

(1950) 11 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 682 of 1950

Bhaguji Pandu and Others

APPELLANT

Vs

Shripat Raghuji

RESPONDENT

Date of Decision : 23-11-1950

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 32, 47(1)

Citation : AIR 1951 Bom 389 : (1951) 53 BOMLR 306 : (1951) ILR (Bom) 314

Hon'ble Judges : Chagla, C.J

Bench : Single Bench

Advocate : V.M. Tarkunde, for the Appellant; M.M. Jape, for the Respondent

Judgement

Chagla, C.J.—A very interesting question arises in this revn. appln. as to whether a debtor can avail himself of insolvency proceedings after the award has been made. In this case an award was made on 29-11-1946, & the award fixed the debts of the debtor at Rs. 4,236 payable by annual installments of Rs. 400. As there was failure to pay the installments under the award, the opponent who is a creditor applied for execution & while the appln. was pending the debtor applied to the Debt Adjustment Ct. to be adjudicated insolvent. The learned Judge below dismissed the appln.

2. Now, Section 47 (1), Bombay Agricultural Debtors" Relief Act, provides :

"If at any stage of the proceedings under Chap. II the Court finds that the income of the debtor & his moveable property are not sufficient to allow his debts to be liquidated by annual installments not exceeding twelve in number, the Ct. shall make an order adjudicating the debtor insolvent."

Mr. Tarkunde for the debtor emphasises the provision in this sub-section to the effect that an order of adjudication can be made at any stage of the proceedings under chap. II & when we turn to chap. II it does not merely deal with the making of the award u/s 32 but it also deals with the execution of the award u/s 38. Mr. Tarkunde further draws my attention to the provisions of Section 50

which bars any appln. or proceedings in regard to the insolvency of a debtor by any other Ct. Mr. Tarkunde rightly points out that after an award is made & after the annual installments are settled, circumstances may change which may make it impossible for the debtor to pay those installments. In this very case in making the award the Judge took into consideration that the lands of the debtor produced Ganja & although they were assessed only at Es. 8 because of the production of Ganja they were very valuable lands. Now the production of Ganja is prohibited & the circumstance of the debtor has changed to such an extent that he is not in a position to pay the installments which were fixed under the award. Mr. Tarkunde also points out that there may be other changes in the condition of the debtor. If the debtor is a joint family, the members of the joint family may increase, there may be an adoption which may divest the property, & so on, & therefore it is not possible to hold that the Bombay Agricultural Debtors' Relief Act which is intended for the benefit of the debtor never contemplated an insolvency proceeding being taken by the debtor after the award was made. As against this the language of Section 47 (1) itself seems to make it clear that an order of adjudication can only be made after the income of the debtor is determined, & the question arises whether that income is sufficient to liquidate his debts by annual installments not exceeding twelve in number. Section 32 (4) provides that the total annual installments which are to be provided for in the award shall not exceed twelve & therefore it is for the purpose of making the award that the Ct. has to determine the income of the debtor & also the question as to whether that income is sufficient to liquidate his debts by twelve annual installments. It is significant that that is the only ground u/s 47 (1) which would enable the Ct. to make an order of adjudication. Once the income has been ascertained & also the fact that the debts of the debtor can be liquidated by twelve annual installments & this is embodied in the award, then no question can ever subsequently arise for the determination of the question whether the income of the debtor can be liquidated by annual installments not exceeding twelve. The debtor in this case has made an appln. for insolvency three years after the award. It cannot be suggested that the Ct. should again consider the question as to whether his income now is sufficient to liquidate his debts in twelve annual installments. Therefore to my mind looking at Section 47 as a whole, it is clear that what the Legislature contemplated was the adjudication of the insolvent only before the award was made. Once the award was made, then there was a determination that the debtor had the capacity to pay, & that determination could not be subsequently varied or modified by any subsequent proceedings. This seems to be clear also from the language of Section 38(3) which provides for the execution of the award. Under that sub-section, if the debtor makes default in payment of the installments fixed under the award, the Ct. shall transfer the award for execution to the Collector & thereupon the Collector shall recover the amount of the installments from the debtor as arrears for land revenue. Nowhere in the Act is there any provision for permitting the debtor to avail himself of insolvency proceedings in the case of his inability to pay the installments as fixed under the award. I quite see the

hardship that might result in certain cases. An award is not satisfied for twelve years after it is made & various things may happen during the course of those twelve years & yet the debtor would be tied down to the liability under the award & he could never get the protection of the insolvency law. This provision may seem to be more severe & more harsh than the law that is applicable to every citizen because the insolvency Ct. is open to everyone who is unable to pay his debts. But under these provisions of the Bombay Agricultural Debtor's Relief Act the position seems to be that the debtor, although he may be honestly unable to pay his debt fixed under the award, could never take the benefit of the insolvency law.

3. It is undoubtedly with some hesitation that I have come to this conclusion. But I find that looking to the language of Section 47 (1) it is impossible to hold that a debtor can apply to be adjudicated an insolvent after an award has been made. I feel certain that the Legislature has overlooked the possibility of change of circumstances which might result in a reduction of the income of the agriculturist. The Legislature apparently thought that once the debts of the debtor were adjusted, & they are adjusted very generously, & an award was made, there was a liability upon the debtor to pay the installments & he could not avoid the liability by resorting to insolvency. But as I said before, circumstances may change and the Legislature should have provided for a case where an agriculturist was unable to pay his award debt through no fault of his but as a result of change in circumstances.

4. The result is that I must hold that the order made by the learned Judge below was right. The revn. appln. fails & the rule is discharged. No order as to costs.