

(1955) 09 BOM CK 0092

In the Bombay High Court

Case No : Civil Revision Application No. 414 of 1954

Lodhi Jesharkhan Himatkhan

APPELLANT

Vs

Patel Keshavlal Gangaram and Another

RESPONDENT

Date of Decision : 30-09-1955

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 151, 32, 37, 4, 8

Citation : AIR 1956 Bom 266

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : N.V. Karlekar, for the Appellant; S.N. Patel, for the Respondent

Judgement

1. This revisional application arises from adjustment proceedings. The petitioner is a debtor where as opponent No. 1 is one of his creditors. It appears that between the debtor and his creditor a settlement took place during the pendency of the adjustment proceedings and when the settlement was submitted to the Court, the Court was satisfied that the settlement had been made by the debtor voluntarily and was for his benefit,

On that view, an award was made in terms of this settlement. Thereafter the debtor applied u/s 37, B. A. D. R. Act, for re-opening of the award on the ground that one of the properties included in the award did not belong to him. This was item No. 3 Survey No. 851/1. The learned Judge .has found that this property has been included in the award, though it does not in fact belong to the debtor. He, however, came to the conclusion that the application for re-opening the award u/s 37 was incompetent.

Even so, exercising his inherent jurisdiction u/s 151, the learned Judge has directed that the property which is shown not to belong to the debtor should be removed from the

award. It is against this order that Mr. Karlekar has come to this Court on behalf of the debtor.

2. Mr. Karlekar contends that the learned Judge was in error in putting a very narrow construction on the provisions of Section 37 of the Act. Section 37 provides for the reopening of an award and re-adjustment of the debts and it lays down that if, after "an award is made u/s 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may re-open the award and re-adjust the debts in accordance with the provisions of the Act.

It would be noticed that the section "prima facie" seems to apply to awards under S, 32 because the opening words of the section are: "If, after an award is made u/s 32....." If it was intended to confer jurisdiction on Courts to re-open awards on the grounds mentioned in Section 37 in respect of awards passed u/s 32 as well as other sections of the Act, Legislature would not have said that the jurisdiction was available after an award, was made under S, 32. That is the view which the learned trial Judge has taken.

Mr. Karlekar contends that an award falling u/s 8 can be re-opened u/s 37 and he relies upon the provisions contained in Sub-section (3) of Section 8. Sub-section (3) of that section provides that

"every such settlement so recorded and certified shall be binding upon the parties thereto and shall not save as otherwise hereinafter provided, be re-opened".

Mr. Karlekar contends -- and with force -- that Sub-section (3) of Section 8 seems to contemplate a provision for re-opening awards made u/s 8 and that the Legislature has referred to this fact when it laid down that "save as otherwise hereinafter provided" the award shall not be reopened in other words, it would be legitimate to assume that in enacting Sub-section (3) of Section 8 the Legislature has expressed its decision to make some provision in the Act after Section 8 by which awards made u/s 8 could be re-opened.

If that be so, it would be necessary to put upon Section 37 a more liberal construction; it would be necessary to hold that, if the other conditions of Section 37 are satisfied, an award made u/s 8 can be re-opened. If the provisions of Section 37 are held not to be applicable to awards made u/s 8, the provision in Sub-section (3) of Section 8 to which I have just referred might become meaningless.

I do not propose to decide this point in the present revisional application because in fact the award with which I am concerned here was not made u/s 8. It has been made u/s 9 during the pendency of adjustment proceedings and in Section 9 there is no provision corresponding to the provision in Sub-section (3) of Section 8 on which Mr. Karlekar has relied. The scheme of Ss. 8 and 9 appears to be that an application for recording settlement can be made u/s 8 independently of an application u/s 4 for the adjustment of debts.

The provisions of Sub-sections (4) and (5) of Section 8 bring out this aspect of the matter. On the other hand, Section 9 seems to deal with a settlement during pendency of proceedings for adjustment before the Court and if a settlement is arrived at and an award is made in terms of such settlement u/s 9, no indication is given by the legislature that the award made u/s 9 can be re-opened under the provisions of Section 37. Therefore, in my opinion, having regard to the fact the present award was made u/s 9, the learned Judge was right in holding that the provisions of Section 37 are not applicable to this award.

Even so, he has exercised his inherent jurisdiction and has deleted Item No. 3 from the award, and that is all that could be done by the learned Judge.

3. in the result, the revisional application fails and the rule is discharged with costs.

4. Rule discharged.