

CIVIL REVISION.

Before Nasim Ali and Rau J.J.

NATH MULL BHUTURIA

v.

GOLAM JABBAR MIYA.*

1939

July 31.

Debt Settlement—*Notice by Board, if stays realisation of deficit court-fees—Code of Civil Procedure (Act V of 1908), O. VII, r. 11—Bengal Agricultural Debtors Act, 1935 (Ben. VII of 1936), s. 34.*

A notice by the Debt Settlement Board under s. 34 of the Bengal Agricultural Debtors Act on the civil Court in a suit which has been registered and in which time was allowed to the plaintiff to pay deficit court-fees under cl. (c) of r. 11 of O. VII of the Code of Civil Procedure has the effect of staying all proceedings in the suit, including the filing of deficit court-fees.

CIVIL RULE obtained by the plaintiff under s. 115 of the Code of Civil Procedure.

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

Phanindra Kumar Sanyal for the petitioner. As soon as a notice under s. 34 of the Agricultural Debtors Act is served by the Board on the civil Court the entire suit or proceeding shall be stayed until the Board has decided on the matter. The civil Court, therefore, cannot proceed to realise the deficit court-fee or reject the plaint for failure to supply the requisite stamp papers.

Sarat Chandra Basak, Senior Government Pleader, and *Ramaprasad Mukhopadhyaya*, Assistant Government Pleader, for the opposite-party. On the date when the notice was served it cannot be said that a

*Civil Revision, No. 789 of 1939, against the orders of Pratul Chandra Ray, Subordinate Judge of Rajshahi, dated May 8 and 15, 1939.

suit was pending before the civil Court, as the plaint was written on paper insufficiently stamped. It is true that the effect of payment of deficit court-fee within the time allowed by the Court would be to date the filing of the suit retrospectively from the day on which the plaint was originally presented. But so long as the deficit court-fee is not paid it cannot be said that there was a pending suit.

NASIM ALI J. The petitioner filed a plaint for recovery of Rs. 4,773-6 as arrears of rent from the opposite-party in the Court of the Subordinate Judge of Rajshahi on April 17, 1939. This plaint was not sufficiently stamped. The Judge, however, ordered the plaint to be registered and directed the petitioner to put in the deficit court-fee on or before April 25, 1939. On this last mentioned date the petitioner applied for an extension of time for filing the deficit court-fee and the Judge allowed him time till May 2, 1939. On April 29, 1939, a notice under s. 34 of the Bengal Agricultural Debtors Act from the Haragram Debt Settlement Board was received by the Judge. On May 2, 1939, the Judge heard the pleader of the petitioner on the question as to whether further proceedings should be stayed in view of the notice under s. 34 of the Bengal Agricultural Debtors Act. On May 8, 1939, the Judge held that, by the operation of the notice under s. 34 of the Bengal Agricultural Debtors Act, the petitioner was not exempted from payment of the deficit court-fees. He, accordingly, gave the petitioner time till May 15, to put in the deficit court-fee. On May 15, 1939, the petitioner applied for time to file the deficit court-fee. The learned Judge thereupon passed the following order :—

Plaintiff's petition for time to file deficit court-fee is put up. Heard plaintiff's pleader. Suit is fixed on 22-5-1939 for filing deficit court-fee. No further time will be allowed.

The petitioner, thereupon, obtained the present Rule from this Court on May 19, 1939, calling upon the opposite-party to show cause why this order of the

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learned Judge should not be set aside and why the filing of the deficit court-fee should not be stayed till the final disposal of the application of the opposite-party before the Debt Settlement Board.

The point for determination in this Rule is whether there is a suit pending before the Subordinate Judge. Under s. 26 of the Civil Procedure Code every suit is instituted by the presentation of a plaint or in such other manner as may be prescribed by the rules.

Under O. IV., r. 1 provides :—

(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Order VII, r. 11, so far as it is material for the purposes of this case, is as follows :—

The plaint shall be rejected in the following cases :—

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.

Under r. 2 of O. IV. :—

The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

The order of the learned Subordinate Judge clearly indicates that the plaint was registered on that date, though it was insufficiently stamped. In view of the provisions of s. 6, cl. (2) of the Court-fees Act the Subordinate Judge had jurisdiction to receive this insufficiently stamped plaint and to direct the petitioner to put in the deficit court-fee within a certain time.

As soon as the plaint is received the suit must be taken to be instituted from that time though of course the plaint is liable to be rejected under O. VII, r. 11 of the Code if the deficit court-fees are not paid within the time fixed by the Court.

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We are, therefore, of opinion that the learned Subordinate Judge should have stayed further proceedings in the matter till the application of the debtor opposite-party is decided by the Debt Settlement Board under the provisions of the Bengal Agricultural Debtors Act.

The Rule is accordingly made absolute and the order complained of is set aside. There will be no order as to costs in this Rule.

The view taken by us in this case cannot in any way affect public revenue as the plaintiff will have to pay the deficit court-fee if the debtor's application before the Debt Settlement Board is dismissed and thereafter the plaintiff wants to get his remedy in the civil Court.

RAU J. I agree.

Rule absolute.

A. A.