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single venture, where a single article or a number of articles on a single contract are purchased and sold, may not amount to a business. But where a number of bales are purchased at one time, sales are to go on, profits are to be realised and those profits are to be divided among the partners, it is not a single venture and amounts to partnership within section 4."

In this case there was a single venture, and consequently it does not come under "business" as mentioned in section 4 of the Partnership Act. The suit was, therefore, maintainable. It is therefore ordered that the application be allowed, the order of the learned Judge, small cause court, be set aside and the case be sent back to the lower court to be re-admitted under its original number and to be disposed of in accordance with law. No order is made as to costs, as the chief defendant (defendant No. 1) is absent.

Before Justice Sir Edward Bennet and Mr. Justice Verma

NARAINDAS BALKISHANDAS (PLAINTIFF) *v.* MUNIR-UDDIN (DEFENDANT)*

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U. P. Encumbered Estates Act (Local Act XXV of 1934), section 9(5)—Does not apply where the liability of the co-debtors is joint and several—Maintainability of suit against non-applicant co-debtor alone—U. P. Encumbered Estates Act, section 13—Cannot operate to discharge a claim as against a non-applicant co-debtor—U. P. Encumbered Estates Act, section 7(1)(b)—No bar of suit as against persons other than landlords coming under the Act.

Section 9(5) of the U. P. Encumbered Estates Act contemplates only those cases in which the liability of the debtors is joint and not those cases in which it is joint as well as several. Where the liability of two debtors is not merely joint, but also joint and several, and one of them happens to be a landlord who makes an application under section 4 of the U. P. Encumbered Estates Act, it is not open to the other to raise the objection that a suit cannot be instituted against him.

*Civil Revision No. 91 of 1938.

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Under section 13 of the U. P. Encumbered Estates Act it is the claim against the landlord that is to be deemed to have been duly discharged, and not the claim against other persons. Where some of the co-debtors apply under section 4 of the Act, and the creditor fails to present to the Special Judge a written statement of his claim in accordance with section 9(1) and (3) of the Act, the effect of this can only be that any claim which he might have had against them shall be deemed to have been discharged; it cannot put an end to the claim which he may have as against the other co-debtors.

Section 7(1)(*b*) of the U. P. Encumbered Estates Act, when it says that no suit shall be instituted, means that no suit shall be instituted against the landlord and not that no suit shall be instituted against any other person. It does not prohibit a suit against such of the co-debtors as are not landlords who have applied under section 4 of the Act.

Dr. *K. N. Malaviya,* for the applicant.

Mr. *Mansur Alam,* for the opposite party.

BENNET and VERMA, JJ.:—This is an application for revision by the plaintiff, in a suit filed in the court of small causes at Benares, against the decree of the court dismissing the suit.

Three persons, Nasiruddin, Muniruddin and Kabiruddin, executed a promissory note in favour of the plaintiff firm on the 12th of August, 1934, agreeing jointly as well as severally to pay to the plaintiff on demand a certain sum of money at a certain rate of interest. Some time in 1936 Nasiruddin and Kabiruddin made an application under section 4 of the U. P. Encumbered Estates Act (XXV of 1934) and the Collector passed an order under section 6 of the Act on the 6th of November, 1936. On the 12th of August, 1937, the suit out of which this application for revision has arisen was filed against all the three executants of the promissory note, namely Nasiruddin, Muniruddin and Kabiruddin. The fact that Nasiruddin and Kabiruddin had made an application under section 4 of the Act and that the Collector had passed an order under section 6 having been disclosed in court, the plaintiff made an application on the 20th of

December, 1937, stating that he wanted to proceed against Muniruddin alone and praying that Nasiruddin and Kabiruddin be exempted from the suit. The court in accordance with the request of the plaintiff, dismissed Nasiruddin and Kabiruddin from the suit and directed that the suit was to proceed against the only defendant left on the record, namely Muniruddin, and a date was fixed for final decision. When the case came on for hearing, an objection was taken on behalf of Muniruddin that the suit was not maintainable against him also, although he had not made any application under the Encumbered Estates Act. The learned Judge has accepted this contention and has dismissed the suit.

