

(1978) 02 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 294 of 1973

Bajirao Domaji Shreerang and Others

APPELLANT

Vs

Kashirao Ajabrao Deshmukh

RESPONDENT

Date of Decision : 14-02-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 16, Order 21 Rule 2, 151, 2
Maharashtra (Vidarbha Region) Agricultural Debtors Relief Act, 1969 — Section 13, 18, 2, 2(12), 2(4)
Specific Relief Act, 1963 — Section 28

Citation : AIR 1978 Bom 350 : (1978) MhLj 665

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Advocate : M.S. Muley, for the Appellant; D.K. Deshmukh, for the Respondent

Judgement

1. This civil revision raises an interesting question as to application of the Maharashtra Vidarbha Region Agricultural Debtor's Relief Act, 1969 (hereinafter referred to as the "Vidarbha Debtor's Relief Act"). The question arises in this way: Applicants 2 to 4 before me obtained decree in Civil Suits Nos. 36B of 1950 and 1455 of 1958 against opponent Kashirao before me (hereinafter referred to as Kashirao). These two decrees, however, could not be executed as the execution of these decrees was stayed on account of the operation of the Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956. This Act came into force on 1st Oct. 1956 (sic) (28th March 1956?). After the Reorganization of the States, the Vidarbha Debtor's Relief Act came into force on the 7th day of March 1969. This was preceded by an Ordinance which was promulgated on 30-1-1969. As we shall presently see the Vidarbha Debtors Relief Act was to provide and substitute in place of the M. P. Temporary Postponement of Execution of Decrees Act, 1956 and the Ordinance in regard to debts due under the decrees of agriculturists in the Vidarbha Region. What was only postponed under the Execution of Decrees Act was, by reason of the

application of the Vidarbha Debtor's Relief Act to become converted into an award executable in accordance with the scheme of the Vidarbha Debtor's Relief Act. Applicants Narayanrao, Sulochanabai and Gangabai the decree-holders in the two suits namely, Civil Suits Nos. 36B of 1950 and 1455/58 had assigned their decrees in favour of Bajirao, the present applicant No. 1 on 14th Jan., 1970 by a registered instrument of assignment. The instrument was registered on the 19th of Jan., 1970.

2. The Vidarbha Debtor's Relief Act required a creditor upon pain of his debt or decree being wiped out to file an application against his debtors before 1-10-1969 for adjustment of his dues. They are then merged into an award under the scheme of the Act. This date, I am informed, was subsequently extended to 1st April 1970. In other words, every creditor who obtained a decree and whose decree was postponed on account of the M. P. Temporary Postponement of Execution of Decrees Act, 1956 had to make an application prior to 1st April 1970 against his debtor for the purposes of an adjustment of his debts under the decree. If he failed to do so, then u/s 13 of the Vidarbha Debtor's Act the debt due from the debtor shall become extinguished under that section. The applicants 2 to 4 before me made an application under the Vidarbha Debtors Relief Act on 30-3-1970. While this application was pending Bajirao filed another application on 19th June 1970 by which he prayed that he is the assignee of the decree passed in favour of Narayan, Sulochanabai and Gangabai. To this application he joined Kashirao as a party and styled this application as being one under Order. 21, Rule. 16, read with Section 151 of the Civil P. C. He contended that both these decrees were assigned in his favour and the decrees have also been transferred for execution to the Civil Judge, Junior Division, Katol. He claimed that by reason of the assignment he was entitled to execute the decree and. therefore, he should be substituted in place of the applicants 2 to 4-- Assignors and the proceedings be allowed to proceed further. This application was filed on 19th of June 1970 i. e. beyond 1st April 1970.

3. This application was dismissed by the learned trial Judge, holding that the assignee was not entitled to file an application since the date for filing of an application by a decree-holder was already over, the application being beyond 1st April 1970. And since on the date of the application filed by Narayan, Sulochanabai and Gangabai on 30th of March 1970, the applicants had already assigned or transferred their right in favour of Bajirao, their application D/-30-3-70 was also not tenable. In view of this, therefore, the learned Judge rejected both the main application as well as Exhibit 12 by which Bajirao had sought to substitute himself in place of Narayan, Sulochana and Gangabai.

4. Against this order passed by the Civil Judge, Junior Division, Katol an appeal was filed to the District Judge, Nagpur being Civil Appeal No. 18 of 1971. This civil appeal was also dismissed, practically on the same grounds on which the trial Court had rejected the application. It was urged before the learned District Judge that an application under the Vidarbha Debtor's Act was an application in

execution and, therefore, the provisions of Order. 21, Rule. 16 of the Civil P. C. apply.

