

(1957) 02 BOM CK 0043

In the Bombay High Court

Case No : Civil Revision Application No's. 482 and 483 of 1956

Jankibai Abaji Pawaskar

APPELLANT

Vs

Bhikaji Raghunath Chavan

RESPONDENT

Date of Decision : 21-02-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 11, 12, 13, 14
Succession Act, 1925 — Section 214

Citation : (1957) 59 BOMLR 610

Hon'ble Judges : Gokhale, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gokhale, J.—These two revision applications have been preferred by the original debtor, one Jankibai, against the order passed by the learned District Judge, Ratnagiri, dismissing her two appeals on the ground that they were not competent under the provisions of the Bombay Agricultural Debtors Relief Act, 1947.

2. The petitioner Jankibai was indebted to one Raghunath Chavan, the father of the opponents, on a mortgage. There was an application for adjustment of debts, in respect of this mortgage under the Bombay Agricultural Debtors Relief Act, 1947, (which will hereafter be referred to as the Act) and that resulted in an award against Jankibai which was obtained by the creditor in B.A.D.R. Application No. 859 of 1957 on April 16, 1952. The amount of the award, which was made payable to the creditor, was Rs. 728, to be paid by yearly installments of Rs. 100 each, the first installment commencing from January 1, 1953. Two installments of Rs. 100 each were paid by the debtor, but as the subsequent installment was not paid, the creditor filed Darkhast No. 1 of 1955 for recovering the installment of Rs. 100 which had fallen due on January 1, 1955. It seems that the petitioner Jankibai and her brother Ramji were also indebted in respect of other dealings to Raghunath Chavan and a decree was obtained by the creditor against Jankibai

and her brother Ramji for the amount of Rs. 3,800. An application for adjustment of that decretal amount came to be filed both against Jankibai and Ramji. But Ramji was held not to be a debtor and only Jankibai was held to be a debtor. These proceedings terminated in an award against Jankibai alone which was passed in B.A.D.R. Application No. 860 of 1947, for the amount of Rs. 2,050, on April 16, 1952, and the amount was made payable by yearly installments of Rs. 275 commencing from January 1, 1953. Jankibai paid two installments in respect of this award for the years 1953 and 1954. As the installment for the year 1955 remained to be paid, the creditor filed Darkhast No. 2 of 1955 for the recovery of the installment due for 1955. It has to be mentioned that just two days before the award was passed on April 16, 1952, in B.A.D.R. Application No. 860 of 1947, a purshis was filed on behalf of the creditor on April 14, 1952, stating that in Regular Darkhast No. 60 of 1949 which was filed by the creditor against Ramji, brother of the petitioner, Rs. 2,402-10-1 had been recovered including costs amounting to Rs. 88-1-0, Rs. 2,314-9-1 being towards the decretal amount. It has to be noted that in spite of this purshis by the creditor, Jankibai raised no contention in the B.A.D.R. proceedings that she could in any way take advantage of this payment received from Ramji with the result that an award came to be passed against her to the extent of Rs. 2,050 as already stated above.

3. It appears that in these two darkhasts two points were raised on behalf of the debtor Jankibai. The first point was that the creditor having obtained a payment of Rs. 2,314 and odd from Ramji, the liability of Jankibai had been satisfied. The second point was that the darkhasts were not competent because the original creditor Raghunath having died and the darkhasts having been filed by his legal representatives, the opponents herein, they could not recover the amounts under the award, they having not obtained a succession certificate u/s 214 of the Indian Succession Act. I may mention that the trial Court observed that no succession certificate was necessary but it found that all the same the procedure laid down by Order XXI, Rule 16, of the Civil Procedure Code, not having been followed before issuing process in respect of the execution of the award, notice was ordered to be issued to the debtor under Order XXI, Rule 16. Mr. Walavalkar has not challenged the correctness of this order. As regards the second point about satisfaction of the liability of Jankibai, the contention of Jankibai seems to be that under both the awards she was liable to pay Rs. 2,778 only. She had paid Rs. 200 in respect of the first award. She had paid Rs. 550 in respect of the second award and the amount of Rs. 2,314 was admittedly recovered by the creditor from Ramji, her brother. Therefore her liability under both the awards was completely satisfied, and consequently the darkhasts were not maintainable against her. This point was decided against Jankibai by the trial Court.

4. Against this decision the petitioner filed two appeals before the District-Court at Ratnagiri, which held that the orders in execution proceedings under an award passed under the provisions of the Bombay Agricultural Debtors Relief Act were not appealable u/s 43 of the Act and that Mr. Walavalkar's client could not take advantage of the provisions of Section 47 of the Civil Procedure Code. Therefore

the lower appellate Court held that the appeals were incompetent and consequently dismissed both the appeals. That is why the petitioner has filed these two civil revision applications.

