

(1980) 12 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 369 of 1978

Bhagwan Motiram Mali (Mahajan)

APPELLANT

Vs

Jayant Shridhar Khare and another

RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Maharashtra Debt Relief Act, 1975 — Section 10, 11, 12, 2, 2(f)

Citation : (1980) 12 BOM CK 0021

Hon'ble Judges : Chandurkar, J; Bhonsale, J

Bench : Division Bench

Advocate : P.M. Karlekar, for the Appellant; Y.S. Jahagirdar, for the Respondent

Final Decision : Allowed

Judgement

Chandurkar, J.—This revision application filed by original defendant No. 1-debtor has been referred to a Division Bench in view of the conflict arising out of two decisions of this Court, one given by Mridul J. and the other by Kantawala C. J. on the construction of the provisions of Ss. 11 and 12 of the Maharashtra Debt Relief Act, 1975 (hereinafter referred to as "the Debt Relief Act").

2. The plaintiff creditor had filed Suit No. 101 of 1973 against the applicant debtor for recovery of an amount of Rs. 4,329.90 on the strength of a promissory note for Rupees 3,000/- executed by the debtor in favour of the plaintiff on 24th Dec., 1970. In the suit the debtor raised a contention that in view of the Maharashtra Debt Relief Ordinance which was promulgated on 22nd Aug., 1975 which is now replaced by the Debt Relief Act, the debtor was a marginal farmer holding less than 1 hectare of unirrigated land and, therefore, under the provisions of the Ordinance, the debt in question stood discharged and the suit was, therefore, liable to be dismissed. On this application the trial Court made an order on 3rd Aug. 1976 as follows:

Reference be made to the proper authority.

Accordingly a reference came to be made to the authorised officer.

3. It appears that in view of the decision of this Court in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, , the learned Civil Judge suo motu decided to recall the reference and made the following order on 14th Mar., 1978 without hearing the petitioner:

In view of Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, this Court has jurisdiction to try the matter under reference. Hence I call back the reference.

This order has been challenged by the debtor-defendant in this revision application.

4. When this revision application came up for hearing before D. B. Deshpande, J., apart from the decision in Promod Jhaveri's case, another unreported decision of Kantawala, C. J. in M/s. Vithaldas Raghunathdas Soni v. Ramgopal Hiralal Tapdiya in Civil Revision Application No. 539 of 1976 decided on 12th Dec. 1977 was brought to the notice of the learned Judge. The learned Judge referred to the view taken by Mridul J. that "the mischief of Ss. 11 and 12 does not extend to the cases of unsecured debts or debt-aspects of secured debts, which matters being within the purview of Cls. (a), (b), (c) and (d) thereof, have to be dealt with by the Civil Courts concerned". Mridul J. had rejected the objection to the jurisdiction of the Civil Courts to try the issues raised in the Civil Court in its insolvency jurisdiction. Kantawala C. J. had taken the view that "the question whether a person who claimed to be a debtor was a worker or not was to be decided by the Authorised Officer" and two additional issues were, therefore, framed dealing with the question whether the defendants or any one or more of them were workers within the meaning of S. 2 (o) of the D. R. Act and whether the debt or the liability, if any, under the transaction in suit was wholly discharged by reason of the provisions of S. 4 of the D. R. Act Deshpande J. took the view that the suit out of which the revision application decided by Kantawala C. J. arose was for a simple money transaction and did not fall within the purview of S. 4 (e) of the D. R. Act and yet Kantawala C. J. held that the jurisdiction was with the Authorised Officer alone and the Civil Court had no jurisdiction to decide this question. It is because of this conflict of view in the two decisions referred to above that this revision application has been referred to a Division Bench.

5. Mr Karlekar appearing on behalf of the debtor-defendant has contended that there is express provision in Ss. 11 and 12 as well as in S. 4 (b) of the D. R. Act which ousts the jurisdiction of the Civil Court in respect of the issue which is required to be settled, decided or dealt with by the Authorised Officer under the Act and; therefore, according to the learned Counsel, when the debtor had applied to the trial Court that he was a marginal farmer because he owned less than 1 hectare of land, he was, therefore, freed of the debt liability by the provisions of the Ordinance, the question as to whether he was a marginal farmer or not could be decided only by the Authorised Officer and the Civil Court did not have jurisdiction to decide that question in view of the express provision in Ss. 11 and 12 of the D. R. Act. The learned Counsel questioned the

correctness of the view taken by Mridul J. in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, .