5. Section 35 of the Vidarbha Debtor's Act provides, it was pointed out, that the provisions of the Civil P. C. shall apply and since the Civil P. C. applies, the provisions of Order. 21, Rule. 16 would apply. This argument was repelled by the learned District Judge holding that this was an application for substitution, and not one contemplated under Order. 1 Rule. 10 of the Civil P. C., where a suit is filed in the name of a wrong plaintiff and is sought to strike it off, or where a proper plaintiff had not been joined through a bona fide mistake, or where there is a doubt as to the right plaintiff. He further held that it cannot be said that it was a bona fide mistake on their part when they made the application. The original applicants had not referred to the assignment in their application. Had they done so, it could have been possible to say that at that time they felt doubtful as to who should apply. When the main application had been filed that person had no statutory right on that date to apply for adjustment of the debt. In effect, therefore, what was held by the learned District Judge was that on the date of the application by Narayan, Sulochana and Gangabai i. e. on 30th of March 1970 they had already sold their rights under the decrees. They had no subsisting interest in the decrees having transferred their interest in favour of Bajirao. On the date on which Bajirao filed his application on 19th June 1970, the time for filing an application under the Act was over. Both the main application dated 30th March 1970 and the application dated 19th June 1970, therefore, were dismissed. It was pointed out that if Bajirao's application were to be allowed, assignee Bajirao would be allowed to file an application beyond the period prescribed under the Vidarbha Debtor's Act.

6. It is now necessary to refer to the provisions of the Vidarbha Debtor's Act and to refer to some other relevant sections which provide the scheme for adjustment of debts due under a decree against a debtor. Section 2 is the defining section of the said Act which became applicable to the Vidarbha Region of the Maharashtra State and came into force on 7th March 1969. The term "Creditor" has been defined as meaning the "holding of a decree". The expression "Decree-holder" or "holder of a decree".has not been in terms defined, but we have Sub-section (12) of Section 2 which says that "words and expressions" used in this Act but not defined, shall have the meanings respectively assigned to them in the Civil P. C. 1908, which for our purpose is the relevant Code. In other words the expression a "holder of a decree" would have the same meaning as it would have under the Civil P. C.

7. We then go to Section 35 to which a reference had been made before the learned District Judge. Section 35 not only makes the provisions of the Civil P. C. applicable, but provides particularly by its proviso that the Court may in a proper case and on such terms as may appear to it to be just, exercise its powers to add or strike out parties under Rule 10 of Order 1 in the First Sch. to the said Code in any proceeding pending before it u/s 3, notwithstanding the fact that such

addition, or striking out of parties is to be made after the date specified in Section 3 has elapsed. It seems to me that this proviso to Section 35 of the Vidarbha Debtor's Act had not been cited before the learned District Judge, or his attention not invited thereto. To my mind, if his attention was drawn or attracted to the proviso to Section 35, it would have become clear that addition or striking out of parties as applicable under Order 1, Rule 10 could be made, even after the date for filing an application had expired. That as I pointed out earlier, has been the main reason why both the Courts below had thrown out the application of Bajirao for being substituted in place of Narayan and others. The reason was that it was felt that this would amount to an extension of time for filing an application. As I pointed out, Section 35 provides in terms for such a contingency.

8. I am inclined to think that the case of Bajirao fell under Order 1, Rule 10. As I have already pointed out, Bajirao was an assignee of the decree by reason of assignment dated 14th of Jan. 1970. The question as to whether Bajirao in terms of the Civil P. C. or the definition of the Vidarbha Debtor's Act could be deemed to be a "creditor" or "holder of a decree" or whether Narayan and two others could be deemed to be creditors or holders of a decree was no doubt a question fraught with difficulties and to which a layman cannot be said to have an easy answer, If persons whose names appear in the decree on the date when they made the application dated 30th I March 1970 thinking that they were entitled to make an application and were to make an application for adjustment of, the debts, it cannot be said that that was not a bona fide mistake. Had they not done so they faced the prospect of the debt being extinguished. If it was a bona fide mistake, then it seems to me competent and reasonable that Bajirao should have been substituted in their place. He filed his application notwithstanding that the period or time for filing an application had already expired. Besides proviso to Section 35 in terms allows such an action.

