CIVIL REVISION.

Before S. K. Ghose and Mukherjea JJ.

NUR MIYA

v.

NOAKHALI NATH BANK, LTD.*

1938

Dec. 13, 14, 15.

Agricultural Debtor—Debt —Jurisdiction of civil Court to determine what is a debt—Bengal Agricultural Debtors Act (Ben. VII of 1936), ss. 2, cl. (8), 18, 20, 33, 34.

Per Curiam. It is the exclusive jurisdiction of the civil Court, on receipt of a notice under s. 34 of the Bengal Agricultural Debtors Act, to determine not only that there is a proceeding pending before it but also that the subject matter of that proceeding is or is not a debt as defined in the Act, and then stay, or refuse to stay, the proceeding accordingly.

The conditions prevailing at the date when the matter is brought to the notice of the civil Court and not at the date of the application before the Debt Settlement Board shall be taken into consideration for the purpose of determining if a certain liability amounts to a debt within the meaning of the Agricultural Debtors Act or not.

Per MUKHERJEA J. The word "debt" in s. 18, sub-s. (*1*) has the same meaning that is given to it by s. 2, cl. (*8*) of the Act and the inquiry contemplated by that section is not one as to whether the liability amounts to a debt at all within the meaning of the Act but whether a debt as defined by the Act, and, which is alleged by the party to exist, exists as a fact, and if so what is its amount.

A decision of the civil Court that there is no debt is binding upon the Debt Settlement Board which must refuse to proceed in the matter further.

Baijnath Tamakuwalla v. *Tormull* (1); *Harish Chandra Pal* v. *Chandra Nath Saha* (2) and *Shaila Bala Das Jaya* v. *Nityananda Sarkar* (3) referred to.

REFERENCE made by the Munsif of Noakhali under O. XLVI, r. 1 and Civil Rule obtained by the defendant under s. 115 of the Code of Civil Procedure.

*Civil Revision, No. 937 of 1938, against the order of R. L. Banerji, Subordinate Judge of Noakhali, dated April 11, 1938, and Reference No. 5 of 1938, made by Charu Chandra Basu, Second Munsif of Sudharam, dated April 11, 1938.

(1) (1938) 42 C. W. N. 481. (2) I. L. R. [1938] 2 Cal. 155.
(3) I. L. R. [1938] 2 Cal. 168.

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The facts of the case are sufficiently stated in the judgment.

Hamidul Huq for the petitioners. The civil Court, on receipt of a notice under s. 34 of the Bengal Agricultural Debtors Act, was not competent to investigate the character of the liability in question. The Debt Settlement Board has been given exclusive jurisdiction under s. 18 of the Act to decide as to the existence of the debt and whether a particular person is a debtor, and when once the Board has taken cognisance of the debt and issued a notice under s. 34 of the Act, the civil Court ceases to have jurisdiction in the matter. Otherwise an anomalous position will arise and there will be conflict of jurisdiction. In the second place even if the civil Court had jurisdiction to go into the matter, the liability in this case being admittedly a debt within the meaning of the Bengal Agricultural Debtors Act on the date when the application before the Debt Settlement Board was made, and the Board having decided that there was a debt and that the applicant was a debtor, and having issued the notice under s. 34 of the Act, the civil Court was bound to stay the execution proceedings. The subsequent inclusion of the creditor bank in the second schedule to the Reserve Bank of India Act, 1934, could not alter the nature of the debt and deprive the Board of the seisin of the matter and give the civil Court jurisdiction to disregard the notice under s. 34 of the Act.

Atul Chandra Gupta, *Bhagirath Chandra Das* and *Jitendra Kumar Sen Gupta* for the opposite party and in support of the Reference. Section 34 of the Act is not the proper section applicable to the facts of the present case, as it applies to cases which are pending in a civil Court before the application to the Debt Settlement Board under s. 8 of the Act is made. Section 33 applies to

cases, as at present, where the application before the Board is made before the matter is brought before the civil Court. The notice under s. 34 is therefore not binding on the Court. As the liability had ceased to be a debt within the meaning of the Act at the time when the proceeding was brought before the Court, s. 33 was no bar to the Court entertaining the application. The provision in s. 18 which gives jurisdiction to the Board is based on the assumption that the liability is a debt within the meaning of s. 2(*8*) of the Act and the only question which the Board is to decide is what is the amount of it if it is not nil. This view is supported by sub-ss. (*2*), (*3*) and (*4*) of s. 18 and s. 36, cl. (*a*).