6. Mr. Jahagirdar appearing on behalf of the plaintiff has wholly relied upon the decision of Mridul J. in support of his contention that the reference as contemplated by S. 12 of the D. R. Act could be made only in respect of matters which are covered by Cl. (e) of S. 4 of the D. R. Act and consequently, according to the learned Counsel, since, as held by Mridul J., an occasion to make an application under S. 7 by the creditor would arise only for the purpose of implementing the provisions of S. 4 (e) of the Act, the reference contemplated by S. 12 could be made only in a case where the question arises out of a claim for return of the pledged articles as contemplated by S. 4 (e) of the D. R. Act.

7. Before we deal with the decision of Mridul J. in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, it is necessary to set out a few provisions of D. R. Act. We are not concerned with the provisions of the Ordinance which stands repealed by the D. R. Act and the relevant provisions admittedly are now the provisions of the D. R. Act The substantive provision providing for liquidation of certain debts is contained in S. 4 of the D. R. Act S. 4 provides:

Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any such law, and save as otherwise expressly provided in this Act, every debt of a worker whose immovable property, if any, does not exceed twenty thousand rupees in market value and every debt of any other debtor, outstanding on the appointed day, including the amount of interest, if any, payable by a debtor shall be deemed to be "wholly discharged."

The substantive "provision in S. 4 thus firstly deals with every debt of a worker, whose immovable property does not exceed twenty thousand rupees in market value and it further deals with every debt of any other debtor. The debts of these persons which are outstanding on the appointed day are now statutorily deemed to be discharged and the debtors are freed from any liability which they may have originally owed to the creditors.

8. Section 4 further enumerates the consequences which will follow as a result of the statutory discharge of the debt liability of the workers and the debtors. The first consequence is that no such debt due from the debtor on the appointed day would be recoverable from him on, from or against any movable or immovable property belonging to him and further no such property is liable to be attached and sold or proceeded against in any manner in the execution of any decree or order relating to such debt against him. The other consequence stated in Cl. (b) is that no Civil Court shall entertain any suit or proceeding against such debtor for the recovery of any amount of such debt, including interest, if any. However, where a suit or proceeding is instituted jointly against such debtor or any other person, the suit or proceeding in so far as it relates to such other person is not affected. Further, all suits and proceedings (including appeals, revisions,

attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor abate. This, however, does not apply to the sale of any movable property held and concluded before the appointed day or sale of any immovable property confirmed before such day. If a debtor is undergoing detention in a civil prison in execution of any decree for money passed against him a Civil Court in respect of any such debt, the law directs that he shall be released.

9. An important consequence which follows the extinction of the debtor's liability is With regard to the right to receive back the pledged property by the debtor. This consequence is stated in Cl. (e) and since the decision in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, is based mainly on S. 4 (e) read With S. 7, we reproduce Cl. (e) which reads as follows:

(e) every property pledged or mortgaged by such debtor shall stand released in favour of such debtor, and the creditor shall be bound to return the same to the debtor forthwith on the debtor making an application in writing in that behalf; and the creditor shall pass a receipt to the debtor of having received the application. If the creditor refuses to pass a receipt, then the debtor may get the application endorsed to that effect under the signature and date of any of the officers referred to in S. 6 or by any person authorised by them in this behalf.

Explanation 1.- Nothing in this section shall be construed to entitle any such debtor to the refund of any part of a debt already repaid by him or recovered from him before the appointed day.

Explanation 2.- For the purposes of this section, the expression "debt of a worker" includes a debt arising out of loans taken from more "than one creditor."

The effect of" Cl. (e) is that there is a statutory obligation created against a creditor to return the property pledged or mortgaged to a debtor forthwith when the debtor makes an application in writing in that behalf. When the debtor gives an application to the creditor, he has to pass a receipt acknowledging that the application has been received. If the creditor refuses to pass a receipt, then the latter may get that application endorsed to the effect that the creditor declines to pass a receipt under the signature and date of any of the officers referred to in S. 6 or by any person authorised by them in this behalf. The officers referred to in S. 6 are the Commissioner of Police, where there is one, and elsewhere the District Magistrate or the Superintendent of Police.