5. Mr. Walavalkar contends that the view of the lower appellate Court that no appeal was competent is erroneous in law. In order to examine the validity of this argument it would be necessary to refer to certain provisions of the Act. Chapter II of the Act lays down in Sections 4 to 46 the procedure for adjustment of debts. Section 43(1) sets out the cases in which appeals shall lie against any decision, order or award of the Court under this Act. Section 46 provides that save as expressly provide in the Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings under that Chapter. Mr. Walavalkar principally relies on Section 46 in support of his argument that though his appeal is not competent under the provisions of Section 43(1) of the Act, it would be competent u/s 47 of the CPC by virtue of Section 46 of the Act, which makes the provisions of the CPC applicable save as expressly-provided in the Act. Mr. Walavalkar also relies on the provisions of Rule 13 of the Rules framed under the Act by virtue of the powers conferred on the State Government u/s 55. Rule 13 states that in respect of any matter for which no provision is made in the Act or the rules, the procedure laid down in the CPC shall, so far as may be, be followed by the Court in the proceedings before it. Mr. Walavalkar has then referred to the provisions of Section 38(3) of the Act under which the award has to be executed in a certain manner. The creditor has to apply in the prescribed form, which is Form No. 8, and Mr. Walavalkar concedes that this form differs from an execution application filed under the provisions of the Code of Civil Procedure. The application has to be made to the Court under the Act as defined in Section 2(3). Section 38(3)(ii) provides that if the Court on receipt of such an application is satisfied that the debtor has made default in the payment of the installment, the Court shall transfer the award for execution to the Collector, and thereupon the Collector shall recover the amount of the installment from the debtor as arrears of land revenue. Therefore, argues Mr. Walavalkar, the Court has to satisfy itself whether the debtor has made a default in the payment of the installment, and that would include the question whether there has been a satisfaction of the award as contended by the present petitioner. Mr. Walavalkar frankly concedes that his appeal would not come under any of the provisions of Section 43(1) of the Act. But he submits that since the provisions of the CPC have been made applicable and since there is nothing to the contrary provided under the Act, the question whether his client has satisfied the award decree would be a question that would be governed by the provisions of Section 47 of the Code of Civil Procedure. Mr. Walavalkar further argues that the decision of the trial Court negating his contention that the two awards had been satisfied is a formal expression of an adjudication in so far as that Court is concerned conclusively determining the rights of the parties and therefore that order would amount to a decree under the provisions of Section 2(2) of the Code of Civil Procedure.

6. This argument, as presented by Mr. Walavalkar, appears to be attractive, but the initial difficulty in the way of Mr. Walavalkar's client is that u/s 47 of the CPC what are contemplated are questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree. Now, it cannot be held in the first instance that the parties to these darkhasts were parties to any suit. Nor can the awards passed against the petitioner be regarded as decrees. Prime facie, therefore, Section 47 of the CPC would not apply. Section 38 of the Act on which Mr. Walavalkar relied itself shows that the award is not executable under the provisions of the Code of Civil Procedure. The form prescribed is different from the form of an execution petition under the Code of Civil Procedure. The application for execution has to be presented to the Court under the Act and c). (iii) of Section 38(3) of the Act would show that where the award contains an order for the delivery of possession of any property under Clause (v) of Sub-section (2) of Section 32, such order for possession has to be executed by the Court as if it were a decree passed by it. Therefore it would appear that the Legislature intended that it was only where the award contained an order for delivery of possession that that order was to be executed as if it were a decree. So far as payment of money under the award is concerned, the Legislature has not provided for its execution as a decree. It cannot also be contended that the decision of the trial Court in the present case conclusively determines the rights of the parties with regard to any matter in controversy in any suit so as to attract the application of Section 2(2) of the Civil Procedure Code.

7. In support of his contention that the order passed by the trial Court would come u/s 47 of the Code of Civil Procedure, Mr. Walavalkar relied on an unreported decision, of this Court in *Shah Amratlal Lallubhai v. Dahyabhai Vishram Suthar* (1950) Civil Revision Application No. 929 of 1949, decided by Dixit J., on January 23, 1950 (Unrep.). There Mr. Justice Dixit took the view that the provisions of Section 43 of the Act were not exhaustive. In that case the Court under the Act had issued a temporary injunction restraining one of the parties from disturbing the possession of the other. The provisions of the Act do not contemplate the issue of an injunction. The injunction could only issue under the provisions of the Code of Civil Procedure, and since an order issuing an injunction is an appealable order under Order XLIII, Rule 1(r), of the Code, it was held that an appeal lay to the District Court against such an order though that order was not appealable under the provisions of Section 43 of the Act. This decision was approved by a Division Bench of this Court in *Vishnu Narhar Bhide v. Abu w/o Gulam Husein Mahatye* (1952) Civil Revision Application No. 490 of 1951, decided by Rajadhyaksha and Vyas JJ., on March 25, 1952 (Unrep.). In my opinion, the facts of the present case are distinguishable from the facts of those two unreported rulings. Where the CPC provides for an appeal, an order passed by the Court in proceedings under the Act, though it may not be covered by Section 43 of the Act, would still be appealable if such an order was, governed by any of the provisions of the Code of Civil Procedure. In the case decided by Dixit