Cur. adv. vult.

GHOSE J. The question for decision arises out of a Reference under O. XLVI, r. 1 of the Code of Civil Procedure and a Civil Revision Case started on a petition. In both cases the Court had received notice for stay of proceedings under s. 34 of the Bengal Agricultural Debtors Act of 1936. In both cases, the common question is whether the Court on receipt of such notice has jurisdiction to go into the question whether the debt in respect of which a proceeding is pending is a debt as defined in the Bengal Agricultural Debtors Act and, if the Court finds that the debt does not come within the definition, whether in that case the Court can disobey the notice for stay under s. 34. In both cases the creditors are the Noakhali Nath Bank, Ltd. but the judgment-debtors are different. In the Reference case, the creditors instituted the suit on March 3, 1938. Thereafter a notice under s. 34 of the Bengal Agricultural Debtors Act was received and in pursuance thereof proceedings were stayed. The plaintiff then filed an application for vacating the stay order. It appears that, by an order of the Government of India dated December 9, 1937, which was published in the Gazette on December 11, 1937, the Noakhali Nath

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Bank, Ltd., was included in the second schedule to the Reserve Bank of India Act. So, the contention is that the debt in this case comes within the exception mentioned in sub-cl. (*vi*), cl. (*8*) of s. 2 of the Act. The learned Munsif who has made the reference has formulated the question thus :—

> If the debt in question is a protected one, being a liability to a bank included in the Reserve Bank Act Schedule, the question is whether any Debt Settlement Board has any jurisdiction to entertain any application regarding it ? And the further question is whether, when a Debt Settlement Board takes cognisance of a debtor's liability to a bank of the requisite description, the civil Court is competent to ignore it altogether on the ground that the notice issued by the Debt Settlement Board is perfectly *ultra vires*.

The learned Munsif in his letter of Reference has taken the trouble to give a useful summary of the relevant cases already decided by this Court. He himself is of opinion that the Court cannot refuse to stay the proceeding after receipt of the notice under s. 34 and the creditors must take their objection to the Debt Settlement Board. In some of the reported cases, this Court has pointed out that the Act has set up its own tribunal and has laid down the principle that where the Act has expressly provided that certain matters are to be decided by that tribunal the civil Court must refrain from going into those matters, but where there is no express provision in respect of the tribunal under the Act the ordinary Court must act in the exercise of its powers. Following this principle, it has been pointed out, in cases under s. 34 of the Act, that it is for the Court to decide whether there is a proceeding pending before it and whether that proceeding is in respect of a debt which is the subject matter of an application under s. 8 or a statement under sub-s. (*1*) of s. 13, as intimated in the notice. See Form XV prescribed by rule 73. Thus it has been held that, if an execution sale has already taken place, the debt is wiped out from the proceeding and the notice under s. 34 cannot operate, for there is nothing to stay. The Act defines what is a "debt" under the Act and what is a "debtor". It does not include all kinds of debt but

there are certain exceptions as mentioned in cl. (*8*) of s. 2. The definition of "debtor" is narrower, because even though there may be a "debt", as defined in cl. (*8*), the person who is liable for that "debt" may not be a "debtor" within the meaning of cl. (*9*) of s. 2. Who is to decide the question whether there is a debt and whether the person who is liable for that debt is a debtor within the meaning of the Act? This is provided for in ss. 18 and 20. It will be seen that the relevant terms of the two sections are somewhat different. Section 18(*1*) runs thus :—

> 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 :
>
> Provided that a decree of a civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

Section 20 runs thus :—

> 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.