10. Section 5 of the D. R. Act prohibits the creditor from damaging, destroying or tampering with any property pledged or mortgaged with him or any document connected therewith or part with it or otherwise deal with the same except as provided in this Act This provision operates from the appointed day. We need not refer to the provisions of S. 6 which entitles a debtor to seek assistance of a Police Officer or the District Magistrate to take such steps as may be reasonably necessary for securing the delivery of possession of the property to the debtor.

11. Then comes S. 7 (1) which reads as follows:

If, in the course of implementing the provisions of S. 4, a creditor raises a question that the person who claims to be his debtor is not a marginal farmer, a rural artisan, a rural labourer or, as the case may be, a worker, or disputes the eligibility of the debtor for relief under this Act on any other ground including the valuation of the immovable property, if any, of a worker, then the creditor shall make an application in writing to an officer not below the rank of an Additional Tahsildar (or any officer in any department who in the opinion of the District Magistrate is of equivalent rank) duly appointed by an order in writing by the District Magistrate in this behalf hereinafter referred to as "the Authorised Officer").

Under sub-sec. (2) of S. 7, an application has to be made within seven days from the date of receipt of the application by the creditor under Cl. (e) of S. 4 or from the date of endorsement made on the application under that clause. Sub-section (6) which deals with the power and jurisdiction of the Authorised Officer reads as follows:

(6) The Authorised Officer shall have power to determine all questions in relation to, or connected with, the question or dispute raised by the creditor in his application and accordingly, he may determine the extent, or as the case may be, the value of the property, give directions for the safe custody of the pledged property and may pass such orders as may be necessary in the circumstances of each case for enforcing and implementing the provisions of this Act. It shall be lawful for the Authorised Officer to take the assistance of the services of an expert for determining the value of any immovable property: and the provisions of sub-section (3) of S. 9 for payment of honorarium shall apply to such payment.

Sub-sec. (8) of S. 7 deals with finality to the question which the Authorised Officer is required to decide under S. 7 (1) and S. 7 (6) of the D. R. Act. Sub-sec. (8) of S. 7 reads as follows:

(8) The Authorised Officer shall decide the question as provided in this section and his decision shall be final and conclusive and shall not be called in question in any civil Court. If the property or its value is in the possession of the Authorised Officer and the decision is in favour of the debtor, it shall be delivered to the debtor forthwith; and he shall make an endorsement on the order that the property or value has been delivered to the debtor.

12. It may be pointed out that a "worker", "debtor", "marginal farmer" and "rural artisan" have been defined in S. 2 of the D. R. Act. It is not necessary to reproduce those definitions in full. It is enough to point out that "debtor" means a marginal farmer, a rural artisan or a rural labourer whose total income from all sources did not exceed two thousand and four hundred rupees during the year immediately before the 1st day of Aug., 1975 and a worker whose total income from all sources did not exceed, if living in an urban area six thousand rupees during the year immediately before the said date, and if living elsewhere four

thousand and eight hundred rupees during that year is a debtor for the purposes of the Act.

13. It is now necessary to reproduce the provisions of Ss. 11 and 12 of the D. R. Act on the construction of which the decision of this revision application will turn. Section 11 reads as follows:

11. (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by the Authorised Officer.

(2) No order of the State Government or any officer or authority made under this Chapter shall be questioned in any Court." Section 12 reads as follows :

12. (1) If a suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with, by the Authorised Officer under this Act, the Civil Court shall stay the suit, and refer such issues to the Authorised Officer for determination.

(2) On receipt of such reference from the Civil Court, the Authorised Officer shall deal with and decide such issues in accordance with the provisions of this Chapter, and shall communicate his decision to the Civil Court, and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Sections 11 and 12 both occur in Chap. III of the D. R. Act. The D. R. Act has been extensively amended by introducing Chapter V-A. It is also common ground that apart from the provisions of Chap. III there is no reference to the Authorised Officer anywhere else in the Act and the only reference to the Authorised Officer is in Ss. 7 and 10.

14. Section 11 bars the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under Chap. III required to be settled, decided or dealt with by the Authorised Officer. Section 12 lays down the course which the Civil Court has to adopt where a suit before it involves an issue which is required to be settled, decided or dealt with by the Authorised Officer. In case such an issue arises, the Civil Court has to stay the suit and refer the issue to the Authorised Officer for determination. Once the Authorised Officer deals with the issues and decides them and the reference is sent back to the Civil Court, the Civil Court has to dispose of the suit in accordance with the decision of the Authorised Officer in respect of those issues.

