debt Settlement Board—Chairman's notice—Courts in Darjeeling—Jurisdiction to stay suit—Bengal Agricultural Debtors Act (Ben. VII of 1936), ss. 1(3), 2(9), 8(1), 9, 34—Government of India Act, 1919 (9 & 10 Geo. 5, c. 101), s. 107—Government of India Act, 1935 (25 & 26 Geo. 5, c. 42), s. 224, prov.—Code of Civil Procedure (Act V of 1908), s. 115.*

Although s. 224 of the Government of India Act, 1935, contains in effect a reproduction of the terms of s. 107 of the previous Government of India Act, 1919, it also contains a proviso, which makes it clear that s. 224 has no application whatever to legal proceedings.

It follows, therefore, that if any relief is to be obtained in revision, it must be obtained under s. 115 of the Code of Civil Procedure or not at all.

No Court situated in a district, in which the Bengal Agricultural Debtors Act has not been brought into force, can be compelled to issue the stay order contemplated in the latter portion of s. 34 of the Act; and in order to obtain a stay order of the nature contemplated by s. 34, it follows that the Act must be in operation both in the district in which the Board is situated, to which an application is made for the settlement of a debt, and also in the district in which the Court is situated to which the notice under s. 34 of the Act is actually sent.

The Act not having been brought into force in Darjeeling, the refusal of the Subordinate Judge of that district to issue a stay order is not a matter which comes within the scope of s. 115 of the Code of Civil Procedure.

CIVIL RULE under s. 115 of the Code obtained by defendant No. 2.

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

*Girija Prasanna Sanyal and Madan Mohan Malhotra* for the petitioner.

*Gopendra Nath Das and Kshetra Mohan Chatterji* for the opposite party.

\*Civil Revision, No. 900 of 1937, against the order of Binode Chandra Sen, Subordinate Judge of Darjeeling, dated May 29, 1937.

COSTELLO. A. C. J. This is an application challenging an order made by the Subordinate Judge of Darjeeling on May 29, 1937. The matter is entitled as an application under s. 224 of the Government of India Act, 1936, and s. 115 of the Code of Civil Procedure. As regards that, we desire to say at the outset that although s. 224 of the Government of India Act, 1935 (not 1936 as stated), contains in effect a reproduction of the terms of s. 107 of the previous Government of India Act, it also contains a proviso which makes it clear that s. 224 has no application of itself to legal proceedings at all. It follows, therefore, that if any relief is to be obtained in revision, it must be obtained under s. 115 of the Code of Civil Procedure or not at all.

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The order complained of was one refusing to stay a suit which had been started by a number of persons of the name of Shahu in the Court of the Subordinate Judge of Darjeeling against a number of persons by the name of Agarwala. All the plaintiffs and originally all the defendants, so we are told, resided and carried on business at Kurseong in the district of Darjeeling. The suit was one for the recovery of a sum of Rs. 26,855-15. It was instituted as long ago as November 16, 1935, and pursued its ordinary course until May 3, 1937, when the defendants prayed for time to compromise and succeeded in getting an adjournment until May 31, 1937, and it was then intimated that no further time would be granted. It seems that one of the defendants, Bhagaban Dayal, who is the petitioner before us, had quarrelled with his co-sharers, the other defendants, and was no longer in alliance with them. It appears that he went off and claimed to reside at Malda and on that basis presumably he made an application on May 25, 1937, under the provisions of the Bengal Agricultural Debtors Act, 1936, to a Board, established under the provisions of the Act at Parbatipur, claiming apparently that he was a debtor within the meaning of the Act and so entitled to the benefit of the Act, despite the fact that

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the amount which had been claimed in the suit in the Court of the Subordinate Judge of Darjeeling was a sum of over Rs. 26,000. The Chairman of the Board forthwith and as it seems without the matter being formally brought before the Board at all on the very same day by a letter of that date, namely, May 25, 1937, sent a notice to the Subordinate Judge of Darjeeling requiring under the provisions of s. 34 of the Act, a stay of the suit then pending in that Judge's Court. Thereupon this remarkable situation arose that an Agricultural Board was being invited to take and indeed was already taking (by its Chairman) action which had the effect of holding up a suit involving a claim to over Rs. 26,000 solely upon the *ex parte* statement of one of the defendants that he was a "debtor" within the meaning of the Act. On May 29, 1937, the notice which had been served upon the Subordinate Judge of Darjeeling by means of the letter of May 25, 1937, was considered by the Subordinate Judge, and we find that the order recorded on that date begins thus :—

Received notices under s. 34, Bengal Agricultural Debtors Act, 1936, from the President, Parbatipur Debt Settlement Board, District Malda, for "Stoppage of this suit."

