

Ponniah. K V. Rajaratnam

127/1964

Present: Abeyesundere, J., and G. P. A. Silva, J.

**K. PONNIAH and Wife, Appellants, and N. RAJARATNAM,
Respondent**

S. C. 436/63—D. C. Jaffna, 5266/M. B.

*Debt Conciliation Ordinance—Section 56—Meaning of words
“ pending ” and “ entertain ”—Section 19a (2).*

Section 56 (a) (i) of the Debt Conciliation Ordinance is as follows :
—“ No civil court shall entertain any action in respect of any matter
pending before the Board. ”

Held, that the word “ pending ” means “ awaiting decision or
settlement ” and the word “ entertain ” means “ consider ”.

APPEAL from a judgment of the District Court, Jaffna.

P. Nagendran, for the defendants-appellants.

V. Arulambalam, for the plaintiff-respondent.

Cur. adv. vult.

December 16, 1964. **ABEYESUNDERE, J.—**

In this action the plaintiff sued the defendants on a mortgage bond to recover the principal and interest due and to obtain an order declaring the mortgaged properties to be bound and executable for the payment of the moneys due upon the mortgage and to enforce such payment by a judicial sale of such properties. The plaint was filed on 10.12.62. The defendants made an application dated 24.11.62 to the Debt Conciliation Board, hereinafter referred to as the Board, to effect a settlement of the debt owed by them to the plaintiff. That application was received in the office of the Board on

26.11.62. The defendants pleaded in their answer that their application was pending before the Board when the plaint was filed in the District Court of Jaffna and that therefore, by reason of section 56 of the Debt Conciliation Ordinance, hereinafter referred to as the Ordinance, the said District Court should not have entertained the action of the plaintiff. The learned District Judge who tried the action held that at the time the plaint was filed the application of the defendants was not pending before the Board and entered judgment and decree in favour of the plaintiff. The defendants have appealed from such judgment and decree.

The learned District Judge was of the view that the application of the defendants could not be said to be pending before the Board until it had been entertained by the Board and, following the decision of this Court in the case of *Simon Silva v. The Debt Conciliation Board* [1 (1963) 65 N. L. R. 13S ; 64 G. L. W. 36.], held that, as the letter P4 dated 21.1.63 sent by the Secretary of the Board to the plaintiff stated that the application of the defendants would be dealt with by the Board, the said application had not been considered by the Board even on that date and therefore when the plaint was filed on 10.12.62 the said application had not been entertained by the Board. The learned District Judge appears to have assumed that the expression “ pending before the Board ” occurring in section 56 of the Ordinance is synonymous with the expression “ entertained by the Board ”. In the context relevant to this appeal the word “ pending ” means “ awaiting decision or settlement ” and the word “ entertain ” means “ consider ”. In the aforesaid case of *Simon Silva v. The Debt Conciliation Board* this Court construed the word “ entertains ” occurring in section 19a (2) of the Ordinance to mean “ considers ” and indicated in the context of that section that when the Board considers an application the Board entertains that application. The judgment of this Court in the aforesaid case does not apply to the action to which the appeal under consideration relates as it is the word “ pending ” occurring in section 56 of the Ordinance and not the word “ entertains ” occurring in section 19a (2) of the Ordinance that has to be construed for the purpose of determining the said action. The learned District Judge has misdirected himself in construing the

word “ pending ” to have the same meaning as the word “ entertains ” .

From 26.11.62, which was the date on which the application of the defendants was received in the office of the Board, that application was awaiting a decision on it by the Board and, as is evident from the letter P4 sent by the Secretary of the Board to the plaintiff, it was awaiting such a decision even on the date of that letter, namely 21.1.63. Therefore when the plaint was filed in the District Court of Jaffna on 10.12.62, the application of the defendants was pending before the Board. That Court was consequently prohibited by section 56 of the Ordinance from entertaining the action of the plaintiff.

I set aside the judgment and decree of the learned District Judge and dismiss the plaintiff’s action. The defendants are entitled to their costs of the action in the District Court and their costs of the appeal.

G. P. A. SILVA, J.—I agree.

Appeal allowed.