15. The crucial question which arises is which are the issues under Chap. III which are required to be settled, decided or dealt with by the Authorised Officer. The only relevant provision is in S. 7 of the D. R. Act. Now, what is contended on behalf of the decree-holder is that S. 7 specifically refers to the jurisdiction which the Authorised Officer has to exercise while implementing the provisions of S. 4 of the D. R. Act and, according to the learned Counsel, the only material clause of S. 4 for the purposes of S. 7 is Cl. (e). Therefore, according to the learned

Counsel, unless the dispute between the debtor and the creditor is one which arises out of a claim under Cl. (e) of S. 4 with regard to the return of the pledged property, there is no occasion for the creditor to make an application under S. 7 and consequently it is only in such a case that the provisions of S. 7 will be attracted. The learned Counsel, therefore, contends on the authority of Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, that since the Civil Court is not implementing S. 4 in a case where there is no question of return of pledged property to the debtor, no question of the Authorised Officer being required to determine any issue which is required to be decided under the D. R. Act arises in such a case. The argument, therefore, is that this scope of Ss. 11 and 12 of the Act is restricted only to a case in which the creditor would have had to apply under S. 7 of the D. R. Act. As already pointed out, this contention is based mainly on the decision in Promod Jhaveri's case, which we shall consider later.

16. Now there can be no doubt that the proceeding under S. 7 before the Authorised Officer can arise only where a creditor wants to raise a question that his debtor is not entitled to the benefits of the D. R. Act and, therefore, his debt does not stand extinguished and, therefore, further he is not bound to return the pledged property to the debtor on an application, being made by him as contemplated by Cl. (e) of S. 4.

17. However, if a careful scrutiny of Sections 7, 11 and 12 is made, it appears to us to be dear that the scope of S. 11 cannot be restricted only to a dispute contemplated by S. 4 (e). Section 4 (e) of D. R. Act no doubt deals with a secured debt because it refers to "every property pledged or mortgaged by such debtor". The consequence of S. 4 (e) is that the pledged or mortgaged property shall stand released in favour of such debtor and the creditor is bound to return the same to the debtor forthwith on the debtor making an application in writing. Now if we read S. 11 of the D. R. Act, it is clear that S. 11 does not refer to any particular proceeding in which the Authorised Officer is to decide the question referred to in that section. Sec. 11 refers to "any question which is required to be settled, decided or dealt with by the Authorised Officer". For the purposes of identifying the question which is required to be settled, decided or dealt with by the Authorised Officer under the Act and to which reference is made in S. 11, we have to go to S. 7.

18. If we now go to S. 7, it is no doubt true that proceeding contemplated by it arises out of a claim under S. 4 (e). What is, however, important is that S. 7 also enumerates the questions which the creditor can raise before the Authorised Officer. Those questions are that:

- (1) The person who claims to be a debtor is not a marginal farmer, a rural artisan, a rural labourer or a worker;
- (2) the dispute regarding the eligibility of the debtor for relief under the Act on any other ground including the valuation of the immovable property of a worker.

These are, therefore, the questions which are referred to in S. 11 as the questions which are required to be settled, decided or dealt with by the Authorised Officer by or under Chap. III of the D. R. Act. A further jurisdiction of the Authorised Officer to determine all questions which are raised by the creditor is to be found in S. 7 (6) which provides that the Authorised Officer shall have power to determine all questions in relation to, or connected with, the question or dispute raised by the creditor in his application. This provision is merely ancillary to the provision in S. 7 (1) and where the determination of any question which is related to or connected with the questions referred to in S. 7(1) becomes necessary, the jurisdiction to decide those additional questions is also with the Authorised Officer. Section 7, therefore, is in two parts. It deals with the nature of the proceeding and it further deals with the questions which can be decided in such proceeding. When S. 11 refers to questions which are required to be settled, decided or dealt with by the Authorised Officer, those questions are to be identified with reference to their mention in S. 7 (1) or 7 (6) of the D. R. Act for the purposes of S. 11 or S. 12. For ascertaining whether the jurisdiction of the Civil Court is excluded under S. 11, all that is material is to ascertain whether any questions which under Chap. III or under the D. R. Act are required to be decided by the Authorised Officer have arisen for decision before the Civil Court and once such questions arise before the Civil Court, the Civil Court is obliged statutorily to stay the suit and make a reference to the Authorised Officer. In our view, the fact that those questions are raised or could be raised in a proceeding arising out of a claim by a debtor under S. 4 (e) to be instituted by the Creditor is of no consequence for the purposes of ascertaining the nature of the questions which the Civil Court is barred from deciding. Therefore, wherever questions of the nature referred to in S. 7 (1) and (6) are raised before the Civil Court, the provisions of Ss. 11 and 12 of the D. R. Act will be attracted and the jurisdiction of the Civil Court to decide those questions is ousted by S. 11 and unless a reference is made to the Authorised Officer by the Civil Court for adjudication of those questions and the decision of the Authorised Officer is communicated to the Civil Court, the Civil Court is incompetent to proceed to decide the suit if the decision of those questions is necessary for the decision of the suit.