J. the order of injunction was passed by the Court under the provisions of the CPC and, therefore, that order was held to be appealable by virtue of the provisions of Order XLIII, Rule 1(r). In the other case decided by Rajadhyaksha and Vyas JJ., the application filed by the creditor for adjustment of debts was itself dismissed as being time-barred by the trial Court. The District Court set aside that decision in appeal and in revision, before this Court, the competency of the appeal to the District Court was itself challenged and this Court held, following the ratio of the earlier decision, that the appeal was competent inasmuch as the trial Court's order rejecting the application as time-barred stood on the same footing as an order of rejection of a plaint as being time-barred, against which an appeal was provided under Order VII, Rule 11, read with Section 2(2) of the Civil Procedure Code. In the present case the proceedings which were started by the creditor have already terminated in two awards against the present petitioner and the Court decided in the darkhasts filed to execute the awards that satisfaction as pleaded by the debtor was not proved. This order, it is conceded, would not fall under any of the provisions of Section 43 of the Act, and it would be difficult to hold that such an order would fall under the provisions of Section 47 read with Section 2(2) of the Code of Civil Procedure, as the award passed by the Court does not amount to a decree, and the parties to the award are not parties to any suit.

8. Mr. Abhyankar, for the opponents, contends that even assuming that the awards passed against Jankibai, the present petitioner, were decrees, the petitioner is not entitled to raise the point about satisfaction as that point was not taken by the petitioner before the awards were passed against her. As I have already stated in the earlier part of this judgment, a purshis was filed on behalf of the creditor, which is exh. 68 on the record, on April 14, 1952, acknowledging payment of Es. 2,402-10-1 from Ramji who had been held to be a non-debtor. Mr. Walavalkar's contention on the point of satisfaction is that his client was entitled to derive a benefit from this payment made by Ramji, who is the brother of the present petitioner. If that was so, then in my opinion it was incumbent on the petitioner to raise this point u/s 22(5) of the Act, before the awards came to be passed against her on April 16, 1952. That being so, Mr. Abhyankar's contention that her present contention would be barred by the principles of res judicata must be upheld.

9. Besides, as award decrees had been passed against the petitioner, the executing Court would not be competent to recognise any payment that may have been made by the debtor or by any one on her behalf before the passing of the awards. Therefore, the further contention of Mr. Abhyankar that no question of satisfaction of the award arises at all and Section 47 of the CPC would not be applicable would also seem to be correct. In my opinion, therefore, the view of the trial Court that there was no satisfaction of the liability of the petitioner as alleged by her would be justified and it would not be necessary to interfere in revision even assuming that appeals were competent to the District Court.

10. I may mention that no prejudice would seem to have been caused to Mr. Walavalkar's client. The two awards were passed against her on the basis that she was a debtor. So far as the award in application No. 859 of 1947 is concerned, there was a liability against her of Rs. 728 out of which she has paid an amount of Rs. 200 representing two installments. That was an award on a mortgage. So far as the second award in Application No. 860 of 1947 is concerned, her liability was of Rs. 2,050 out of which she paid Rs. 550 representing two installments. So far as the decree obtained by the creditor against the petitioner and Ramji was concerned, there was a joint and several responsibility of Rs. 3,800. Ramji having been held to be a non-debtor, he was responsible for the payment of the entire amount of Rs. 3,800, out of which he paid, as acknowledged by the creditor, an amount of Rs. 2,314 plus costs. Jankibai, the present petitioner, having been held to be a debtor, she got an advantage of having her debts scaled and an award for an amount of Rs. 2,050 came to be passed against her. But, as observed by the trial Court, in no case would the creditor be entitled to recover from both the judgment-debtors together more than the decretal amount. As Ramji has already paid Rs. 2,314, both the judgment-debtors, namely, Jankibai as well as Ramji, would be liable to pay only the balance of the decretal amount. Even, on that basis, therefore, the liability of the present petitioner would not be to the entire extent of the amount of the award passed against her. That position has not been challenged by Mr. Abhyankar.

11. The result is that both the revision applications fail and the rules are discharged with costs.