CALCUTTA HIGH COURT

Jabed Sheikh

Vs.

Taher Mallick

(B.K. Mukherjea, J.)

24.02.1941

JUDGMENT

B.K. Mukherjea, J.

1. This rule is directed against an order of the Sadar Munsif, Faridpur, dated 25-6-1940, refusing to stay a proceeding for ascertainment of mesne profits on receipt of a notice under Section 34, Bengal Agricultural Debtors Act. The material facts are not in controversy and may be stated as follows : The opposite party 1, Taher Mallik, brought a suit against the petitioners and certain other persons in the Court of the Sadar Munsif at Faridpur, for recovery of possession of certain property on establishment of his title to the same. There was also a prayer for mesne profits in the plaint. The suit culminated in a decree passed by the trial Court on 13th August 1936, which was finally affirmed by this Court in S. A. No. 456 of 1938. The plaintiff's claim for khas possession in respect of the lands in suit was allowed, and it was further declared that he would be entitled to recover mesne profits from the defendants, which would be ascertained on an application made by him under Order 20, Rule 12, Civil Procedure Code The plaintiff obtained delivery of possession of the property in suit through Court, and then started the present proceeding for ascertainment of mesne profits as directed by the preliminary decree. During the pendency of the proceeding two of the judgment-debtors applied to the Debt Settlement Board at Majchar for settlement of their debts under Section 8, Bengal Agricultural Debtors Act, and on 11th June 1940, the Munsif received a notice from the Board under Section 34 of the Act, requesting him to stay further proceedings in the suit. This the Munsif refused to do, on the ground that no debt in the sense of an absolute or perfected debt having as yet come into existence, the provision of Section 34, Agricultural Debtors Act, was not applicable to the facts of the present case. It is the propriety of the decision that has been challenged before us in this rule.

2. In order that a suit or proceeding may be stayed under Section 34, Bengal Agricultural Debtors Act, it is necessary that it must relate to a debt, which is included in an application under Section 8 or a statement under Section 13 (1) of the Act. The Munsif was of opinion that as the inquiry was still pending, there was no certainty as to whether any money would be payable by the

defendants as mesne profits or not, and a liability which might or might not arise in future would not be a 'debt' within the meaning of the Act. Mr. Mukherjee, who appears in support of the rule, argues before us that this view is not correct; and that the liability of the defendants to pay mesne profits is a present liability, though the amount is still unascertained, and it is not in any way dependent upon a future contingency which might or might not happen. In support of this argument, reliance has been placed by the learned advocate on a decision of Edgley J. which is to be found reported in *Revati Mohan Roy v. Bhikchand Bhuiyan*[1] Now a debt, as defined in Section 2 (8) , Agricultural Debtors Act, includes all liabilities incurred prior to 1st January 1940, of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a civil Court or otherwise and whether payable presently or in future. Then follows a list of exceptions, item (i) of which excludes from the category of debt any liability the payment of which is contingent. Strictly speaking, this is not a definition, but a description of the term 'debt,' and the description has both a positive and a negative aspect, which set out the limits within which the expression is to be confined for purposes of the [Act. Section 2 (8) begins by saying that the liability must be that of a debtor; this means that the obligation must be one to pay a debt in the accepted sense of the word, and unless the liability is that of a debtor, it would not amount to a debt within the meaning of the Act, even though the particular case does not come within the purview of any of the exceptions enumerated in the section.

3. A "debt" in the legal sense of the word means a liquidated money obligation for which an action will lie. Lindley L. J. in *Webb v. Stenton*[2] defined a "debt" to be a liquidated sum of money which is now payable or will become payable in future; land this was quoted with approval by Sir L. Jenkins in the Full Bench case in *Bancharam Mazumdar v. Adhyanath Bhattacharja*[3] It is a debt even if the money is to be paid in future, provided the obligation has already accrued; and there may be a dispute as regards the amount payable by the debtor, which has got to be settled by the Court; but there cannot be a debt in law unless there is a liquidated money claim. In my opinion when a plaintiff institutes a [suit for damages for wrongful possession of his lands by the defendant, or claims mesne profits against him as ancillary to a prayer for recovery of possession, it is not a suit for enforcement of a debt. The defendant cannot be regarded as a debtor either before for after the institution of the suit, till a decree is passed against him making him liable for a definite sum. Then he becomes a debtor by reason of the judgment, and a judgment debt would certainly come within the purview of the Agricultural Debtors Act. In the present case the preliminary decree in the title suit must be taken to have only determined that the defendants were trespassers and hence liable to pay mesne profits to the plaintiff. It is only when a final decree for a specified sum is passed against them as a result of the investigation that is now proceeding, that they would become debtors in law, and their liability to pay the sum fixed by the judgment would rank as a debt.