19. A reference to Cl. (b) of S. 4 does not appear to be relevant for the purposes of construing the provisions of Ss. 11 and 12, One of the consequences specified in S. 4 of the Act is that in cl. (b) it is provided that no Civil Court shall entertain any suit or proceeding against the debtor for the recovery of any amount of such debt, including interest, if any. Now this, as already pointed out is merely a consequential provision consequent upon the statutory extinguishment of the liability of the debtor as a result of the operation of the D. R. Act in respect of the debts of the debtor to whom the Act becomes applicable. Before, however, the bar of Section 4 (b) can be availed of, the question whether the debt of the debtor is extinguished will have to be decided and this issue will have to be decided by the Authorised Officer. Cl. (b) of S. 4 is, therefore, not of any

assistance for the purposes of the construction of Ss. 11 and 12.

20. Coming now to the decision in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, , though we agree with the view taken by the learned Judge that the governing concept in S. 7 is the implementation of the provision of S. 4 and that Civil Courts are not instrumentalities charged with the task of implementing the provisions of S. 4, we find ourselves unable to agree with the narrow construction which the learned Judge has placed on Ss. 11 and 12 of the D. R. Act. It was contended before the learned Judge, who decided Promod Jhaveri's case, on behalf of the creditor that only claims which relate to release and delivery of possession of security fall within the scope of the Authorised Officer's authority. The learned Judge in that case has taken the view that "reading S. 7 as a whole, the reference to S. 4 in opening part of sub-sec. (1) of S. 7 must be said to be a reference only to Cl. (e) of the said S. 4" and "the governing concept in sub-sec. (1) of S. 7 is, implementation of the provisions of S. 4". It is not possible to dispute the validity of this view. It is also not possible for us to dispute the view taken by the learned Judge that when the Courts give effect to the consequences enumerated in Cls. (a), (b), (c) and (d) of S. 4, the Courts cannot be said to be the instrumentalities charged with the task of implementing the provisions of S. 4 and that the Courts do not implement the provisions of law, but they merely enforce the rights and liabilities recognised by law. The learned Judge has also, in our view, correctly taken the view that the jurisdiction of the Authorised Officer is confined to such questions as are raised by the creditor in his application and that the said sub-sec. (6) of S. 7 enumerates powers of the Authorised Officer. The learned Judge has further taken the view that the Authorised Officer has no jurisdiction to decide questions or disputes which are not capable of being raised by the creditor in his application to the Authorised Officer and in the proceeding under S. 7, the Authorised Officer is not required by the Act to go into the questions or claims pertaining to debts simplicities.

21. There can be no doubt that having regard to the provisions of S. 4 (e) and S. 7 (1), the jurisdiction to be exercised by the Authorised Officer under S. 7 (1) can be invoked only on an application made by a creditor disputing the debtor's claim. It is, however, difficult for us to concur with the view taken by the learned Judge when he further holds that the applicability of the provisions of Ss. 11 and 12 of the Act is restricted only to a case which must fall under S. 4 (e). The relevant observations of the learned Judge in para 44 of the Judgment are as follows:

In my opinion, an authorised officer is entitled to settle, decide or deal with, questions which can be raised by a creditor in his application under S. 7, that is to say, claims arising in connection with release and delivery of possession of "property pledged or mortgaged by" a debtor. That being so, Civil Courts have jurisdiction to adjudicate upon and adjudge all claims, questions and disputes other than those which are raised by the creditor in his application under S. 7. As

held above, the applications contemplated by S. 7 of the Act do not take within their sweep claims, questions and disputes pertaining to Cls. (a), (b), (c) and (d) of S. 4 in so far as the said disputes relate to unsecured debts or merely to debt aspect of secured debts as contradistinguished from security aspect thereof. In my opinion, the mischief of Ss. 11 and 12 does not extend to the cases of unsecured debts, or debt aspects of secured debts, which matters being within the purview of Cls. (a), (b), (c) and (d) thereof, have to be dealt by the Civil Courts concerned.