We are not here concerned with the question regarding a debtor. We are here concerned with the question regarding a debt and so the construction of s. 18 is relevant. Mr. Gupta for the creditor in this Court has contended that the provision in s. 18 assumes that the debt is one which comes under the definition of debt as laid down in cl. (*8*) of s. 2 and on that assumption the only question which the Board is to go into is whether that debt is nil, and, if it is not nil, what is the amount of it. I think this contention is correct and it is confirmed by the proviso, since the decree of the civil Court, which concludes the question before the Board, surely does not decide the point whether the debt is one under the Act or not. This is also confirmed by sub-ss. (*2*), (*3*) and (*4*) of s. 18 which deal with the question of the amount. In this connection, see also s. 36, cl. (*a*). It is noteworthy that dismissal of the applications by the Board is provided for by s. 17, which expressly lays down the grounds upon which dismissal may be

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made and these grounds do not specifically include the ground of jurisdiction. This is quite consistent with the fact that the Act creates a special jurisdiction and the procedure laid down in proceedings under the Act assumes that the matter dealt with is one which comes within the four corners of the definition of the terms "debt" and "debtor". Section 8, for instance, which starts with the application lays down that the application is to be by a "debtor" for the settlement of his "debt". Thereafter the subsequent proceedings as provided for in the Act assumes that the party before the Board is a "debtor" and the matter dealt with in the application is "debt" as defined in the Act. Where there is no "debt" as defined in the Act, the Act does not apply. In a recent matter before this Court in *Abu Taher Bazlul* v. *Chandra Moni Saha* (1) we have already held that s. 34 does not apply to the case of persons who are not applicants before the Board. Upon these considerations, I am of opinion that it is for the Court on receipt of notice under s. 34 to decide the question, not only that there is a proceeding pending before it, but also that the subject-matter of that proceeding is a debt as defined in the Act. If the Court finds it is not such a debt, then the notice under s. 34 cannot operate so as to stay the proceedings in the Court.

In my judgment, therefore, the point referred by the learned Munsif should be decided thus. The civil Court after receipt of notice under s. 34 of the Bengal Agricultural Debtors Act has jurisdiction to enter into the question whether the debt, in respect of which the proceeding is pending before it, is a debt within the meaning of cl. (*8*) of s. 2 and if it finds that it does not come within that definition, it should not stay proceedings in pursuance of the notice.

This point also arises in Civil Revision Case No. 937 of 1938 and the answer must be the same. There is, however, a further point which arises in that case. The petitioner in that case filed an

(1)(1938) 43 C. W. N. 318.

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application under the Bengal Agricultural Debtors Act on September 26, 1937. The decree-holder bank started execution in Execution Case No. 22 of 1938 on February 3, 1938. A notice under s. 34 of the Act was issued on April 8, 1938 and served on the same day on the Subordinate Judge. As mentioned already, the bank was included in the schedule of the Reserve Bank of India on December 9, 1937. The Subordinate Judge, by his order dated April 11, 1938, decided that the notice of stay under s. 34 should be disregarded and execution should proceed. From these facts, the second point raised in the Revision Case is whether the Noakhali Nath Bank, Ltd., having been included in the schedule subsequent to the filing of the application before the Board, can get protection under sub-cl. (*vi*) of cl. (*8*) of s. 2. It is contended for the debtor in this case that, since at the time of the application to the Board the Nath Bank was not included in the schedule of the Reserve Bank, it cannot claim that its debt should be protected. The answer to that turns on the question whether the debt must be a protected one at the time of the application to the Board or at the time of the stay order. It seems to me that only the latter point of time is material. This is in accordance with s. 34 and consistent with my answer on the first point since it is for the Court to decide on receipt of the notice whether the subject-matter of the application pending before it is a debt within the meaning of the Act. That being so, if at the time of the notice the debt is not a debt as defined in the Act, the notice has no force as against the Court. In that view, I think, that in this case the Court may disregard the notice to stay the proceeding under s. 34.

The result is that the order as made by the Subordinate Judge on April 11, 1938 must be upheld.

A copy of the judgment should be transmitted to the Court of the Second Munsif, Noakhali, and such Court shall proceed to dispose of the case in conformity with the decision of this Court.

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The Rule stands discharged. There will be no order for costs.

MUKHERJEA J. I agree with my learned brother in the decision which he has arrived at both in the Reference as well as in the Revision Case.

The Reference has been made by the Munsif, Second Court, Noakhali, under O. XLVI, r. 1 of the Code of Civil Procedure and it is in connection with Small Cause Court Suit No. 49 of 1938 of that Court.