4. It was held in *Jones v. Thomson*[4] that a claim for damages does not become a debt even after the jury has returned a verdict in favor of the plaintiff till the judgment is actually delivered. This principle is, in my opinion, applicable to the facts of the present case. A suit for mesne profits is

in substance an action for damages for trespass to immovable property, (vide *Kunjo Behary v. Madhub Chandra*[5]) and it is the final judgment that creates the debt, which cannot possibly exist before the judgment is passed. I agree with the learned advocate for the petitioners that it is not a case of contingent liability; for, the payment is not in any way dependent on any future or uncertain event, but in my opinion no liability on the part of the petitioners to pay any debt has as yet come into existence. As the debt has not accrued and is not in

[1] AIR 1939 Cal 343 [3](09) 36 Cal 936 [5] (96) 23 Cal 884 (FB)
[2](1884) 11 QBD 518 [4](1858) 27 LJQB 234

existence, it would not possibly be included in a petition under Section 8, Agricultural Debtors Act, and there is no proceeding in respect of any debt pending before the civil Court, which the latter can be called upon to stay on receipt of a notice under Section 34. It could not have been the intention of the Legislature that a proceeding like this should be stayed. The Debt Settlement Board can settle a debt which is created by a judgment in a suit for recovery of possession of immovable property; but it has no authority to decide on what basis the mesne profits should be determined, and it possesses no machinery by which the amount could be ascertained.

5. The case in *Revati Mohan Roy v. Bhikchand Bhuiyan*[6], upon which reliance has been placed by the learned advocate for the petitioner arose out of a suit for accounts which was commenced by a landholder against his agent. The suit was stayed by the Munsif on receipt of a notice under Section 34, Bengal Agricultural Debtors Act, and the order was upheld by my learned brother Edgley J. The learned Judge was of opinion that the unascertained liability of the defendant in an account suit not being a contingent liability within the meaning of excep. (i) of Section 2 (8), Bengal Agricultural Debtors Act, was a debt liable to be dealt with under the provision of the Act. I am in entire agreement with my learned brother that the liability could not be said to be a contingent liability, but I venture to think that the mere fact that it did not come within this or any other exception, would not necessarily make it a debt for purpose of the Act. As I have said already, the definition or description of debt as given in Section 2 (8), has both a positive and negative aspect, and in order that a particular liability may rank as a debt, it is not enough that it is not included in any one of the exceptions mentioned in the section; it must fulfill the positive test of being essentially the liability of a debtor. This aspect of the question was not at all considered in the above case. It may be pointed out in this connexion that a liability to account has been held not to be a "debt" for purposes of the Succession Certificate Act: vide *Bisseswar Roy v. Durgadas*[7] It is however not necessary for us to express any opinion as to the propriety or otherwise of the view that my learned brother took on the facts of the particular case. It is enough for our present purposes to say that on facts that case is different from the present one.

6. My conclusion therefore is that the view taken by the Munsif is perfectly sound and must be upheld. Mr. Mukherji has raised another point in support of the rule, viz., that under Section 20, Bengal Agricultural Debtors Act, the question whether a liability is a debt or not is to be decided by the board, and consequently it is not open to the civil Court to go into the question. It was held by a Division Bench of this Court in *Nur Mia v. Noakhali Nath Bank*[8], that on the question being raised before a civil Court, the latter was both competent and bound to determine whether the

liability involved in the proceedings before it was a 'debt' within the meaning of the Act. This view was accepted by Edgley J. in *Revati Mohan Roy v. Bhikchand Bhuiyan*[9], referred to above. It is true that the law has been changed by the Amending Act 8 of 1940; and under Section 20 of the Amended Act, when a question arises before a board, as to whether a liability is a debt or not, it is the board that is, given the right to decide the matter. In the present case, the application for settlement of the debt was presented by the petitioners long before the Amended Act came into force and the notice under Section 34 of the Act was also issued before that date. We do not think therefore that the provisions of the Amended Act are at all attracted

[6] AIR 1939 Cal 343
[7](05) 32 Cal 418
[8] AIR 1939 Cal 298
[9]AIR 1939 Cal 343

to the facts of the present case. Anyway, it is not necessary to discuss the matter further as the rule that has been granted in this case is not an open rule, but is expressly-limited to grounds 1 and 2 of the petition, neither of which covers the present point. The result therefore is that the rule is discharged. We make no order as to costs.

Biswas, J.

7. I entirely agree. I have no doubt that the word "debt" as used in the Bengal Agricultural Debtors Act must receive its ordinary meaning as explained by my learned brother. There is certainly nothing to the contrary in the definition clause-cl. (8) of Section 2. The list of inclusions and exclusions set out therein does not show that the Legislature intended to include even an unliquidated claim for damages-within the scope of the Act. The object of the Act is the settlement of debts, and this implies that there must be claims for specific amounts against the debtor which can be settled. The proceedings before a Debt Settlement Board are initiated by an application under Section 8, and Section 11 which requires a "statement of debt" to be included in such application, uses very clear words in describing the particulars of the debts to be specified therein. Thus, with reference to an application made by a debtor, Clause (b) of Sub-section (1) of Section 11 provides that the statement shall include the names and addresses of the creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor. Clause (b) of Sub-section (2) which deals with an application by a, creditor similarly speaks of the total amount of every debt claimed by the creditor to be owing to him by the debtor. The words "the total amount of debt claimed" show conclusively that what is contemplated is a specific liquidated demand on the part of the creditor against the debtor. In my opinion, therefore, in order to constitute a debt under the Bengal Agricultural Debtors Act, two conditions must be fulfilled, namely, (1) that there must be a present obligation to pay on the part of the debtor, and (2) that this obligation must be in respect of a liquidated claim or demand against him. Whore there is uncertainty as to either of those points, uncertainty as to the obligation to pay though not necessarily as to the date of payment, or uncertainty as to the quantum of the claim, there will be no debt at all. I agree therefore that the learned Munsif took a correct view of the matter in the present case, and the rule must be discharged.