

CIVIL REVISION

Before Henderson J.

PYARI MOHAN MANJHI

v.

HASHEM ALI KHAN.*

1940
April 25.

Debt Settlement Board—*Notice on civil Court to stay proceedings—Validity—Court's order on such notice, if appealable—Revisional jurisdiction of High Court—Court's order—Practice—Bengal Agricultural Debtors Act, 1935 (Ben. VII of 1936), s. 34—Code of Civil Procedure (Act V of 1908), ss. 47, 115.*

When a notice under s. 34 of the Bengal Agricultural Debtors Act, 1935, is issued in the prescribed form by the Debt Settlement Board for staying proceedings in an Execution Case pending before a civil Court such notice is valid, if it correctly states the number of Execution Case, even though the notice omits the name of one of the decree-holders and adds the name of a person who is not a judgment-debtor.

A Court should not pass an order which would be infructuous or ineffective.

CIVIL REVISION CASE at the instance of the judgment-debtor.

The material facts of the case appear from the judgment.

Bhupendra Nath Das Gupta for the petitioner. The Munsif has no jurisdiction to hold the sale ignoring the notice of the Debt Settlement Board. The omission of the name of decree-holder or the inclusion of the name of a stranger as a judgment-debtor could not affect the validity of the notice which bore the correct number of the Execution Case. After the sale was held, the petitioner filed an application

*Civil Revision Case, No. 1828 of 1939, against the order of Samarendra Narayan Bagchi, Second Munsif of Pirojpur, dated Aug. 10, 1939.

under ss. 47 and 151 of the Code and prayed for equitable relief. I submit that the learned Munsif erroneously rejected the application. No appeal lay to the District Judge, as the order of the learned Munsif is not under s. 47 of the Code. The order does not conclusively determine the rights of the parties but only refuses to stay further proceedings.

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Satyendra Chandra Sen for the opposite party. The order of the Munsif was under s. 47 of the Code and as such an appeal lay to the District Judge. Hence, the present application in revision is not maintainable.

Das Gupta, in reply.

HENDERSON J. This Rule has been obtained by the judgment-debtors and arises out of Rent Execution Case No. 405 of 1939. During the course of the proceedings, the petitioners applied to a Debt Settlement Board and a notice under s. 34 of the Bengal Agricultural Debtors Act reached the Court on July 21, 1939. The Munsif disregarded it and the proceedings went on. A sale was held on August 10, in spite of the protests of the petitioners, and the property was purchased by opposite parties Nos. 3 to 7. Petitioners then filed the application, which has given rise to this Rule. It was dismissed. The sale was eventually confirmed on September 23 and, as the price fetched was greater than the demand, the execution case was dismissed on full satisfaction.

The case of the petitioners is extremely simple. Their contention is that the Munsif acted without jurisdiction in ignoring the notice from the Debt Settlement Board and that the sale held was a nullity. But difficulty arises as to the procedure which he should follow in order to obtain relief.

I am bound to say that I find some difficulty in understanding the reasons which induced the Munsif to ignore the notice. Under s. 55 of the Bengal

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Agricultural Debtors Act, the Local Government may make rules to provide for the manner of giving notices under s. 34. Under those powers, a form is prescribed (Form No. XV) and the notice was in that form. The form correctly gives the number of the Execution Case, which was to be stayed. There were two decree-holders, one of whom is a trustee for the other. The notice mentioned the name of the trustee only. There were two judgment-debtors, the present petitioners. The notice also mentions the name of another brother. In other words there was an omission of one decree-holder and an addition of a person who was not a judgment-debtor. These are mere formal defects which could not possibly affect the merits and it could not be suggested that there was any other pending case to which the notice really referred. There is no doubt whatever that the notice referred to this case and it was the duty of the Munsif to stay further proceedings.

In dealing with the petitioners' application the learned Munsif had some difficulty in deciding whether it was an application under s. 47 or s. 151 of the Code of Civil Procedure or whether it was an application in review. He finally decided that it was none of them and that the only course open to the petitioners was to move this Court.

The relief which I can now on this Rule grant to the petitioners lies within a very narrow compass. They are certainly entitled to a stay of any further proceedings in connection with the execution. But that relief would be infructuous for two reasons. In the first place, they want relief against the sale and, in the second place, there is nothing further to be stayed. The result is that no useful purpose would be served by staying further proceedings.

It is impossible for me to give any relief with regard to the sale. The petitioners are certainly entitled to raise the question in an application under

s. 47 and to ask for a declaration that the sale has not affected their title. There can be no doubt that the application filed by them was one under that section. There was, therefore, an appeal to the District Court and it will not be open to this Court to interfere in revision. The second difficulty lies in the fact that the dispute is now not between the petitioners and the decree-holders but between the petitioners and a third person, namely, the auction-purchaser. In that view they can only obtain relief in a regular suit. If, however, they are of the opinion that the application under s. 47 was competent, their proper course is to appeal against the Munsif's decision.

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The Rule is accordingly discharged.

I make no order as to costs.

Rule discharged.

N. C. C.