

Bhogilal Fulchand Vs. Chhanaji Bakerji Thakarda

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Court : Mumbai

Decided On : Sep-16-1949

Reported in : AIR1950Bom329; (1950)52BOMLR408

Judge : Rajadhyaksha and ;Chainani, JJ.

Acts : Debt Law; [Bombay Agricultural Debtors' Relief Act, 1947](#) - Sections 4(1), 19 and 19(1)

Appeal No. : Civil Revn. Appln. No. 694 of 1948

Appellant : Bhogilal Fulchand

Respondent : Chhanaji Bakerji Thakarda

Advocate for Def. : K.T. Pathak, Adv.

Advocate for Pet/Ap. : C.G. Shastri. Adv.

Judgement :

Rajadhyaksha, J.

1. This is an application in revision against an order passed by the Second Joint Civil Judge (Junior Division), Ahmedabad, directing that Suit No. 2213 of 1947 pending before him should be transferred to the Chairman of the Debt Adjustment Board for disposal. The facts giving rise to this appeal are few. The Debt Adjustment Board was established in the district of Ahmedabad on 2nd January 1947. Accordingly the last date for filing applications for adjustment of dates was 31st July 1947. On 3rd September 1947, the plaintiff, a debtor, filed a suit for redemption against the defendant alleging that a document of sale which he had passed in favour of the defendant was really in the nature of a mortgage. On 8th April 1948, an application was made to the Court saying that 'the plaintiff was an agriculturist, that he had evidence to prove his status as an agriculturist, that he should be held an agriculturist and that the matter should be sent to the Debt Adjustment Board.' This was quite an improper application under Section 19, Bombay Agricultural Debtors' Relief Act, as the applicant, in order to get the pending suits transferred to the Debt Adjustment Board, had to allege, firstly, that he was a debtor, and, secondly, that his total debts did not exceed Rs. 15,000. However, the defect was rectified to some extent on 7th July 1948, when a purshis was given that the plaintiff was an agriculturist and that his debts did not exceed Rs. 15,000. Even this purshis was not quite in order as it was not alleged that the plaintiff was a debtor within the meaning of the Act. However, the learned Civil Judge appears to have treated it as a proper application under Section 19. The application was resisted by the defendant on the

ground that the suit was filed after the expiry of the period of filing applications before the Debt Adjustment Board. The learned Civil Judge was of the opinion that under Section 19, Bombay Agricultural Debtors' Relief Act, the proceedings had to be transferred to the Board whenever it was contended that the party was a debtor and that his debts did not exceed Rs. 15,000. He accordingly made an order for the transfer of the proceedings to the Chairman of the Debt Adjustment Board, namely, the fourth joint Court (Junior Division), for disposal. Against that order the defendant has come in revision.

2. In our opinion, this application must succeed. It was contended by Mr. Pathak for the opponent that in view of our observations in *Champaklal Chhabilrai v. Commonwealth Ass. Co.*, : AIR1950Bom84 the order made by the learned Judge is correct. He invited our attention to our observations made at p. 785. Those observations have, however, got to be read with the facts of the case with which we are dealing. In that case the suit was filed long before the last date fixed for making an application to the Court under Section 4 of the Act, namely, 1st August 1947, and the application for the transfer of the suit was made on 29th July 1917. The only point that we had to consider was whether it was incumbent that an application should be pending before the Court on the date on which a request was made for a transfer of the suit and we held that the existence of an application was not necessary and that a pending proceeding could be transferred to the Court even in the absence of an application made under Section 4 (1) of the Act. We did not then have to consider the position which would arise if the suit was instituted after the last date fixed for making an application to the Court and the application for a transfer of the suit to the Debt Adjustment Board was consequently made after that date. That position was considered by a Division Bench of this Court in *Somabhai Shanabhai v. Narandas Zaverdas* 51 Bom. L. R. 461 : A. I. R 1949 Bom. 308. In that case, the last date for making an application under Section 4 (1) was 31st August 1945, and the suit was instituted 9 months later, i.e. on 24th July 1946, and thereafter an application was made for a transfer of the suit to the Debt Adjustment Board. It was held by the Division Bench consisting of the Chief Justice and Bavdekar J., that

'Under Section 19 (1), Bombay Agricultural Debtors', Relief Act, 1947, only such suits, appeals, applications for execution and proceedings can be transferred which were pending at the date when an application under Section 4 could be made to the Special Court set up under the Act.'

Mr. Pathak for the opponent has argued that the deletion of the words 'on the date of the application under Section 19 (1) of the Act' has made difference in law and that it was not necessary that the suit itself should be filed before the last date fixed for making an application. In our opinion, the words which have been deleted make no difference to the interpretation of the Act so far as the point that we have got to consider is concerned. The anomalous position that would arise if the submission made by Mr. Pathak is acceded to, has been considered by the learned Chief Justice in the following passage of his judgment which appears at p. 463 of the report. He said :

'. . . the submission that is made to us and which we are asked to accept is that although the time for making the application for adjustment or settlement of debts had already expired when the suit was filed, still that suit being a pending suit within the meaning of Section 19 should be transferred to the Court set up under the Act. If we were to accede to this contention, a very curious and to my mind a very illogical result would ensue. Indisputably, if no suit had been filed by the creditor, neither the

debtor nor he nor any other creditor could have made an application for the adjustment of debts under Section 4 of the Act. If such an application had been made, it would be clearly barred and could not have been dealt with by the Court set up under the Act. According to Mr. Patel, merely because a suit is filed, the pendency of that suit gives a higher and a better right to the debtor than would have been enjoyed by him if no such suit had been filed. That to my mind is an entirely untenable contention and a contention which does not fit in with the general scheme of the Act.'

With respect we are in agreement with this view. In view of that decision, it is clear that the learned Judge was in error in transferring the suit to the Debt Adjustment Board.

3. We must, therefore, make the rule absolute and direct that the learned Judge himself will proceed with the suit and dispose it of in accordance with law. The applicant will get his costs from the opponent.

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