

CRIMINAL REVISION.

Before Mr. Justice E Maung.

R.M.M.R.M. CHETTYAR FIRM (APPLICANT)

1947

Nov. 3.

v.

MAUNG KYAW HTU AND ONE (RESPONDENTS).*

Agricultural Debts Moratorium Act (Burma Act XXIV of 1947)—Ss. 2 (b) and 3—S. 2 (b) when applicable—S. 3 when applicable to pending cases.

Held: S. 3 of the Act does not apply to pending suits. In pending suit the plaintiff seeks to have defendant's liability declared. Before he can reap the fruits of that decree he must apply for execution. It is at that stage that s. 2, clause (b), comes into play and it would then be for the defendants to claim that the decree could not be enforced and it must be kept under suspension.

V. S. Venkatram for the applicant.

E MAUNG, J.—The applicant instituted a suit for the recovery of Rs. 393-12 on the 31st March 1947. This suit was met with a plea by the defendants under section 3 of the Agricultural Debts Moratorium Act of 1947 (Burma Act XXIV of 1947). The defendants' case was that in view of section 3 of the Act the suit could not proceed. The learned trial Judge accepting the defendants' plea accordingly stayed further proceedings in the suit. The plaintiff has come up to this Court on revision against this order.

It must be conceded, as the learned trial Judge himself has said in the course of his judgment, the Act was couched in very unsatisfactory language. Section 3 of the Act leaves much to be desired.

I have not had the advantage of hearing learned counsel representing the respondents who were defendants at the trial Court; but it seems to me

* Civil Revision No. 57 of 1947 against the order of the Subordinate Judge's Court of Thègon.

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clear that section 3 of the Act does not apply to pending suits ; all that the plaintiff in a pending suit seeks is to have the defendants' liability declared. Before he can expect to reap the fruits of that decree he must apply for execution and it is at the stage when he applies for execution that section 2, clause (b), of the Act would come into play and it would then be at that stage that the defendants may, if at the time section 3 is still in operation, claim that the decree of a civil Court which is to be enforced—would be the debt which could not be enforced or must be kept under suspension. Till that stage is reached and in the absence of any specific provision to the contrary, I am definitely of the opinion that the present suit must proceed.

Accordingly, I set aside the order of the trial Court and direct that the case be proceeded in due course of law. The applicant is entitled to costs of this application. Advocate's fee 3 (three) gold mohurs.