APPELLATE CIVIL.

Before Edgley J.

1940

May 2, 3.

PULIN BIHARI DAS

v.

REASAT ALI.*

Jurisdiction—*Order by a Board under the Assam Debt Conciliation Act that a debt is time-barred, Effect of—Jurisdiction of the civil Court with regard to such debt—An order dismissing an application for execution as time-barred, if can be set aside under s. 151 of the Code of Civil Procedure—Irregularities in an application for execution, when can be remedied —Assam Debt Conciliation Act, 1936 (Assam X of 1936), ss. 8, 9, 16; Code of Civil Procedure (Act V of 1908), s. 151; O. XXI, r. 17.*

An order by a Board under the Assam Debt Conciliation Act that a particular debt is time-barred amounts to a decision that the Board has no jurisdiction to deal with the matter.

Under s. 8(*3*) of the Act, finality attaches only to an order of a Board in so far as it purports to decide that it has no jurisdiction to deal with the matter. But, so far as the order purports to decide incidentally that an alleged debt is not in existence being time-barred or its amount, no finality attaches to the order and the jurisdiction of the civil Court to decide it is not ousted thereby.

Nur Miya v. *Noakhali Nath Bank, Ltd.* (1) referred to.

When a creditor submits a statement of his claim but fails to file any document in support of it as required by s. 9 of the Act, the case does not come within s. 8(*2*) so as to discharge the debt. The jurisdiction of the civil Court in relation to the debt does not become barred under s. 16(*4*).

An order of a Board holding that a particular debt is time-barred terminates the proceedings before it, so far as that debt is concerned and s. 21(*1*) of the Act has no longer any application to it. The proceedings in a civil Court in relation to that debt need not be suspended till the final decision of the Board with regard to other debts covered by the same application.

When an order dismissing an application for execution as time-barred is set aside under s. 151 of the Code of Civil Procedure, reviving the execution case, that order must be held to be valid and legal unless proper steps are taken to get it set aside.

Irregularities in an application for execution, such as the putting of an incorrect number of the suit or stating an incorrect amount of the decree, can be remedied under O. XXI, r. 17(*1*) of the Code of Civil Procedure.

*Appeal from Appellate Order, No. 160 of 1939, against the order of N. L. Hindley, District Judge of Sylhet, dated Mar. 10, 1939, affirming the order of Santosh Kumar Sen, Second Munsif of Sylhet, dated Jan. 31, 1939.

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APPEAL FROM APPELLATE ORDER preferred by the judgment-debtors.

The material facts of the case and arguments in the appeal appear sufficiently from the judgment.

Priyanath Dutt and *Himangshu Chandra Choudhury* for the appellants.

Jatindra Nath Lahiry and *Paresh Lal Shome* for the respondents.

EDGLEY J. This appeal is directed against the order of the learned District Judge of Sylhet, dated March 10, 1939, under which he dismissed an appeal against the decision of the trial Court, in which the learned Munsif directed that certain proceedings taken in Execution Case No. 362 of 1938 should proceed.

The main points urged on behalf of the appellants in this case are: (1) that the application for execution was barred by limitation and (2) that the Courts below should have suspended all proceedings in execution on account of the fact that the appellants had approached the Debt Conciliation Board at Sylhet for the settlement of their debts including the debt covered by the decree which was the subject-matter of the abovementioned execution proceedings.

The admitted facts of the case are briefly as follows:—

On February 7, 1934, the decree-holders obtained a decree against the appellants for the sum of Rs. 666. Thereafter, on the February 8, 1937, the decree-holders put this decree into execution in Execution Case No. 91 of 1937. On February 27, 1937, an order was recorded by the Court to the effect that the application for execution was time-barred, but on the same day the decree-holders filed a petition for the reconsideration of this order under s. 151 of the Code of Civil Procedure. On March 1, 1937, the execution case was revived and the application for execution was duly registered, but two days later this execution

