

1969 Present : Sirimane, J., and Samerawickrame, J.

M. ATHAMBAWA, Appellant, and I. P. BEE BEE, Respondent

S. C. 274/66 (F)—D. C. Batticaloa, 4868/M

Debt Conciliation Ordinance (Cap. 81), as amended by Act No. 5 of 1959—Application to effect a settlement thereunder—Bar of subsequent civil action—Inapplicability to an unsecured debt—“Debtor”—“Debt”—Sections 14 (1), 17 (c), 24 (2) (c), 26 (1), 64.

Though the term “debt”, according to section 64 of the Debt Conciliation Ordinance, “includes all liabilities owing to a creditor in cash or kind, secured or unsecured . . .”, section 14 (1) does not permit a debtor to make an application to the Board for the settlement of an unsecured debt owed to a secured creditor.

Where a debtor makes an application to the Board for the settlement of a secured debt, the disclosure under section 17 (c) of an unsecured debt due to the same creditor on a promissory note does not have the effect of making the unsecured debt “a matter pending before the Board” within the meaning of section 56 so as to debar the creditor from instituting action subsequently in a civil court to recover the amount of the unsecured debt.

APPPEAL from a judgment of the District Court, Batticaloa.

C. Ranganathan, Q.C., with *A. R. Manzoor*, for the plaintiff-appellant.

S. Sharvananda, for the defendant-respondent.

Cur. adv. vult.

May 17, 1969. SIRIMANE, J.—

The plaintiff filed this action against the defendant by way of summary procedure, for the recovery of a sum of Rs. 1,500 and interest due to him on a promissory note.

The learned District Judge made order staying proceedings as he was of the view that this matter was pending before the Debt Conciliation Board, and in accordance with the provisions of section 56 of the Debt Conciliation Ordinance (Cap. 81) he had no jurisdiction to entertain the action.

Section 14 (1) of that Ordinance enables a debtor to “make an application to the Board to effect a settlement of the *debts* owed by him to all his *secured creditors* or any one or more of them.”

For the purposes of this case, it is sufficient to note that the term “debtor” in the Ordinance as amended by Ordinance No. 5 of 1959 means a person

“who has created a mortgage or charge over any immovable property or any part thereof”

Though the term "debt", according to section 64, "includes all liabilities owing to a creditor in cash or kind, secured or unsecured", I am of the view that in the context of section 14 (1) the words "*debts owed by him to his secured creditors*" refer only to secured debts.

I am unable to accept the argument that a debtor could, under section 14 (1) make an application to the Board for the settlement of an unsecured debt owed to a secured creditor.

In this case the defendant also owed another debt to the plaintiff on a mortgage bond. The defendant could undoubtedly make an application to the Board in respect of that debt, as in fact he has done. When such an application is made, section 17 (e) requires that the debtor should also furnish "particulars of all debts due by the applicant to unsecured creditors". This information is obviously needed to assist the Board in making a just and equitable order in respect of the secured debt. The disclosure (as in this case) under section 17 (e) of an unsecured debt due to the same creditor does not have the effect of making that unsecured debt, "a matter pending before the Board". The learned District Judge, in my opinion, was wrong in taking the view that he had no jurisdiction to entertain an action in respect of the unsecured debt.

Unsecured debts can be reviewed by the Board only in certain instances, e.g., under section 24 (2) (c), where an application has been made by a creditor, and the debtor desires that the Board should attempt to effect a settlement between him and *all* his creditors whether secured or unsecured. The debtor in such a case must make a written request. Or again, under section 26 (1), if, after the examination of an applicant, the Board itself is of opinion that it is desirable to attempt to effect a settlement between a debtor and *all* his creditors, whether secured or unsecured, a certain procedure has to be followed. But the unsecured debt in the present case was not considered under those provisions.

The appeal is allowed, and the order of the District Judge staying proceedings is set aside.

The case is sent back to the District Court for further hearing in compliance with the provisions of chapter 53 of the Civil Procedure Code.

The appellant is entitled to costs of this appeal.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.