

# NAGPUR HIGH COURT

Ramkrishna Ashanna

Vs

Board of Revenue

Misc. Petn. No. 131 of 1953. decided on 30.9.1953

(Sinha, C.J. and Bhutt, J.)

07.04.1953. 30.09.1953

## JUDGMENT

**Sinha, C.J**

1. This application under Article 226 of the Constitution, is directed against the order of the Claims Officer, Warora, respondent No. 2, and that of the Board of Revenue, respondent No. 1, confirming the order of the Claims Officer in appeal, by which they held that the debt due to the petitioner by respondent No. 3 is a secured debt within the meaning of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951).

2. The petitioner held a simple money decree against respondent No. 3, in execution of which he attached certain properties belonging to respondent No. 3. During the pendency of the execution proceedings, respondent No. 3 applied under section 11, C.P. and Berar Money Lenders Act, 1939, for payment of the decretal amount in installments. Parties ultimately compromised the claim and an application was filed, which was signed by both of them, for recording the terms of compromise. It was agreed that the decree would be payable in installments, for the due payment of which two of the properties attached would be subject to a charge. However, in the order recording the terms of compromise, it was stated that the said two properties would remain under attachment. The circumstances under which the charge was not mentioned in the order may be gathered from the order-sheet which is reproduced below :

" '26-2-1944' : Applicant with Mr. Hastak and Mr. Kakde, N.A. with Mr. Chendke.

Commission back duly executed. Parties however (have) come to terms and apply jointly to record the terms of settlement. Parties admit and agree to those terms.

Order delivered. Witnesses are all discharged. Applicant's property except what is agreed to be charged today will be released from attachment. N.A. agrees that he would be content with continuance of attachment over the property agreed to be charged."

3. After the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951), came into force, respondent No. 3 made an application under section 19(1) of the Act for settlement of the debt. The petitioner raised an objection that the debt was not a secured debt and was not, therefore, subject to the Act. This objection was, however, overruled by the Claims Officer whose order was upheld in appeal, by the Board of Revenue. These are the orders that are impugned in these proceedings.

4. As we read the provisions of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951), hereinafter called the Act, we are clearly of the opinion that the Claims Officer is not entitled under the Act to determine whether or not the debt is a secured debt within the meaning of Section 17(a). The fact that the Act defines a secured debt does not mean that the Claims Officer is empowered to determine the secured character of the debt. This matter will have to be determined with reference to other provisions of the Act.

5. Section 18 of the Act deals with the appointment of Claims Officers and provides that the purpose of their appointment is to determine "the 'amount' of secured debts or claims owed by proprietors divested of proprietary rights under this Act". (Underlining (here into ' ') is ours). This Section does not, therefore, in terms contemplate that they are empowered to determine the character of the debt where it is in question. Subsection (1) of section 19 gives power to the debtor to make an application for determination of the secured debts or claims. Sub-Section (2) thereof likewise empowers the creditor to make a similar application. It will mostly be in the case of a debtor's application that the creditor may be interested in denying the secured character of the debt so as to take it out of the operation of section 24 and subsequent Sections of the Act where under a secured debt or claim is liable to be scaled down.. Before this stage is reached, he is entitled to raise a preliminary objection to the proceedings, under section 21(2), on the ground that the debtor is not wholly or mainly an agriculturist. If, after enquiry, this objection prevails, then no further provisions of the Act will apply to the secured debts or claims against the debtor. Sub-Section (5) of section 21 provides :

"If no objection is made under Sub-Section (2) or if an objection is made and decided, the jurisdiction, of the Claims Officer to proceed in accordance with the provisions of this Chapter shall not be questioned in any Civil Court."

This sub-Section only authorizes the Claims Officer to proceed as provided in the Act, which does not mean that he is empowered to decide all questions relating to the secured debts or claims. It is only the jurisdiction to proceed further in accordance with the provisions of the Act, that is guaranteed to him at this stage, and it is this limited jurisdiction that cannot be questioned in any Civil Court. What is the extent of his power is provided in the following Sections.