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case was dismissed for default. On February 7, 1938, the judgment-debtors applied to the Debt Conciliation Board at Sylhet for the settlement of the debts due from them to all their creditors and their application apparently included the debt due to the respondents under the decree in Money Suit No. 1569 of 1933. On April 11, 1938, it appears that the judgment-debtors produced before the Board a certified copy of the order, dated February 27, 1937, under which the decree-holder's application for execution had been rejected as being time-barred, but they did not disclose the fact that a few days later this application had been restored on the decree-holders' petition under s. 151 of the Code of Civil Procedure. After perusal of the order of the learned Munsif, dated February 27, 1937, the Debt Conciliation Board held that the debt due on the decree in Money Suit No. 1569 of 1933 was not subsisting as it was time-barred. On May 5, 1938, the decree-holders applied to the Board for a review of this order under s. 19 of the Assam Debt Conciliation Act, but their application was rejected. On September 13, 1938, the decree-holders again applied to the Court for the execution of this decree and it was in connection with this application for execution that the judgment-debtors raised two objections to the effect, (1) that the application for execution was barred by limitation and (2) that the civil Court had no jurisdiction to deal with the matter in view of the orders which had been passed with reference thereto by the Debt Conciliation Board.

As regards the question of limitation, the main argument of the learned advocate for the appellants in this case is that the previous application for execution, which was filed on February 8, 1937, cannot be regarded as an application in accordance with law within the meaning of Art. 182(5) of the Indian Limitation Act and he relied on certain irregularities connected with the filing of the application for execution, to which reference has been made in the judgment of the learned District Judge. For

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instance, it would appear that the correct number of the suit had not been mentioned and the amount for which the decree was passed was incorrectly given. The defects in the form of the application, such as they were, were not material and might easily have been remedied if the Court had followed the provisions of O. XXI, r. 17(*1*) of the Code, which it failed to observe. Moreover, the Court wrongly assumed that the application was time-barred, and, in my view, the order rejecting it which was made on February 27, 1937 was obviously illegal.

I am in entire agreement with the learned Judge in the opinion which he records to the effect that the execution-proceedings in connection with this matter were inefficiently conducted by the Court and the ministerial officers concerned. It would appear that, in connection with this matter, no large measure of blame can be attached to the decree-holder and, in any case, the record shows that, on March 1, 1937, the application for execution was duly registered under the provisions of O. XXI, r. 17(*4*) of the Code of Civil Procedure. The judgment-debtors took no steps to have this order for registration set aside and, this being the case, it must be regarded as a legal and valid order. In this connection, it has been argued that the executing Court had no jurisdiction to revive the execution case on March 1, 1937 under the provisions of s. 151 of the Code of Civil Procedure. Having regard to the special circumstances of the case, I am not prepared to say that in this particular case the executing Court acted illegally in making the order under s. 151 of the Code, but, in any event, if the judgment-debtors felt themselves aggrieved by this order, they should have moved this Court in revision under s. 115 of the Code of Civil Procedure for its modification. This they failed to do. In view of the circumstances set forth above, I am of opinion that the proceedings in Execution Case No. 91 of 1937 were taken in accordance with law. The latter case was dismissed on March 3, 1937, and, as the application in the present case was filed on September 13,

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1938, it is clear that the present execution proceedings were taken in proper time.

As regards the second objection which has been urged on behalf of the appellants, the trial Court held that the order recorded by the Debt Conciliation Board on April 11, 1938, was made without jurisdiction and the learned District Judge was of the opinion that, as regards the debt which was the subject-matter of the execution proceedings, there had been no final adjudication by the Debt Conciliation Board, and, therefore, it could not be said that the civil Court had no jurisdiction to deal with the matter.

From the provisions of the Assam Debt Conciliation Act, 1936, it would appear that, under s. 8(*1*) of the Act, if the Board after examining the debtor considers it desirable to effect a settlement between him and his creditors, it is enjoined to call upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Sub-section (*2*) goes on to say :—

> Every debt of which a statement is not submitted to the Board in compliance with the provisions of sub-s. (*1*) shall be deemed for all purposes and all occasions to have been duly discharged.

On behalf of the judgment-debtors in this case it was suggested, during the course of the argument, that the order, dated April 11, 1938, had the effect of discharging the debt within the meaning of s. 8(*2*) of the Act and, in this view, it was urged that the jurisdiction of the civil Court would be barred by the provisions of s. 16(*4*) of the Act. I am not prepared to accept this contention. The abovementioned order indicates that the creditors had in fact submitted a statement of their debts, but that they had failed to file any document in support of their claim as contemplated by the provisions of s. 9 of the Act. It, therefore, follows that the order cannot be regarded as falling within the purview of s. 8(*2*) of the Act. In effect, the order in question merely amounted to a decision on the part of the Board that they had no

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jurisdiction to deal with this particular debt as it was barred by limitation.

