

1967 Present : Abeyesundere, J., and Siva Supramaniam, J.

M. A. M. SALIM and others, Appellants, and THE CHARTERED BANK, COLOMBO, Respondent

S. C. 646/64—D. C. Colombo, 1104/Spl.

Debt Conciliation Ordinance—Application thereunder—Settlement for sum greater than twice the amount of principal—Decree absolute in terms of such settlement—Invalidity—Right of appeal to Supreme Court—Sections 33 (b), 43, 44.

The prohibition of an appeal to the Supreme Court contained in the proviso to section 44 (2) of the Debt Conciliation Ordinance does not apply to a decree absolute which a District Court purports to enter in terms of section 44 (1) of the Ordinance in respect of a settlement under which the creditor is allowed a greater amount in satisfaction of both principal and interest due to him than twice the amount of such principal. Such a settlement contravenes the provisions of section 33 (b) and cannot be regarded as a settlement under the Ordinance.

APPEAL against a decree entered by the District Court, Colombo.

H. V. Perera, Q.C., with *Hanan Ismail*, for the debtors-appellants.

H. W. Jayewardene, Q.C., with *S. J. Kadirgamar* and *S. S. Basnayake*, for the creditor-respondent.

March 8, 1967. ABEYESUNDERE, J.—

The appellants in this case made an application to the Debt Conciliation Board under the Debt Conciliation Ordinance for a settlement of a debt of Rs. 90,270/69 and interest accrued thereon which they owed to the respondent. Upon that application the respondent who was the creditor and the appellants who were the debtors were served with the requisite notice by the Debt Conciliation Board and after hearing the parties to the application the Debt Conciliation Board recorded an amicable settlement which the respondent entered into with the appellants. Thereafter the appellants defaulted in complying with the terms of the settlement. Thereupon the respondent made an application under section 43 of the Debt Conciliation Ordinance to the District Court of Colombo for a decree in favour of the respondent in terms of the settlement. The District Court entered decree nisi upon such application. After inquiring into whether or not the decree nisi should be made absolute, the District Court made order on 21st October, 1964, making the decree nisi absolute. The appellants have appealed from that order.

Mr. H. W. Jayewardene, Q.C., appearing for the respondent, raised the objection that there was no right of appeal in view of the provisions of the proviso to sub-section (2) of section 44 of the Debt Conciliation Ordinance. That proviso states that no appeal from, or application for revision of, a decree nisi made absolute under sub-section (1) of section 44 shall lie to

the Supreme Court. Mr. H. V. Perera, Q.C., appearing for the appellants, submitted that the aforesaid proviso applied only to a decree absolute entered in respect of a settlement under the Debt Conciliation Ordinance and that the expression "settlement under the Debt Conciliation Ordinance" meant a settlement in accordance with the provisions of that Ordinance. He stated that the amount allowed in the settlement in the instant case to the creditor in satisfaction of both principal and interest due to him was in excess of the maximum amount permitted by section 33 (b) of the Debt Conciliation Ordinance. That section provides that in any settlement under that Ordinance no creditor shall be allowed a greater amount in satisfaction of both principal and interest due to him than twice the amount of such principal. The settlement in this case states that it is agreed that a sum of Rs. 192,892/45 is due to the creditor up to 31st October, 1962, and then sets out the manner in which that amount shall be paid by the debtors. It is also indicated in the settlement that the principal debt is Rs. 90,420/69 due on mortgage bond No. 459 dated 7th June, 1954. The principal that was due to the respondent from the appellants was Rs. 90,420/69 and the maximum that the respondent could have been allowed in a settlement under the Debt Conciliation Ordinance, in accordance with the provisions of section 33 (b) of that Ordinance, in satisfaction of the principal and interest due to him was Rs. 180,841/38, but in the settlement the respondent is allowed Rs. 192,892/45. The settlement is therefore in contravention of section 33 (b) of the Debt Conciliation Ordinance. Consequently we hold that the settlement is not a settlement under the Debt Conciliation Ordinance.

A decree nisi under section 43 of the Debt Conciliation Ordinance must be in terms of a settlement under that Ordinance. The settlement in the instant case is held by us to be not a settlement under the Debt Conciliation Ordinance. The learned District Judge could not therefore have entered a decree nisi under section 43. An appeal from, or an application for revision of, a decree nisi entered in terms of a settlement under the Debt Conciliation Ordinance and made absolute does not lie to the Supreme Court. As the decree nisi made absolute in the instant case is in terms of a settlement which we hold is not a settlement under the Debt Conciliation Ordinance, the prohibition of appeal contained in the proviso to sub-section (2) of section 44 of that Ordinance does not apply to the decree from which the appeal before us is made. A statutory provision disallowing the right of appeal must be strictly interpreted. We hold that the appellants have a right of appeal.

Mr. H. W. Jayewardene, Q.C., submitted that, if it is held that the settlement provides as the amount due to the respondent a sum which is in excess of the maximum permitted by section 33 (b) of the Debt Conciliation Ordinance, the settlement may be held to be valid in so far as the amount specified therein less the impeached excess is concerned and that this Court may permit a decree to be entered in terms of the settlement treating the amount due to the respondent as being the amount

stated in the settlement minus the impeached excess. If the learned District Judge is called upon to enter a decree nisi in accordance with the submission of Mr. Jayewardene, the learned District Judge will have to enter a decree nisi not in terms of the settlement between the creditor and the debtors but in terms of a settlement varied by him. Section 43 of the Debt Conciliation Ordinance requires the decree nisi to be in terms of the settlement entered into by the creditor and the debtors. We therefore hold that Mr. Jayewardene's submission that the settlement be treated as valid up to the amount permitted by section 33 (b) of the Debt Conciliation Ordinance cannot be upheld.

For the aforesaid reasons we set aside the decree nisi made absolute by the learned District Judge and dismiss with costs the respondent's application to the District Court for the enforcement of the settlement.

The appellants are entitled to their costs of the appeal.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