6. We are not concerned in these proceedings with section 22 or section 24 or subsequent

Sections of the Act. The objection that was raised by the petitioner in regard to the character of the debt is not related to any specific provision of the Act. Nevertheless, it was an objection that he was entitled to raise in order to safeguard his rights. The only provision in the Act, under which the Claims Officer can make an enquiry at this stage, it is Section 23 which is reproduced below :

"23(1). On the date fixed for the hearing of the case, or on any subsequent day to which the hearing may be adjourned, the Claims Officer shall require proof of the validity and subsisting character of the secured debt or claim.

(2) Where the debtor objects to the claim preferred by any creditor on the ground that the debt not incurred or that it is not binding on the debtor, the Claims Officer shall not determine the amount due on any sue claim and nothing contained in Sections 24 to 27 shall apply to any such claim."

'The enquiry that is contemplated is only under section 23(1), for if an objection is raised to the creditor's application by the debtor that the debt was either not incurred or is not otherwise binding on him, the Claims Officer cannot proceed further under the Act. This enquiry under Sub-Section (1) of section 23 is directed to the following two points and no others, viz.,

- (1) validity of the secured debt or claim, and
- (2) subsisting character of the secured debt or claim.

This postulates that the enquiry does not cover the question whether the debt or claim is at all secured. It is only when its character as a secured debt or claim is not in dispute that the Claims Officer may require proof regarding the two points mentioned above. This is in keeping with the provisions of section 18 of the Act, which defines the purpose for which the Claims Officers are appointed.

7. It was contended on behalf of the debtor, respondent No. 3, that as in this case the charge was already created by the parties either orally before they presented the application to the Court to record the terms of compromise, or by embodying it in the said application, the objection raised by the petitioner could not relate to the existence of the secured debt but to its validity or subsisting character, due either to want of registration of the application or the order passed thereon, or due to the failure of the Court to record the charge in the order. What exactly, however, was the character of the objection is not a matter of interpretation or conjecture and must be referable to the objection itself. On a reading of the petitioner's written statement, dated 19th May 1951, it appears that he clearly denied the existence of the debt as a secured debt for the reason that although the parties prayed that the proprietary shares should be kept under charge but the Court did not accept the prayer of the parties and merely directed the previous attachment of the shares to continue as before". He accordingly prayed :

"As the non-applicant's debt does not constitute a 'secured debt' under section 17(a), the

present application does not lie."

It is, therefore, clear that it was the character of the debt as a secured debt that was denied by the petitioner in the proceedings before the Claims Officer; therefore, the enquiry under section 23(1) of the Act could not be directed on that point, however apparent the question might be considered to be.

8. In the view that we have taken it is not necessary to consider the question that was posed. In - '*Queen v. Commrs. for Special Purposes of the Income Tax*<sup>1</sup>', which in terms of the instant case may be stated thus, viz., whether the statute does or does not entrust to the Claims Officer himself the jurisdiction to determine whether or not the preliminary state of facts essential to give him jurisdiction to act under the statute exists. This question may arise in the matter provided in Section 21(2) of the Act. So far as Section 23 is concerned, the Claims Officer's enquiry is limited to the two questions expressly mentioned in it, which do not cover the question as to whether a charge shall be created either at law or by act of the party. Where this question is raised, the Claims Officer should obviously keep the proceedings pending until the debt is decided in a competent Civil Court.

9. The impugned orders of the Claims Officer and the Board of Revenue are accordingly quashed, and it is directed that further proceedings be stayed until respondent No. 3 obtains a declaration from a competent Civil Court that the debt was a secured debt within the meaning of Section 17(a), M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951). Parties shall suffer their own costs. The petitioner is entitled to refund of the outstanding amount of the security.

Petition allowed.

Cases Referred.

<sup>1</sup>(1888) 21 Q B D 313