
(1984) 10 BOM CK 0030
In the Bombay High Court
Case No : Spl. Civil Application No. 95 of 1978

Namdeo Asruba Mali

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-10-1984

Acts Referred:

Maharashtra Debt Relief Act, 1975 — Section 4, 6, 7

Citation : AIR 1985 Bom 211 : (1985) 1 BomCR 392 : (1985) 87 BOMLR 42 : (1985) MhLj 671

Hon'ble Judges : Madhava Reddy, C.J.;Khandekar, J;Ginwala, J

Bench : Full Bench

Advocate : K.S.Naik and S.C. Bora, for the Appellant; S.S.Choudhary, Govt Pleader, A.B. Naik and S.K. Shelke, Asst. Govt. Pleaders, B.N. Deshmukh and A.H. Kapadia, for the Respondent

Judgement

Madhava Reddy, C.J.—This matter comes up before us on reference by a Division Bench to resolve the conflict of views in Punamchand Sobaji Oswal Vs. Dattatraya Bharat Dandekar and Others, and Tukaram Ramchandra Mirgal Vs. Shankar alias Sakharam Kirshnaji Dabholkar and Others, on the question of jurisdiction of the Authorised Officer u/s 7(6) of the Maharashtra Debt Relief Act, 1975 (for short "the Act") to go behind the apparent nature of the transaction and determine the real nature of the transaction and grant relief to the debtor.

In Punamchand Sobaji Oswal Vs. Dattatraya Bharat Dandekar and Others, the Division Bench held:--

"If the transaction is expressed in the form of a sale-deed we do not understand how the Tahsildar acting under the provisions of the Debt Relief Act can go beyond the document and adjudicate that the transaction appears to be one of mortgage. The provisions of the Maharashtra Debt Relief Act, 1975 do not include any section which permits the Authorised Officer to go out beyond the transaction and find out the real nature thereof The legislature lly aware of the laws passed by itself in the past, viz. Deccan Agricultural Debtors Relief Act,

1902, as well as the Bombay Agricultural Debtors Relief Act. Both these Acts included provisions which permitted allegations to be made that a transaction of sale was in fact a transaction of loan or mortgage and when such allegations were made notwithstanding the provisions of the Evidence Act or any other Act for the time being in force, it was permissible to lead evidence and it was obligatory upon the Court to weigh that evidence and hold whether the alleged transaction of sale was in fact a transaction of loan or mortgage. When we look at the Maharashtra Debt Relief Act no such provision is to be found A debt has been specifically defined as a liability either in cash or kind which is outstanding on the appointed day, viz. 22nd August 1975. In the absence of any provision as mentioned above, the debt under the Maharashtra Debt Relief Act, 1975 has got to be a debt which is obvious and is beyond doubt. In any case it must have an appearance of a debt and it is entirely against the provisions of the Act to adjudicate whether a transaction of a sale is a mortgage at all."

This decision was followed by a Single Judge of this Court in *Voltas Limited v. Central Stores* 1980 Mah LJ 559 , but was, however, not noticed by a later Division Bench which decided *Tukaram Ramchandra Mirgal Vs. Shankar alias Sakharam Kirshnaji Dabholkar and Others*, wherein it was held that the Authorised Officer does have jurisdiction to adjudicate upon the real nature of the transaction.

2. In referring the matter the Division Bench, having regard to the decision of the Supreme Court in *Om Prakash Gupta Vs. Rattan Singh and Another*, was of the view :--

"whether or not the transaction is in reality a debt is not a jurisdictional fact but a fact in issue in such cases. Jurisdiction cannot be allowed to depend upon the admitted position about the nature of transaction."

It was also of the view that although when *Punamchand Sobaji Oswal Vs. Dattatraya Bharat Dandekar and Others*, was decided, Chapter V-A was not introduced :

"the fact that such a provision now exists cannot be ignored. Section 35 of the Act is very similar to corresponding section 24 of the Bombay Agricultural Debtors' Relief Act, which permits allegations to be made about real transaction.....absence of this provision is one of the principal consideration in deciding *Punamchand's* case."

Unable to agree with the view expressed in *Tukaram Ramchandra Mirgal Vs. Shankar alias Sakharam Kirshnaji Dabholkar and Others*, and finding that it conflicts with the earlier view in *Punamchand Sobaji Oswal Vs. Dattatraya Bharat Dandekar and Others*, the entire case has been referred to the Full Bench.

3. If the conflict of views alone had fallen for consideration before the Full Bench, we would have addressed straightway to the question, but as the entire case is referred to the Full Bench, it becomes necessary for us to refer to the facts and

see what the real question for determination is.