9. I am inclined to think that the Courts below were also in error in rejecting the main application of Narayan and others on the ground that on the 30th of March 1970 when the application was filed they could not be deemed to be the "holders of the decree" as contemplated by the Vidarbha Debtor's Act. I have already referred to the definition of "Creditor" which means "holder of the decree." Section 2(12) says that words and expressions shall carry the same meaning as is assigned to them under Civil P. C.

10. Now the term "holder" is to be found in sub-section (3) of Section 2, Civil P. C.; The term "holder of decree" is inter-changeable and refers to a person who is the holder of a decree. Sub-s. (3) of Section 2, Civil P. C. defines "decree-holder" as being a person in whose favour a decree has been passed." In other words; therefore, as long as a person whose name is inscribed on a decree is to be found as the person in whose favour the decree is passed, then such a person must be deemed to be a decree-holder. His name in certain cases may or may not appear as the plaintiff. As I shall presently point out all that is necessary is

that the decree must be in his favour. It cannot be disputed that the two decrees passed in civil suits Nos. 36B/1950 and 1455/58 were passed in favour of applicants 2 to 4. What is, however, contended is that since there was an assignment of these decrees in favour of Bajirao, applicants 2 to 4 have ceased to be persons in whose favour the decrees were passed, and therefore, holders of the decree. It seems to me that this contention is not well founded and has to be rejected. A reference in this connection has to be made to the definition of "decree holder" as obtaining in the C.P.C, 1882. The former Code denned "decree-holder" as meaning and including a transferee of a decree or order. That definition has not been adopted in the present 1908 Code. This clearly indicates that the legislature did not think it right to include a "Transferee of a decree within the expression "decree holder". That aspect of the matter is now taken care of by the provisions of Order 21 Rule 16 Civil P. C.

11. It would be now necessary to refer to those provisions. Order 21 Rule. 16 Civil P. C. provides for execution of the decree by transferees and lays down that

"Where a decree, or if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it"

This would go to show that the transferee has an option to apply for execution. The use of the verb may indicate that a decree-holder can continue to execute this decree notwithstanding the assignment as long as his name continues to appear as a person in whose favour a decree is passed. In other words, therefore, the transferor's right to execute the decree is not taken away as long as the transferee is not recognised and accepted by the Court. Where the person is recognised under Order. 21, Rule. 16 and transferee is substituted in place of the transferor, from that point of time the transferee ceases to have any interest or title as decree-holder. Similarly notwithstanding the assignment the assignee is not bound to execute the decree.

12. It is material to consider now the provisions of the Vidarbha Debtors' Act. Reverting to that Act, we find in Section 3 that a debtor or his creditor, namely, holder of a decree, may subject to the provisions of the Act make an application or has to make an application on or before 1st Oct., 1969 or as was subsequently amended by 1st April 1970 to the Court for adjustment of the debts of his debtor. A "debtor" has been defined to mean as a person who is a judgment-debtor or defendant against whom a proceeding under the M. P. Act has been stayed. The assignment in this case in favour of Bajirao it is common ground was not recognised. In other words, therefore, it was open in spite of assignment in favour of Bajirao for Narayan and others to make an application on or before 1st April 1970 and were indeed" under an obligation if they wanted their dues due from the debtor to be adjusted otherwise their debts would have be-come extinguished.

13. Section 4 then provides for the debtor and creditor respectively to file true and correct statements before the Court. Sections 6 and 7 then provide for settlement of debts and speak of award in terms of settlement of debt between the creditor and the debtor. The scheme for settlement or adjustment of debts due from a debtor against whom there may be more than one applications or one application is found u/s 10. An application against a debtor by all such creditors of his debt are to be consolidated and then an account is to be made in terms of Section 18, and an award passed u/s 23 after taking an account of the amount of debts due to all the creditors as contemplated u/s 18. Section 13 provides the consequence of extinguishment in respect of a debt due from a debtor in respect of which no application has been made u/s 3 of the Act. It would thus be seen that as contemplated by the Civil P.C. Narayan and others on 30th of March 1970, on the day on which they: made the application notwithstanding the assignment in favour Of Bajirao were competent to execute the decree and must, therefore, be deemed to be holders of the decree as contemplated under the Civil P. C. and also under the Vidarbha Debtors" Act,