The suit was commenced by the plaintiff bank against the defendant, one Fazlul Karim for recovery of a sum of Rs. 245 due as principal and interest upon a note of hand executed by the defendant in favour of the plaintiff. The suit was instituted on March 3, 1938, and on March 16th following a notice under s. 34 of the Bengal Agricultural Debtors Act was received by the Court, requesting it to stay the suit. The Munsif stayed the suit and on March 26, 1938 the plaintiff made an application for vacating the order of stay on the ground that the notice was wholly without jurisdiction, inasmuch as the plaintiff bank being a scheduled bank, the money due to it was not a debt under s. 2, cl. (*8*), sub-cl. (*vi*) of the Bengal Agricultural Debtors Act and consequently the Debt Settlement Board was incompetent to entertain any application for the settlement of such a debt.

The point on which the learned Munsif entertained a reasonable doubt and which is referred to us for our opinion is, as to whether the civil Court on receipt of a notice under s. 34 of the Bengal Agricultural Debtors Act was competent to investigate the character of the liability in question upon a prayer of the decree-holder for ignoring the notice on the ground that the debt was not a debt within the meaning of the Act.

I agree with my learned brother that the question formulated by the Munsif must be answered in the affirmative. The Bengal Agricultural Debtors Act is undoubtedly a special

Act which confers special jurisdiction upon the tribunal set up by it, to deal with certain specified cases and it lays down new remedies and new procedure. The jurisdiction that the Debt Settlement Board exercises within the limits of its authority must be deemed to be exclusive and cannot concurrently be exercised by the civil Court. This is apparent from the whole scheme and structure of the Act and particularly from ss. 33 to 36, which are intended to stay the hands of the civil Court or to render its orders and decisions nugatory when they come into conflict with anything which is done by the Board under the provisions of the statute. The Board, however, can exercise its jurisdiction only in certain limited and special cases which are laid down in the Act itself. The intention of the Act, as we gather from the preamble, is to give relief to a particular class of debtors only and the expressions "debt" and "debtor", as defined in the Act, have been used in a rather restricted and limited sense. Certain class of liabilities which would ordinarily come within the meaning of the word "debt" are specifically excluded from the scope of the Act and even when a liability is a debt, the person saddled with it is not necessarily a debtor. In order to be a debtor and to have the requisite competency to invoke the provisions of the Act, a person must fulfil certain requirements which are enunciated in s. 2, cl. (*9*) of the Act. It is a "debtor" thus defined who can present an application for settlement of his debt under s. 8 of the Act. It seems, therefore, that the Act does not come into operation at all when there is no debt within the meaning of the Act, and the Debt Settlement Board cannot also exercise its functions in the matter of settlement of debts unless the applicant before it is a debtor as defined in the statute. The question is whether the Board itself can decide as to whether a particular liability is a debt or the applicant before it is a debtor which would entitle it to exercise its jurisdiction under the Act. Ordinarily when a

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tribunal exercises a subordinate or special jurisdiction the question whether the condition essential to give it jurisdiction is present or not is left to the ordinary Courts of the land. I agree, however, with Ameer Ali J. in holding that there is no inherent obstacle to a Court being vested with exclusive and final powers in the matter of determining the limits of its own authority. *Vide Baijnath Tamakuwalla* v. *Tormull* (1). The question, therefore, narrows down to this, as to how far the legislature either expressly or by implication has endowed the Debt Settlement Board with authority to determine the matters which are necessary to enable it to exercise its powers under the Act.

As I have said above, the proceeding is initiated before the Board by an application for settlement of debt under s. 8 of the Bengal Agricultural Debtors Act and the application must be made by a debtor and, unless the debtor has already made the application, by any of his creditors. Sections 10 and 11 lay down the form of the application and the statement it should contain. The sections that follow set out the procedure that is to be adopted by the Board in disposing of the application and unless the application is dismissed summarily, under s. 17 of the Act, notices are to be served on all persons named in the petition and the Board should proceed to settle the debt in the manner laid down in the Act. Section 20 then lays down that if any question arises in connection with a proceeding before the Board under this Act whether a person is a debtor or not the Board shall decide the matter. There is no ambiguity with regard to the provision of this section and, in my opinion, it is established beyond doubt that the Board is given exclusive jurisdiction to decide as to whether or not a person is a debtor within the meaning of the Act and is competent to make an application under s. 8 of the Act. The decision of the Board in this matter can be revised only by the appellate tribunal

(3) (1938) 42 C. W. N. 481.

that is constituted under s. 40 of this Act and the civil Court cannot exercise any concurrent jurisdiction in this matter. This is well-established by a series of cases in this Court and reference may be made only to the cases of *Harish Chandra Pal* v. *Chandra Nath Saha* (1); *Shaila Bala Das Jaya* v. *Nityananda Sarkar* (2); and *Baijnath Tamakuwalla* v. *Tormull* (*supra*).