The learned Judge refused to consider himself bound by that notice on several grounds: the first of which was that the defendants were not debtors within the meaning of s. 2(9).

The learned Judge stated :—

From the notice it does not appear if all the defendants joined in the petition to Debt Settlement Board under s. 9 of the Act.

Lastly—

As the defendants do not ordinarily reside in Malda, the Debt Settlement Board of Parbatipur has no jurisdiction regarding the debts in suit, under s. 8(1) of the Act.

It is to be observed that, although the alleged debt was as much as Rs. 26,000, yet it does not seem open to the Court to decide or even consider whether the debtor comes within the Act or whether he does not.

That question rests solely with the Board. If, therefore, there were no other matters to be taken into consideration there would have arisen this amazing situation; that the Debt Settlement Board of Parbatipur would have been able to hold up a suit started in the Court of the Subordinate Judge of Darjeeling in which a sum of over Rs. 26,000 was in dispute, and if that Debt Settlement Board had come to the conclusion that the defendants were in fact debtors within the meaning of the Act, the Board might have completely ousted the Court and adjudicated in effect upon a claim for Rs. 26,000 and the only appeal against their decision would have been to a Munsif whose ordinary powers might be limited to cases involving not more than one thousand rupees. It seems clear, therefore, that the Bengal Debt Settlement Act in its present shape is likely to entail consequences of a fantastic description, which obviously could not have been fully realised or even dimly foreseen when the Act was drafted or when it was passed into law. Fortunately, however, in the present case, we are able to say that the learned Judge was right as regards one other conclusion at which he arrived, or rather one other ground on which he refused to recognise the notice as being effective. That ground is stated by him in this way:—

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Act VII of 1936 has not been brought into force in Darjeeling District under s. 1(3).

It has been admitted by the learned advocate appearing for the petitioner here, who, as I have said, is one of the many defendants in the suit, that in fact the Act has not been put into force in the Darjeeling District. There seems to be a curious inconsistency with regard to the manner in which this Act is described. Section 1(1) says this:—

This Act may be called the Bengal Agricultural Debtors Act, 1936.

It also seems to be described as "Bengal Act VII "of 1936". There is a notification of June 26, 1936, which gives a list of certain districts in which the Act

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is to be operative. That list does not include Darjeeling.

In these circumstances, it seems quite clear that the Court in Darjeeling was not in any way subject to the provisions of the Act and the learned Judge was quite entitled to take no notice of the letter which was sent under date May 5, 1937. In any event, this is clearly not a matter which comes within the scope of s. 115 of the Code of Civil Procedure. The result is that this Rule must be discharged with costs, hearing-fee 2 gold *mohurs*.

EDGLEY J. I entirely agree with the observations which have been made by My Lord the Acting Chief Justice with regard to the awkward situation which may arise having regard to certain provisions of the Bengal Agricultural Debtors Act, and I doubt whether these consequences were foreseen by the legislature at the time when the Act in question was passed. I also agree that in this particular case it is impossible for us to interfere, because the Act admittedly has not been brought into force within the Darjeeling district under s. 1(3) of the Act.

The learned advocate for the petitioner argued at some length that because the Parbatipur Board had jurisdiction to entertain the petitioner's application, it had also jurisdiction to issue a notice under s. 34 of the Bengal Agricultural Debtors Act on a Court situated in Darjeeling and that on receipt of such a notice the Darjeeling Court was bound to comply with it. In my view, however, this is a contention which cannot possibly be upheld. Section 34 of the Act lays down that in a case in which an application has been made to a Board for the settlement of a debt in respect of which a suit or other proceeding is pending before a civil Court or revenue Court, the Board should give notice thereof to such Court in the prescribed manner. The section goes on to say that on receipt of such notice the suit or proceeding in question shall be stayed in the Court in which such suit or proceeding is pending. It is, however, clear

that no Court, situated in a district in which the Act has not been brought into force, can be compelled to issue the stay order contemplated in the latter portion of s. 34 of the Bengal Agricultural Debtors Act and in order to obtain a stay order of the nature contemplated by s. 34, it follows that the Act must be in operation both in the district in which the Board is situated, to which an application is made for the settlement of a debt, and also in the district in which the Court is situated to which the notice under s. 34 of the Act is actually sent.

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In my opinion the order of the learned Subordinate Judge is quite correct, and we cannot possibly interfere with it under s. 115 of the Civil Procedure Code.

*Rule discharged.*

G.S.