

tion was a decree for money within the meaning of section 5 of the U. P. Agriculturists' Relief Act. Accordingly the judgment-debtors are entitled to have that decree converted into an instalment decree because admittedly they were agriculturists both at the date of the transaction and at the date of the suit. We accordingly answer question No. 2 in the affirmative.

1938

HAR PRASAD
v.
SEWA

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

KANHAIYA LAL (APPLICANT) v. MAHESHWAR NARAIN
AND OTHERS (OPPOSITE PARTIES)*

1938
May, 2

U. P. Encumbered Estates Act (Local Act XXV of 1934), section 7(1)(a)—Stay of proceedings—"In respect of" any debt—Suit for specific performance of a contract to sell land—Bulk of the consideration being liquidation of debts due by the vendor to the vendee—Stay of proceedings, by whom to be ordered—Technicality.

Ordinarily a suit for specific performance of a contract to sell land would in effect be a suit for possession of immovable property and would not be a proceeding "in respect of" a debt, within the meaning of section 7(1)(a) of the U. P. Encumbered Estates Act; but where the bulk of the consideration for the sale agreed upon is to be paid in liquidation of existing debts due by the vendor to the purchaser, the suit for specific performance is in the nature of a proceeding "in respect of" a debt and falls within the scope of section 7(1)(a) of the Act.

The court whose duty it is, under section 7(1)(a) of the U. P. Encumbered Estates Act, to stay proceedings is the court in which such proceedings are pending; and the Special Judge has no power under the Act to order stay of proceedings pending in any court. Where, however, the same person was the Special Judge, as well as the Civil Judge in whose court the suit was

*First Appeal No. 142 of 1936, from an order of Jiwan Chandra Malik, Special Judge first grade of Farrukhabad, dated the 9th of July, 1936.

1938

KANHAIYA
LAL
v.
MAHESHWAR
NARAIN

pending, and the order for stay of proceedings was signed by him as Special Judge instead of as Civil Judge, it was *held* that it was a mere technical error and immaterial.

Mr. *B. Malik*, for the appellant.

Messrs. *P. L. Banerji*, *S. N. Verma* and *S. N. Misra*, for the respondents.

COLLISTER and BAJPAI, JJ.:—We have before us a first appeal from order and also a revision against an order of the Special Judge of Farrukhabad, dated the 9th of July, 1936, staying proceedings in a suit for specific performance of contract.

The suit was instituted on the 1st of October, 1935, and the contract was alleged to have been entered into on the 28th of August, 1935. The suit was filed by Kanhaiya Lal, who is the appellant and applicant before us, and the defendants to the suit were Maheshwar Narain and his two minor sons, Surendra Narain and Narendra Narain. The 6th of July, 1936, was fixed for hearing of that suit in the court of the Civil Judge. Meanwhile proceedings had been taken by Maheshwar Narain under the Encumbered Estates Act (Local Act No. XXV of 1934). Certain creditors, namely Mst. Gombi Bai, Gau Charan, Shib Charan and Kunj Behari Lal, then applied to the Special Judge for stay of the suit for specific performance of contract. We are informed that Maheshwar Narain had also attempted on several occasions before the Civil Judge to have that suit stayed, but without success; but on the 6th of July, 1936, i.e., on the date fixed for hearing in the suit for specific performance of contract, the Special Judge granted the prayer of Mst. Gombi and others, and, purporting to act under section 7 of the Encumbered Estates Act, stayed proceedings in the suit for specific performance of contract.

It is against that order that the present appeal and revision have been filed. The appeal was filed on the 29th of July, 1936, and the respondents to it were

Maheshwar Narain and his two sons. These were the defendants to the suit for specific performance of contract, and those creditors who had successfully applied for stay under section 7 of the Encumbered Estates Act were not made respondents to the appeal. At a considerably later date this mistake was discovered and therefore a revision was filed in this Court in which Mst. Gomi Bai and others as well as Maheshwar Narain were impleaded as opposite party. Section 46 of the Encumbered Estates Act provides that "Any court empowered under section 45 to hear an appeal under this Act may of its own motion, or on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a court from which appeals lie to such court, and after giving due notice to the parties concerned pass such orders thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final."