22. The learned Judge seems to have taken the view that S. 7 does not contemplate decisions of questions pertaining to Cls. (a), (b), (c) and (d) of S. 4. These observations, in our view, are not justified by the terms of S. 4 read with S. 7. It will be clear from a careful reading of S. 4 that the consequences specified in Cls. (b), (c), (d) and (e) thereof cannot survive independently of the consequences in Cl. (a). The effect of the Act is mainly to be found in the substantive part of S. 4 and in order to decide whether any of the consequences specified in Cls. (a) to (e) follow in a given case, one must first decide whether the debt stands statutorily extinguished as provided in the main part of S. 4. Unless the debt is of the kind defined in the Act and the "debtor" satisfies the requirements of being a debtor as defined in S. 2 (f) of the D. R. Act, the question of ascertaining whether the consequences specified in S. 4 can follow really could not arise. In order to decide whether even under S. 4 (e) a debtor is entitled to the return of the security, the Authorised Officer, even while making his enquiry under S. 7 (1), has to go back to the main provisions in S. 4 because the claim of the creditor that the debtor is not entitled to the return of the debt security can be substantiated only if the creditor is able to satisfy the Authorised Officer that the debt of the debtor does not stand extinguished under the D. R. Act.

23. These are the basic questions which are required to be decided before the provisions of S. 4 (e) are implemented, as will be clear from the provisions of S. 7 (1). There is no question which independently arises under S. 4 (e) and unless the Authorised Officer first decides the question as to whether the debtor satisfies the description of a marginal farmer, a rural artisan, a rural labourer or a worker, or whether the debtor is entitled to the benefits or the reliefs under the D. R. Act, even a claim under S. 4 (e) cannot be successfully made by the debtor. It is no doubt true that the basic questions referred to above do not fall expressly within the terms of Cl. (e), but for giving effect to the provisions of S. 4 (e), it is clear that these basic questions were required to be decided first and that is why the legislature has specifically made a reference to those questions in S. 7 (1). It would, therefore, be incorrect to say that S. 7 (1) does not contemplate the decision of the questions in Cls. (a) to (d), because unless the requirement of the main provisions of S. 4 is satisfied, the consequences enumerated in the latter part of that section could not be given effect to. The main question which is required to be decided under Chap. III is the eligibility of the debtor or the applicability of the Act or whether the debt is a "debt" within the meaning of the

Act and any other questions would be merely incidental to those main questions. As already pointed out, before giving effect to the provisions of Cls. (a) to (e), a determination of the questions referred to in S. 7 (1) is necessary for the purposes of the main part of S. 4.

23-A. With respect, to the learned Judge, it appears that the fact that Ss. 11 and 12 refer only to the questions which are required to be decided by the Authorised Officer and not to the proceedings in which those questions are to be decided under S. 7 has been overlooked by him. Section 11 refers to the questions which are to be settled, decided or dealt with by the Authorised Officer under Chap. III. Section 12 deals with the same questions, but the terminology used is, "any issues which are required to be settled, decided or dealt with by the Authorised Officer under this Act". Though Section 11 uses the words "under this chapter" and S. 12 uses the words "under this Act", that does not make any difference because admittedly the questions referred to in Sections 11 and 12 are required to be decided by the Authorised Officer only under Chapter III. Thus, as already pointed out, all that has to be done for the purposes of Sections 11 and 12 is to ascertain the questions which are to be decided by the Authorised Officer under Chap. III of the Act. For this one has to look to S. 7. The fact that those questions are required to be decided in an application under S. 7 (1) does not cease to make those questions answer the description necessary for the attraction of Sections 11 and 12 of the D. R. Act. We are, therefore, of the view that the learned Judge was not right when he held that the only question which is required to be settled, decided or dealt with by the Authorised Officer is one in respect of the return of the security contemplated by S. 4 of the Act and that the mischief of Ss. 11 and 12 does not extend to the cases of unsecured debts or debt-aspects of secured debts. Not much argument is necessary to point out that whether a debt secured or unsecured is not relevant for the purposes of the D. R. Act and. both kinds of debts stand extinguished provided the necessary conditions required to be satisfied under the Act are fulfilled. Before each of Cls. (a), (b), (c), (d) and (e) is invoked by the debtor, it will necessarily require the decision on the questions referred to in S. 7 (1) and once these questions are raised in a suit, having regard to the provisions of Ss. 11 and 12, the jurisdiction of the Civil Court to decide those questions will be ousted. We are, therefore, of the considered view that the jurisdiction of the Civil Court to decide any of the questions referred to in S. 7 (1), i. e., whether the person who claims to be a debtor is not a marginal farmer, a rural artisan, a rural labourer or, as the case may be, a worker, or where the eligibility of the debtor for relief under the Act on any other ground including the valuation of the immovable property, if any, of the worker, is taken away by S. 11. Similarly, all questions in relation to or connected with the above questions also will be outside the jurisdiction of the Civil Court. The decision in *Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another*, must, therefore, stand overruled.

