

1965 Present : Tambiah, J., and Sirimane, J.

HILDA PERERA, Appellant, and LAWRENCE PERERA, Respondent

S. C. 80 (Inty.)—D. C. Negombo, 441/MB

*Debt Conciliation Ordinance (Cap. 81)—Sections 19 and 56—Bar of civil actions—
Date from which such bar operates.*

Section 56 (a) (i) of the Debt Conciliation Ordinance reads as follows :—

“ No civil court shall entertain any action in respect of any matter pending before the Board. ”

Held, that the date from which an application for relief under the Debt Conciliation Ordinance is regarded as pending before the Board is the date when the application is received by the Board and not the date when it is entertained by the Board under section 19 of the Ordinance.

APPEAL from an order of the District Court, Negombo.

E. B. Wikramanayake, Q.C., with *S. W. Jayasuriya*, for the defendant-appellant.

C. Ranganathan, for the plaintiff-respondent.

Cur. adv. vult.

April 6, 1965. TAMBIAH, J.—

This is a mortgage action. The defendant made an application on 5.11.62 to the Debt Conciliation Board. In his application he set out certain matters and asked for certain reliefs. The application was received by the Board on 6.11.62. Thereafter, the plaintiff filed this action to enforce the mortgage bond on 22.11.62. In April, 1963, the Debt Conciliation Board entertained this application.

The defendant filed answer and moved for dismissal of the action on the ground that the Court had no jurisdiction to entertain this action, in view of the provisions of Section 56 of the Debt Conciliation Ordinance, Chapter 81. The relevant portion of Section 56 of the Debt Conciliation Ordinance reads as follows :—

“ No civil court shall entertain any action in respect of any matter pending before the Board. ”

The learned District Judge has taken the view that an action is only pending when the defendant has received notice of the action. He drew an analogy between the doctrine of *lis pendens* and the receipt of notice of this application by the creditor and he held, therefore, that the action was maintainable. From this order, the defendant has appealed.

The short point for consideration is whether, when an application had been received by the Debt Conciliation Board, Section 56 (a) (i) operates, or whether it operates only after the Board has entertained the application.

Mr. Wikramanayake, on behalf of the appellant, contended that proceedings are initiated by an application, and, when the application is received by an officer of the Board, proceedings commence, and are pending before the Board. He submitted that the fact that the Board had to act under Section 19 of the Debt Conciliation Ordinance to consider whether it would entertain the application, does not, in any way, alter the situation.

Mr. Ranganathan, on behalf of the respondent, contended that the matter is only pending before the Board after the Board had entertained the application under Section 19 of the Debt Conciliation Ordinance.

The Debt Conciliation Ordinance was enacted to provide for the establishment of a debt conciliation Board and other matters connected with the purposes for which it was established. It was clearly a piece of legislation intended to give relief to debtors. The language of Section 56 of the Ordinance is plain. It states that “ no civil court shall entertain any action in respect of any matter pending before the Board. ” By the word “ matter ”, is meant the particulars in the application. In my view, the moment the application is received by the Board, the matters stated in the application are pending before the Board. Thereafter, it is for the Board to decide as to whether they wish to entertain the application or not. We are fortified in taking this view by the ruling in *The Agricultural and Industrial Credit Corporation of Ceylon v. de Silva*¹. In this connection, it is noteworthy that under Section 17 of the repealed Partition Ordinance, any alienation of undivided interests pending a partition action is null and void. It was held in *Fernando v. Amarima*² that “ under the provisions of Section 17 of the Partition Ordinance, the date after which an alienation is void is the date of the filing of the plaint. ”

¹ (1949) 41 C. L. W. 96.

² (1922) 4 C. L. Rec. 135.

If the contention of Mr. Ranganathan is correct, the relevant portion of Section 56 of the Debt Conciliation Ordinance would have read : “No civil court shall entertain any action in respect of any matter *entertained* by the Board.”

The function of a Court is not to legislate but to interpret the plain words found in a Statute. If the interpretation given to Section 56 of the Debt Conciliation Ordinance by Mr. Ranganathan is adopted, great hardship would be caused to debtors who have already filed applications and which are awaiting attention by the Board. Due to various reasons, applications by debtors do not come before the Board for consideration for a long period of time.

There is, therefore, no reason for us to place the construction urged by Mr. Ranganathan in considering Section 56 (a) (i) of the Debt Conciliation Ordinance.

For these reasons, we set aside the order of the learned District Judge and dismiss the plaintiff's action with costs in both Courts.

SIRIMANE, J.—I agree.

Appeal allowed.
