

inamullah Vs. Babu Ram

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Court : Allahabad

Decided On : Jan-15-1937

Reported in : AIR1937All360

Appellant : inamullah

Respondent : Babu Ram

Judgement :

ORDER

1. The question on which the opinion of this Court is invited by the learned Judge of the Court below is as follows:

Should the execution proceedings taken by the decree-holder against the surety Kanhai Lal, be stayed because two of the principal judgment-debtors have applied under Section 4, Encumbered Estates Act of 1934?

2. The brief history of the litigation between the parties is this : Sheikh Inam Ullah, decree-holder, obtained a decree under the provisions of Rule 6 of Order 34, Civil P.C., against Babu Ram, Makkhan Lal and Raghunath Dass and against the assets of Mul Chand in the hands of Mt. Hira Kuar, on the 8th November 1930, for a sum of Rs. 5,410-8-0 together with future interest at Rs. 6 per cent. There was an appeal against that decree, but it was dismissed by this Court on the 19th December 1934. The judgment-debtors made an application for the amendment of the decree under the provisions of the T.J. P. Agriculturists' Belief Act of 1934, and

the amendment prayed for was allowed. One of the terms under the amended decree was that the judgment-debtors would pay a sum of Rs. 1,000 yearly to the decree-holder. This was not done and, therefore, the decree-holder made an application for execution of his decree and got Babu Ram and Makkhan Lal arrested. The judgment-debtors prayed for one month's time within which to pay a sum of Rs. 1,000 to the decree-holder. The latter would not agree unless some security was given and thereupon two persons Kanhai Lal and Ghasi Ram executed a security bond under which they made themselves liable for the payment of a sum of Rs. 1,006 if the judgment-debtors did not pay the sum. The amount was not paid to the decree-holder and thereupon he made an application for execution of his decree against one of the sureties Kanhai Lal. This he did under the provisions of Section 145, Civil P.C. Babu Ram, one of the judgment-debtors, and Mt. Hira Kuar made an application under the provisions of Section 4, Encumbered Estates-Act, to the Collector. Kanhai Lal, against whom the decree-holder had applied for execution, prayed that the proceedings in execution should be stayed against him as an application had been made by some of the judgment-debtors under Section 4, Encumbered Estates Act. The decree-holder opposed this application for postponement of the proceedings in execution against Kanhai Lal, surety. The learned Judge of the Court below found some difficulty in deciding this point and has, therefore, referred the question mentioned previously in this judgment to this Court for decision. Section 7, Encumbered Estates Act (Act 4 of 1935), among other things enacts as follows:

(1) When the Collector has passed an order under Section 6 the following consequences shall ensue : (a) all proceedings pending at the date of the said order in any civil or revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such Court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued.

3. We are clearly of opinion that having regard to the provisions of Section 7 referred to above, the proceedings against the surety should be stayed. The provisions of Section 7 are very wide and it enjoins that all proceedings pending at the date of the said order in respect of any public or private debt to which the landlord is subject shall be stayed. There can be no doubt whatsoever that the proceedings against the surety are covered by the provisions of this section. These proceedings are proceedings in execution pending at the date of the order of the Collector in respect of which a debt is due by a landlord. We have to take note of the provisions of Section 9, Encumbered Estates Act in dealing with this question. That section enacts the procedure to be followed by the special Judge when dealing with the applications made under the provisions of this Act. In the present case there are several judgment-debtors. It is true that only two of them have applied under Section 4 of the Act, but it shall be the duty of the Judge to make the other judgment-debtors parties to the suit and finally he would decide the question as to how much in all is due to the decree-holders before us and other decree-holders and what is the amount for which the various judgment-debtors are liable to their creditors, it is conceivable that after this inquiry has been made it may be found that nothing is due to the decree-holder from the judgment, debtors. It is, however, for the purpose of this case not at all necessary to go into this question. The decree-holder is not without his remedy. If his application for execution against the surety is stayed under Section 7, Encumbered Estates Act, it will be still open to him to institute a suit for the recovery of the amount for which the sureties made themselves liable. It is unfortunate that the security-bond, which the two sureties executed in favour of the decree-holder, is not before us, and we are not, therefore, in a position to make a definite pronouncement on this question. In view of all that has been said above we hold that the proceedings which are pending in the Court below for execution of decree against the sureties should be stayed till the matter has been decided by the Court which will hear the application of the judgment-debtors under the Encumbered Estates Act. Our answer to the reference is, therefore, in the affirmative. We do not make any orders as to costs.