The question now is as to whether the Board is also given authority by the statute to decide the question as to whether a liability is a debt at all within the meaning of the Act. The answer to this question in my opinion must be in the negative. Stress is laid in this connection on the provision of s. 18(*1*) of the Act, the wording of which is as follows :—

> 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.

In my opinion, the word "debt" here has the same meaning that is given to it by s. 2, cl. (*8*) of the Act, and the enquiry contemplated by this section is not one as to whether the liability amounts to a debt at all within the meaning of the Act but whether a debt as defined by the Act and which is alleged by the party to exist exists as a fact; and if so, what is its amount. The word "existence" cannot have reference to the character of the liability and this is clear from the proviso which lays down that a decree of the civil Court relating to a debt shall be a conclusive evidence as to the *existence* or *amount* of the debt as between the parties to the decree. It is obvious that the civil Court cannot say anything as to whether the liability of the judgment-debtor is a debt within the meaning of the Act or not. This interpretation is also borne out by the marked difference in the language which exists between ss. 18 and 20 of the Act. Under s. 20, if any question arises before the Board as to whether a person is a debtor or not the Board shall decide the

(1) I. L. R. [1938] 2 Cal. 155. (2) I. L. R. [1938] 2 Cal. 168.

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matter. But in s. 18 there are no words to show that the Board has authority to decide as to whether a particular liability amounts to a debt within the meaning of the Act or not. It presupposes that there is an allegation of debt as defined in the Act, the only dispute being with regard to its existence and amount. It is significant to note that s. 17 of the Act, which enumerates the circumstances under which an application under s. 8 could be summarily dismissed, does not provide for throwing out such an application *in limine* on the ground that the liability was not a debt.

If we now look at ss. 33 and 34 of the Act, we find that they are intended to stay the hands of the civil Court only when there is a debt included in an application under s. 8, or statement under s. 1 of the Act and a suit or proceeding in respect of the *debt* is pending before it. It has been held already in a series of cases by this Court [*vide* the cases of *Jagabandhu Roy Choudhury*, *firm* v. *Bhusai Bepari* (1); *Ramendra Nath Mandal* v. *Dhananjoy Mondal* (2) and *Jatindra Mohan Mandal* v. *Elahi Bux* (3)] that when a debt is satisfied by an execution sale and no proceeding in respect of a debt can be said to be pending before a civil Court, the Court is not bound to stay any proceeding by way of confirmation of sale or otherwise even if this proceeding is expressly mentioned in the notice under s. 34 of the Bengal Agricultural Debtors Act. I think that it is equally correct to say that the Court can refuse to stay a proceeding or a suit if it is satisfied upon enquiry that there is no proceeding or suit pending before it which is in respect of any *debt* as defined by the Bengal Agricultural Debtors Act. I think that no anomaly or conflict of jurisdiction is likely to arise as has been suggested by Mr. Hamidul Huq. As I have already held, the Board is not given exclusive jurisdiction to decide as to whether a liability is a debt or not and its assumption of jurisdiction depends

(1) (1937) 42 C. W. N. 217. (2) (1937) 42 C. W. N. 218.
(3) (1938) 42 C. W. N. 530.

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upon the fact that there is a debt. A decision of the civil Court that there is no debt is, therefore, binding upon the Board which must refuse to proceed in the matter any further.

Coming now to the Revision Case it may be said at the outset that one point that is involved in this Rule is identical with that which is raised in the Reference that is just disposed of.