1938
 KANHAIYA
 LAL
 v.
 MAHESHWAR
 NARAIN

It is thus clear that this Court has wide powers of revision. We now have all the parties before us and are in a position to determine the points in controversy, treating the whole matter as a revision.

The first point taken by learned counsel for Kanhaiya Lal applicant is that the Special Judge had no jurisdiction to stay proceedings in a suit which was pending in another court.

Section 7(1)(a) of the Act provides that "all proceedings pending at the date of the said order (i.e., an order under section 6) in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject . . . shall be stayed" This means that when the court before which such proceedings are pending becomes aware in any manner whatsoever that an order has been passed under section 6 of the Act, it is its duty to stay such proceedings forthwith; but the Special Judge has no power under the Act to order stay of such proceedings in any such court.

1938
 KANHAIYA
 LAL
 v.
 MAHESHWAR
 NARAIN

In the present case, however, the Special Judge and the Civil Judge are embodied in one and the same person, and it is clear that if he had purported to sign the order staying proceedings in his capacity as Civil Judge and not, as he did, in his capacity as Special Judge, there could have been no objection whatsoever. In the circumstances, the objection is purely technical and cannot be allowed to prevail.

The next and principal point taken by learned counsel for the applicant is that section 7 of the Act does not contemplate the stay of proceedings in a suit for specific performance of contract. Learned counsel pleads that in effect this was a suit for recovery of possession of immovable property, and he has referred us to the case of *Mukand Sarup v. Krishna Chandra Singh* (1), in which a Bench of this Court held that a claim for recovery of possession of immovable property is not one in respect of any debt. We are informed by counsel that the alleged contract between the parties was that Maheshwar Narain should sell a village to Kanhaiya Lal for Rs.10,250. Rs.1,200 were paid as earnest money, Rs.6,800 were to be set off against certain hundis in favour of Kanhaiya Lal and the balance was to be paid at the time of registration. It is thus clear that the bulk of the consideration was to be paid in liquidation of debts due to the purchaser. Section 2(a) of the Encumbered Estates Act provides that "debt" includes any pecuniary liability, except a liability for unliquidated damages. In the case of *Mukat Behari Lal v. Manmohan Lal* (2) a plaintiff had instituted a suit for ejectment on the ground that a forfeiture had been incurred by reason of the non-payment of house rent, so that the plaintiff lessor had become entitled to eject the defendants lessees in spite of the fact that the term fixed for the tenancy had not expired. The defendants had submitted an application under section 4 of the

(1) I.L.R. [1938] All. 153.

(2) I.L.R. [1938] All. 246.

1938

KANHAIYA
LAL
v.
MAHESHWAR
NARAIN

Encumbered Estates Act, and prior to the institution of the suit the Collector passed an order under section 6 of the Act. It was held by a Bench of this Court that the suit for ejection was barred by section 7(1)(b) of the Encumbered Estates Act, the suit for ejection being in the circumstances a suit "in respect of" the arrears of rent which must be held to be within the meaning of the word "debt" as defined in the Act. There can be no doubt that in the majority of cases a suit for specific performance of contract would not be a proceeding "in respect of a debt"; but, as we have already shown, in the present case the greater part of the consideration for the sale which was agreed upon between the parties was in lieu of prior debts which were due from Maheshwar Narain to Kanhaiya Lal. Section 7(1)(a) of the Act is not confined to proceedings for the recovery of a debt; the words used are "in respect of" any debt, and this is a very wide expression. Having regard to the terms of the alleged contract between Kanhaiya Lal and Maheshwar Narain, it cannot be said that the latter suit was not in the nature of a proceeding in respect of a debt, since the main object of the covenant was to liquidate debts which were due from Maheshwar Narain to Kanhaiya Lal. We think, moreover, that this view is in consonance with the scope and object of the Act, and we do not think that it can have been within the intention or contemplation of the legislature that one creditor should thus obtain an unfair advantage as against the debtor and as against the other creditors. Further, it would also appear that under the provisions of section 7(2) and (4) of the Act Maheshwar Narain might plead that any sale effected by him without the sanction of the Collector would be incompetent and therefore void. Having regard to all the circumstances we are of opinion that there are no grounds to interfere in revision with the order of the court below. This appeal and revision are accordingly dismissed with costs.