14. Reference may now be made to some of the decisions in which the question was raised and decided. I will firstly refer to the decision in Paddiseti Rangayya Setti Vs. Guduru Venkata Subba Reddi and Others, In that case the petitioner was a judgment-debtor. Decree-holder was a judgment-debtor of the petitioner in another suit. The judgment-debtor petitioner and the decree-holder in that suit arrived at an understanding on the 17th Aug., 1933 and adjusted their mutual decrees which had been obtained by them against each other. Prior to that on the 5th July 1933, the petitioner decree-holder had already assigned his decree in favour of a third person. By reason of the adjustment which was recorded on the 17th of Aug., 1933, the petitioner's debt due under the decree which was passed in his favour, and the debt due from him under the decree which was obtained against him by the judgment-debtor in that suit was settled. Subsequently, that is, after about a year later, the transferee of the decree which the petitioner had obtained in another suit took out execution of that decree. An objection was raised to that execution application that the decree had been fully adjusted. This objection succeeded and it was held by his Lordship Mr. Justice Cornish who delivered the judgment of the Court that-

"The present definition of "decree-holder" is more limited. It means the person in whose favour a decree has been passed. This is the meaning which the word must bear in Order. 21 Rule. 2, providing for the recording of satisfaction or adjustment of decree between the decree-holder and the judgment-debtor. Until the transferee has taken steps under Order. 21, Rule. 16, for sanction to execute the decree, the executing Court cannot recognize any other person than the decree-holder on record."

It was held, therefore, referring to the change of the definition of the term "decree-holder", as obtained in the Civil IP, C. 1882 and that of the year 1908, I that a transferee of the decree is ex-eluded from the definition of "decree-

holder" in the 1908 Code. Therefore, as long as the transferee was not recognised under Order. 21 Rule, 16 a decree could be executed by such person in whose favour the decree was passed.

15. The next decision to which a reference could be made is that reported in *Sitabai v. Gangadhar* AIR 1935 Bom 331. In this case during the pendency of the execution of the mortgage decree which was taken out by the petitioner, the decree was assigned. The assignee, however, did not take any steps to bring himself on record. It is true that the assignment deed provided that the judgment creditor notwithstanding the assignment was authorised to continue the execution proceedings but it was held that this circumstance does not make any difference. It was contended by the judgment debtor that the decree could not be executed by the decree-holders, they have assigned their interest and property in the decree to the transferee and had no subsisting interest. That contention was rejected and Mr. Justice Rangnekar who delivered the judgment of the Court observed:

"In the first place Order. 21 Rule. 16, Civil P. C. does not compel the assignee to come forward and have himself substituted on the record in place of the judgment-creditor. It gives him an option to do so; he has a right to bring himself on record if he wants to see that his rights are enforced, but he is not bound to do so. And the darkhast, which is regularly filed by the holder of the decree, cannot come to an end because, pending execution, the judgment creditor has assigned his interest in favour of another person. It is well established by decisions of this Court, that an assignee does not become a holder of the decree within the meaning of Order. 21, Rule. 16 and Section 2, Civil P. C. unless he applied to the Court to bring himself on record in place of the judgment-credit or." The third decision reported in *Anath Nath Bose Vs. Monmotha Nath Bose and Others*, went a little further. That was no doubt a case of an award which has the status of a decree, but it was held therein that the holder of an award is entitled to execute it although he may have transferred his rights under the award to the transferee, unless and until the transferee comes before the Court and applies under Order. 21 Rule. 16 to execute the award. In that case also, the award had been transferred. Notwithstanding, the person in whose favour the award was passed was allowed to continue the execution of the decree.

16. The expression "a person in whose favour the decree has been passed" appearing in the definition of the term "decree-holder" in Civil P. C. not only includes a plaintiff, but in a case like any decree for specific performance also includes a defendant. It is settled law that such a decree can be executed even at the instance of the defendant judgment-debtor (see Section 28 of the Specific Relief Act and decrees in partnership suits.) Therefore, the only basis for finding out as to who is the decree-holder is to ask the question as to in whose favour the decree is passed. If the answer has to be that the decree-holders in this case were Narayan and others, then there can be no dispute that on 30th March 1970

the decree being still in favour of Narayan and others, they could make an application. Besides they could also and could have also executed the decree if the execution of the decree had not been stayed by the M. P. Temporary Postponement of Execution of Decrees Act on that date.

17. In that view of the matter, the order passed by both the Courts below will have to be set aside. This revision application is allowed and the proceedings sent down to the Court below for being dealt with and disposed of in accordance with the law and in the light of the judgment above. Since the question which was raised in this revision application was purely a question of law, I think the proper order would be to direct the parties to bear the costs of the proceedings throughout.

18. Revision allowed.