The Rule was obtained by certain judgment-debtors and it is directed against an order of the Subordinate Judge refusing to stay certain execution proceedings on receipt of a notice under s. 34 of the Bengal Agricultural Debtors Act. The decree-holders are the Noakhali Nath Bank, Ltd., and they obtained a decree against the judgment-debtors for a sum of about Rs. 2,763 in the year 1935. On September 26, 1937, the judgment-debtors applied for settlement of their debts under s. 8 of the Bengal Agricultural Debtors Act. On December 9, 1937, when the proceeding was pending before the Debt Settlement Board, the plaintiff bank was included in the list of scheduled banks. On February 3, 1938, the bank started execution proceeding against the judgment-debtors and on April 8, 1938, the executing Court received a notice under s. 34 of the Bengal Agricultural Debtors Act. The Court refused to stay proceeding on the ground that the decree-holders being a scheduled bank the debt due to them was not a debt within the meaning of the Bengal Agricultural Debtors Act and consequently the Debt Settlement Board had no jurisdiction to entertain an application for settlement of the debt under s. 8 of the Act or to send down a notice under s. 34 of the Act.

Two points have been raised on behalf of the petitioners in this Rule. In the first place, it is said that the Court on receipt of a notice under s. 34 of the Act was bound to stay the proceeding; and was not competent to enter into and decide the question as to whether the liability was a debt or not. This question has been sufficiently discussed in connection

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with the Reference mentioned above. In view of the reasons given there the contention of the learned advocate for the petitioner on this point must be overruled.

It is contended, in the second place, that, even if the civil Court had jurisdiction to investigate the matter, it was bound to stay the execution proceedings under s. 34 of the Bengal Agricultural Debtors Act, inasmuch as the liability was certainly a debt at the time when the application for settlement of debt was made and any subsequent change in the constitution of the bank could not alter its nature.

I may say at the outset that I agree with Mr. Gupta in holding that s. 34 is not the proper section which is applicable to the facts of the present case. It seems to me that ss. 33 and 34 are complementary sections. Section 33 contemplates a case when an application has been made before the Debt Settlement Board prior to the starting of a suit or proceeding in the civil Court and this section imposes a bar upon the civil Court and precludes it from entertaining any such suit or application. Section 34, on the other hand, applies to cases where a suit or proceeding is already started in a civil Court and this fact is brought to the notice of the Debt Settlement Board when an application for settlement of debt is made before it. In such cases, it is obligatory on the Board to issue notice under s. 34 of the Act. As in this case the execution case was filed long after the application for settlement of debt was presented before the Debt Settlement Board, s. 33 is, in my opinion, the proper section applicable and not s. 34. But the distinction is not very much material for our present purposes, for, even if s. 33 is the proper section to be applied, the Court is nevertheless obliged to stay the proceeding without any notice if it is apprised of the fact—and there is no doubt that it was so apprised here—that an application for settlement of debt has already been presented to the Board. The question, therefore, that really arises is, as to

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whether the civil Court was bound to stay the proceeding when the debt included in the application before the Board had ceased to be a debt before the suit or proceeding was commenced in the civil Court. In order that the civil Court might be called upon to exercise its powers under s. 33 or s. 34 of the Act, it is necessary under both these sections that there must be a suit or proceeding pending in respect of a debt. If the liability had ceased to be a debt at the time when the suit or proceeding was commenced in the civil Court it cannot be said that any suit or proceeding in respect of any debt was pending before such a Court and neither of the sections obliges the civil Court to stay its hands under such circumstances. Looked at from this point of view the civil Court in this case was perfectly justified in refusing to stay the proceeding when the notice was served upon it under s. 34 of the Bengal Agricultural Debtors Act. It is argued by Mr. Huq that it would lead to anomalous consequences if the material time is taken to be the time when the suit or proceeding is commenced in the civil Court. It is said that as the liability was a debt at the time of the application under s. 8, the Board had jurisdiction to proceed under the Act, and, if ss. 33 and 34 which are intended to assist the Board in the work of settling a debt, be held not to be applicable to such cases, there will be a clear conflict of jurisdiction. I do not think that there is really any substance in this contention. If, as I have already held, the liability is not a debt, it does not come within the purview of the Act at all and the Board has no jurisdiction to exercise in this matter. In my opinion if, what was a debt before had ceased to be so prior to its being settled by the Board the latter loses all jurisdiction in respect of the same and cannot proceed any further in the matter.

For these reasons, I agree that this Rule should be discharged.

Reference answered; Rule discharged.

A. A.