The learned counsel appearing for the plaintiff firm has read to us the promissory note in suit and has relied on the fact that in that document the liability undertaken by the three executants was not only a joint liability but was also, in so many words, a several one. His argument is that section 9 (5) of the Act does not apply to such a case. He further contends that the reliance placed by the court below on the language of section 13 of the Act is not correct. He urges that the relevant words of section 13 are: "Every claim decreed or undecreed against a landlord . . . . shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged." The point raised is that it is the claim against the landlord that is to be deemed to have been duly discharged, and not the claim against other persons.

Having heard learned counsel on both sides we have come to the conclusion that the contentions of the plaintiff applicant are well founded. It seems to us that section 9(5) of the Act contemplates only those cases in which the liability of the debtors is joint and not those cases in which it is joint as well as several. Reference has been made to the case of *Swadeshi Bima*

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Company v. *Shiv Narain Katiyar* (1). It has been held in that case that "Any person who is not a landlord, but who incurs a liability jointly and severally with a landlord who makes an application under section 4 of the Encumbered Estates Act, cannot plead that no suit can be instituted against him in respect of that liability. It is only in those cases where his liability with the landlord is only joint and not several that it may be open to him to contend that no suit can be instituted at all." We agree with the decision that in a case where the liability of two debtors is not merely joint, but also joint and several, and one of them happens to be a landlord who makes an application under section 4 of the Encumbered Estates Act, it is not open to the other to raise the objection that a suit cannot be instituted against him. The object of the U. P. Encumbered Estates Act is "to provide for the relief of encumbered estates". It is not intended to afford any relief to those who do not come within the four corners of the Act. The effect of the executants of the promissory note having undertaken a liability which was several is that it is open to the creditor to treat the promissory note as having been executed by any one of them singly. We see no reason therefore for accepting the contention put forward on behalf of the defendant Muniruddin that the creditor is not entitled to institute the suit against him.

The reasoning of the court below based on section 13 of the Act arises out of the fact that in the proceedings under the Act initiated by the application of Nasiruddin and Kabiruddin under section 4 the plaintiff firm did not, within the time prescribed, present to the Special Judge a written statement of its claim under section 9(1) and (3) of the Act. In our opinion the effect of this can only be that any claim which the plaintiff might have had against Nasiruddin and Kabiruddin shall be deemed to have been duly discharged. It cannot put

(1) I.L.R. [1939] All. 115(118).

an end to the claim which the plaintiff may have against Muniruddin alone. Learned counsel appearing for the defendant respondent cited the case of *Babu Ram* v. *Manohar Lal* (1). That, however, was a case in which there was "a joint decree and therefore a joint judgment debt", as has been clearly pointed out in the judgment. The case is, therefore, not applicable to the facts of the present case. It has further been argued that the language of section 7(1)(*b*) is very wide and that it must be held that it prohibits the institution of a suit against a person who is not a "landlord" and has not made an application under section 4 of the Act if the debt in respect of which the suit is brought had been incurred by such person jointly with another person who is a landlord and has made an application under section 4. In our opinion this argument is not well founded. The material portion of the sub-clause relied on reads thus: "No fresh suit . . . shall . . . be instituted . . . in respect of any debts incurred before the passing of the said order." It seems to us that when the section says that no suit shall be instituted it means that no suit shall be instituted against the landlord, and not that no suit shall be instituted against any other person.

Our conclusion therefore is that the decision of the court below is incorrect. Accordingly we allow this application in revision, set aside the decree of the court below and remand the case to that court with the direction that it shall admit it to its original number and will proceed to hear and decide it according to law. The plaintiff firm, applicant before us, is entitled to its costs in this Court. The costs in the court below will abide the event.

(1) I.L.R. [1938] All. 22.