
(1954) 04 BOM CK 0005

In the Bombay High Court

Case No : Second Appeal No"s. 681, 682, 683 and 684 of 1953

Mohamad Sadik Gulam Saheb Patil

APPELLANT

Vs

Hussein Miya Gulam Saheb Patil

RESPONDENT

Date of Decision : 05-04-1954

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 15(1), 15(2), 19, 19(1)

Citation : AIR 1954 Bom 548 : (1954) 56 BOMLR 902 : (1954) ILR (Bom) 1385

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : G.R. Madbhavi, for the Appellant; M.M. Virkar and Hussein M. Dalvai, for the Respondent

Judgement

Chagla, C.J.—A partition decree was passed on 31-3-1945, and defendant No. 1 filed an appeal. Ultimately the District Court by its judgment dated 18-10-1947, modified the decree of the trial Court. Defendant No. 6 then filed two darkhasts--one against defendant No. 1 and the other against defendant No. 2, and the contention raised by the judgment-debtors was that the judgment-debt was extinguished and therefore a darkhast could not be presented in respect of that judgment-debt. Now, the last date for making an application for adjustment of debts was 31-7-1947, and what is urged is that the appeal which was pending before the District Court was liable to be transferred u/s 19 of the Bombay Agricultural Debtors Relief Act and the subject-matter of the appeal should have been dealt with by the provisions of that Act, and inasmuch as the appeal was not transferred and inasmuch as the creditor did not make any application for adjustment of the debt by 31-7-1947, the judgment-debt under the decree passed by the District Court is extinguished u/s 15 of the Act.

Now, this second appeal is referred to a Bench because there are two conflicting decisions on" this point--one given by Mr. Justice Shah -- "Bhikaji Tatya v. Bhargavram Balkrishna", Section A. No. 474 of 1953, D/- 1-10-1953 (Bom) (A)" and the other given by me -- "Bhimanna Venkappa v. Shidrama Nin-gappa", Civil

Revn. Appln. No. 912 of 1953, D/-18-6-1953 (Bom) (8).

2. Now, the view taken by Mr. Justice Shah is that u/s 19 it is not necessary for the debtor to apply for the transfer of a suit or an appeal, and that there is a statutory obligation upon the Court, in which a suit or appeal is pending, to transfer it to the Bombay Agricultural Debtors Relief Act Court, if the suit or appeal involves the questions whether the person from whom a debt is due is a debtor and whether the total amount of debts due from him exceeds Rs. 15,000. Therefore, Mr. Justice Shah came to the conclusion that Section 15 (2) had no application, because it could not be said that by reason of the debtor not applying for a transfer of the appeal to the Bombay Agricultural Debtors Relief Act Court he had by his omission, intentionally caused or permitted the creditor to believe that he was not a debtor.

Now, with respect to the learned Judge, we are unable to accept that view. It is perfectly true that there is an obligation cast upon the Court to transfer the proceedings mentioned in Section 19 (1). But it is not every appeal that is liable to be transferred. It is only an appeal which involves the two questions referred to in Section 19(1) that is liable to be transferred. Now, the appeal which was pending before the District Judge in this case did not involve either of the two questions. The suit was a simple partition suit which led to an appeal being filed by one of the parties, and no question arose as to whether any of the parties was a debtor within the meaning of the Bombay Agricultural Debtors Relief Act or whether his debts exceeded Rs. 15,000.

It is only if defendant No. 1 or defendant No. 2, who now urge that they were debtors and their debts are extinguished, had made an application to the District Court and had alleged that they were debtors and their debts did not exceed Rs. 15,000 that an issue would have arisen involving the determination of those two questions. In the absence of any such allegation by the debtor, it is difficult to understand how it could be said that this appeal was liable to be transferred to the Bombay Agricultural Debtors Relief Act Court. The failure on the part of defendants Nos. 1 and 2 to make these relevant allegations leads to this conclusion that by failing to make these allegations he led the creditor to believe that he was not a debtor and that the District Court had jurisdiction to dispose of the appeal.

Therefore, in our opinion, the failure on the part of a debtor to make the necessary allegations, which would lead to the transfer of a suit or appeal to the Bombay Agricultural Debtors Relief Act Court, must incur the penalty laid down in Section 15(2) and the penalty is that the debtor cannot contend that the debt which is the subject-matter of the suit or appeal is extinguished, by reason of Section 15 (1). Therefore, applying the test to the facts of the present case, the failure on the part of defendants Nos. 1 and 2 to make the necessary allegations required u/s 19(1), before the appeal could be transferred, must lead to the consequence that it is not open to them to contend that the debt which is the subject-matter of that appeal is extinguished by reason of Section 15(1).

3. The result, therefore, is that the appellant, who is the decree-holder, must succeed and all the appeals will be allowed with costs in this Court. The order of the District Court will be set aside, the order of the trial Court restored and the darkhasts will be directed to proceed in accordance with law. Parties to bear their own costs in the District Court.

4. Appeals allowed.