

1971 *Present*: Samerawickrame, J., and Thamotheram, J.

T. PRAISOODY and another, Appellants, and
K. GURUNATHAPILLAI and another, Respondents

S.C. 362/68 (F)—D. C. Chavakachcheri, 3164/L

Debt Conciliation Ordinance (Cap. 81)—Sections 19A (1), 49, 56—Conditional transfer of immovable property—Debtor's application for relief—Time limit—Computation—Form of application under the Ordinance.

Where the transferor in a "conditional transfer of immovable property" seeks relief under the Debt Conciliation Ordinance, the period of thirty days within which section 19A (1) of the Ordinance requires that his application should be made must be computed according to the well known principle that in calculating a period within which an act is required to be done, the day from or after which such period is to be commenced is excluded.

¹ (1954) 56 N. L. R. 566.

When the Board considers whether an application for relief is in proper form, section 49 of the Debt Conciliation Ordinance empowers the Board to entertain the application if it substantially conforms to the requirements of the relevant provisions.

APPEAL from a judgment of the District Court, Chavakachcheri.

O. Chellappah, for the defendants-appellants.

S. Sharvananda, for the plaintiffs-respondents.

Cur. adv. vult.

December 9, 1971. SAMERAWICKRAME, J.—

Much argument was addressed to us as to whether the District Court had jurisdiction to consider whether the order of the Debt Conciliation Board holding that the application had been made in time was or was not correct but I find that the matter may be decided simply on the facts.

By deed No. 4183 dated 22.8.1960 the defendants conveyed a land to the plaintiffs subject to the condition that if the defendants paid a sum of Rs. 5,000 and interest within a period of five years from the date of execution of the deed the plaintiffs should execute a retransfer to them. It is a well known principle that in calculating a period within which an act is required to be done, the day from or after which such period is to be commenced is excluded—vide *Wickramasooriya v. Appu Singho*¹, 1 N. L. R. 178. As the deed was executed on 22.8.1960 the five year period commenced to run from 23.8.1960 and ended at midnight on 22.8.1965.

Section 19. A (1) of the Debt Conciliation Ordinance reads :—

“The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such conditional transfer of immovable property as is a mortgage within the meaning of this Ordinance unless that application is made at least thirty days before the expiry of the period within which that property may be redeemed by the debtor by virtue of any legally enforceable agreement between him and his creditor.”

As the period within which this property could be redeemed in terms of Deed No. 4183 ended at midnight on 22nd August, 1965, the application had to be made thirty days before that time. The application therefore had to be made before the 24th of July, 1965. The application marked D1 had been posted on 22nd July, 1965 and had been received

¹ (1955) 1 N. L. R. 178.

at the office of the Debt Conciliation Board on 23rd July, 1965. The application was accordingly made in time and was pending from 23rd July, 1965.

Learned counsel for the plaintiffs-respondents made the point that the application was not in proper form. As stated by the Board in its order it substantially conforms to the requirements of the relevant provisions. Section 49 provides that, "it shall be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form." The Debt Conciliation Board itself regarded it as sufficiently complying with the requirement and was prepared to act on it. I do not think that this point can be upheld.

The main matter argued before us was whether the application was or was not made in time and, if it was in fact made out of time, the effect of the order of the Debt Conciliation Board holding the contrary. In view of my finding that the application was made in time it was pending at the time this action was filed on 24th January, 1966. Section 56 prohibits a civil Court from entertaining any action in respect of any matter pending before the Board. I therefore hold that the objection raised by the defendants-appellants that the Court had no jurisdiction to entertain the plaintiffs' claim should have been upheld.

Accordingly I allow the appeal, set aside the order of the learned District Judge and direct that order be entered dismissing the plaintiffs' action with costs. The defendants-appellants will also be entitled to costs of appeal.

THAMOTHERAM, J.—I agree.

Appeal allowed.