24. We respectfully agree with the view taken by Kantawala C. J. in unreported decision in *M/s. Vithaldas Raghunathdas Soni's case*. That was a case in which

the plaintiff had filed a suit to recover a sum of Rs. 10,198.32, being the amount due from the defendants on account of a loan advanced to them. A claim was made by the defendants that their income was less than Rs. 400/-per month and their liability in respect of the transaction was wholly discharged by reason of the provisions of the Act and the application to refer the relevant issues under S. 12 of the D. R. Act by the Authorised Officer was rejected by the trial Court and the defendants had filed a revision application. While allowing the revision application, Kantawala C. J. after making a reference to S. 12 of the D. R. Act observed as follows:

Having regard to the provisions of S. 7, the question whether a person who claims to be a debtor is a worker or not is to be decided by the Authorised Officer specified therein. It is unnecessary in the present case for me to consider in detail the various questions which are likely to arise in determination of the plea that has been taken by the defendants before the plea can be granted. Ordinarily, these matters are to be decided by the Authorised Officer in view of the provisions of S. 11 read with S. 12 of the Act because for any question which is required to be decided or determined by the authority under the Act the jurisdiction of the Civil Court is expressly taken away to decide the same.

Two issues, one dealing with the question as to whether the defendants or any one or more of them were workers within the meaning of S. 2 (o) of the D. R. Act and the other dealing with the question as to whether the debt or the liability, if any, under the transaction in suit was wholly discharged by reason of the provisions of S. 4 of the D. R. Act were directed to be referred by the trial Court to the Authorised Officer.

25. We may, however, sound a word of caution to the Civil Courts that while it is obligatory upon them to give effect to the provisions of Ss. 11 and 12, before making a reference to the Authorised Officer, it would be the duty of the Civil Courts to first come to the conclusion that the issues which are asked for being referred to the Authorised Officer arise in the case and that they are required to be decided for the purposes of the suit. The Civil Court is not mechanically required to stay its hands the moment a plea is taken. It is common experience that vague pleas are taken by the defendants merely with a view to delay the proceedings in the Civil Courts. Before framing issues, it must be ascertained that the plea is not a frivolous one in the sense that the defendant raising these issues must make a full and complete pleading in respect of those pleas in the written statement itself. Unless such full particulars of the plea are given, the Civil Court will be justified in not framing an issue on vague and inadequate pleading. It is well-known that once such reference is made, the reference takes a long time to be disposed of and maximum care must, therefore, be exercised by the Civil Court before exercising its jurisdiction to make a reference as contemplated by Ss. 11 and 12. The minimum that is demanded in such a case is that the Court must satisfy itself that a *prima facie* case of being entitled to the benefits under the D. R. Act must be made out in the pleadings by the party who

desires to seek a reference to the Authorised Officer under S. 11 of the D. R. Act.

26. In the view which we have taken, the order recalling the reference made by the trial Court in this case is liable to be set aside. It appears from the application on which the reference was made that the defendant had merely stated that the defendant had 1 hectare of land and, therefore, he was entitled to the benefits of the D. R. Act. The written statement of the defendant is not available at this stage. It will, however, be open to the trial Court to deal with the question of reference afresh, in the light of the observations made in this judgment.

27. The revision application is, therefore, allowed. Rule made absolute. However, there will be no order as to the costs of this revision application.