As regards the question of the jurisdiction, it is provided by s. 7 of the Act that the Board may, at any stage, dismiss an application for want of jurisdiction and there is a further provision in sub-s. (*3*) of s. 8 to the effect that the decision of the Board with regard to jurisdiction under s. 7 or s. 8 shall be final and shall not be questioned in any civil Court. Having regard to the terms of the order, which was recorded on April 11, 1938, I must hold that it merely amounted to a decision that the Board had no jurisdiction to deal with the matter. In this view of the case, I consider that the civil Court would be competent to deal with any application for the execution of the decree, which might thereafter be filed in such Court, and to decide for itself in those proceedings whether the debt was in fact time-barred.

In this connection, it has been suggested by the learned advocate for the appellants that the order, dated April 11, 1938, should be taken as a final determination of the Board to the effect that the debt did not exist, which would prevent the question of the existence of such debt being again raised directly or indirectly in the civil Court. In other words, it is contended that a Debt Conciliation Board in Assam would have an inherent final jurisdiction to determine questions relating to the existence and amount of a debt such as has been expressly conferred upon Debt Settlement Boards in Bengal under the provisions of s. 18 of the Bengal Agricultural Debtors Act. I am not prepared to accept this argument. Of course, a question relating to the amount or existence of a debt might have to be considered incidentally (*e.g.*, under s. 4 of the Act) in order to enable a Board to decide whether or not it had jurisdiction to deal with a particular applications and the Board's decision on the question of jurisdiction would be final under s. 8 (*3*) of the Act. At the same time, under this sub-section,

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finality only attaches to the actual decision with regard to jurisdiction and not to any incidental finding on which that decision may be based. The general principles which regulate the scope of the authority of the civil Court with regard to Debt Settlement Boards in Bengal have been summarised by Ghose J. as follows in the case of *Nur Miya* v. *Noakhali Nath Bank, Ltd.* (1):—

> 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.

If the principle formulated above be applied in respect of the order of the Board, dated April 11, 1938, it appears that finality only attaches to the order in so far as it purports to decide that the Board had no jurisdiction to deal with the matter, but, in so far as the order may have purported to decide whether the alleged debt was in existence or its amount, no finality would attach thereto. If it had been the intention of the legislature to confer exclusive jurisdiction upon Debt Conciliation Boards to decide questions of fact with regard to the existence or amount of debts some provisions on the lines of s. 18 of the Bengal Agricultural Debtors Act would have been inserted in the statute, but this has not been done. In my judgment, therefore, even if the decision of the Board, dated April 11, 1938, could be regarded as a determination to the effect that the alleged debt did not exist, this would not have the effect of ousting the jurisdiction of the civil Court under s. 8(3) of the Act. Further, the matter clearly does not come within the purview of s. 16 of the Act. This contention must, accordingly, be overruled.

Finally, it has been argued by the learned advocate for the appellants in this case that the civil Court should have suspended all further proceedings in the

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matter under the provisions of s. 21(*1*) of the Assam Debt Conciliation Act, which is in the following terms:—

> When an application has been made to a Board under s. 4, any suit or other proceedings then pending before a civil Court in respect of any debt for the settlement of which application has been made shall be suspended until the disposal of the application.

It is true that the debt in respect of the decree for Rs. 666, which was obtained on February 7, 1934, was included in the original application to the Debt Conciliation Board, but the order of the Board which was recorded on April 11, 1938, must be regarded as disposing of the application in respect of that particular debt, inasmuch as it amounted to a decision that the Board had no jurisdiction to deal with the matter. It, therefore, follows that the civil Court was under no obligation to suspend the execution proceedings in connection with that decree after the order of April 11, 1938 had been recorded by the Board.

In my view the decision of the lower appellate Court is correct. I consider that the appellants have failed to show that the application, dated September 13, 1938, was time-barred and it is also clear that the jurisdiction of the civil Court to deal with this matter has not been curtailed by anything contained in the provisions of the Assam Debt Conciliation Act of 1936.

The judgment of the lower appellate Court is, therefore, affirmed and this appeal is dismissed with costs. The hearing-fee is assessed at three gold mohurs.

Appeal dismissed.

A.C.R.C.