4. The petitioner is the owner and possessor of land admeasuring 4 acres 25 gunthas comprised in survey No. 81/2-B of village Wadalli, Taluka Kannad, District Aurangabad. Respondents Nos. 3 and 4 were the owners of that land. In 1951, they borrowed sum of Rs. 395/- and mortgaged the suit land with the petitioner by way of a usufruct mortgage for a period of 13 years which ended in 1964. On 3rd January 1977 they applied to the Authorised Officer alleging that the petitioner had got his name entered in the record of rights as the owner and prayed for the restoration of possession. The original application filed by them being somewhat cryptic, respondents Nos. 3 and 4 gave further details in another application dated 27th July 1977. The petitioner in reply admitted that there was transaction in the nature of usufruct mortgage as averred by respondents Nos. 3 and 4 agreed to transfer the said land in favour of the petitioner and accordingly they executed an Isarpavti on 24th March 1956 after receiving a further sum of Rs. 650/-. They subsequently executed a Bharnapavti on 2nd May 1956 accepting a further amount of Rs. 600/-. It is his claim that respondents Nos. 3 and 4 sold the said land after receiving a consideration of Rs. 1,250/-. As this transfer was hit by section 47 of the Hyderabad Tenancy and Agricultural Lands Act (Act X of 1950), he applied for a validation certificate u/s 98 A of that Act. A certificate regularising the transfer of the aforesaid land in favour of the petitioner was accordingly issued to him on 2nd May 1960. Ever since that date the record of rights consistently showed the name of the petitioner as the owner and actual possessor of the suit land and also as personally cultivating the same as owner.

The Tahsildar, who is the Authorised Officer, made a summary enquiry into the claim of respondents Nos. 3 and 4 after notice to the petitioner. The Authorised Officer appears to have also called for the record of the proceedings u/s 98 A of the Hyderabad Tenancy Act. He came to the conclusion that respondents Nos. 3 and 4 were entitled to the relief prayed for and directed the respondents to be put in possession of the suit land. The petitioner preferred an appeal before the Deputy Collector, Vaijapur, and prayed for stay. The deputy collector was of the view that as the matter arose under the Maharashtra Debt Relief Act, no appeal was maintainable before the Deputy Collector under the Maharashtra Land Revenue Code. He stayed the hearing of the appeal to enable the petitioner to approach the High Court.

5. Under the Maharashtra Act No. III of 1976 the Authorised Officer is empowered to adjudicate upon matters arising under Chapter III in which sections 4 to 13 occur. No appeal against any order made u/s 4 read with sections 6 and 7 is provided under the Act. Further, the jurisdiction of civil Court is also barred u/s 11. The order passed by the Authorised Officer is thus final so far as the Act is concerned. The appeal preferred before the Deputy Collector by the petitioner was, therefore, not maintainable. However, as the Authorised Officer performs a quasi-judicial function, the order made by him is subject to

the writ jurisdiction of the High Court both under Arts. 226 and 227 of the Constitution of India.

6. The Maharashtra Debt Relief Act, 1975, which came into force on 3rd January 1976, repeals the Maharashtra Debt Relief Ordinance, 1975. The ordinance had come into force on 22nd August 1975. The Act which substantially replaces the Ordinance is intended to provide relief "from indebtedness to certain farmers, rural artisans, rural labourers and workers in the State of Maharashtra." In promulgating the Act it was "now considered that relief from indebtedness should be restricted to the liabilities arising out of loans only and debts of workers who held immovable property the market value of which does not exceed twenty thousand rupees and the debts of workers who hold such property the market value of which exceeds twenty thousand rupees but does not exceed forty thousand rupees should receive moratorium for a temporary period". Chapter III of the act makes a provision for liquidation certain debts. Section 4 makes provision for "discharge of certain debts and consequences thereof". By section 5 the creditor is prohibited from disposing of the pledged property on pain of being prosecuted and punished. The debtor is given a right u/s 6 to approach the District Magistrate or an officer not below the rank of the Tahsildar and even the police authorities mentioned therein for putting him in possession of the property pledged or mortgaged mentioned u/s 4(e) of the Act. In the course of implementing the provisions of section 4 of the Act the creditor is given a right u/s 7 to dispute the eligibility of any debtor to the relief of possession under the Act. The creditor may allege that the debtor is not a marginal farmer, a rural artisan, a rural labourer or a worker, he may dispute the eligibility of the debtor for the relief under the Act on any other ground including the valuation of the immovable property, if any, of a worker. For this purpose he is required to make an application to the Authorised Officer within the period mentioned in sub-section (2) of section 7. He is also required to deposit the documents evidencing pledge or mortgage of the property with the Authorised Officer. The Authorised officer is empowered to make an inquiry in accordance with the procedure laid down for summary inquiries under the Maharashtra and Revenue code, 1966. Sub-section (6) of section 7 empowers him 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 pass such orders as may be necessary in the circumstances of each case for enforcing and implementing the provisions of the Act. Having thus vested the Authorised Officer with jurisdiction to determine all questions in relation to or connected with the question or dispute raised by the creditor in the application, the Act bars the jurisdiction of the civil court u/s 11 in the following words:--

"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 of an officer or authority made under

this Chapter shall be questioned in any Court."

As the civil court is thus barred from settling, deciding or dealing with any question under Chapter III required to be settled, decided or dealt with by the Authorised Officer, section 12 provides for stay of all pending suits involving such issues and enjoins it to refer such issues to be determined by the Authorised Officer. 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 Officers 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 suit in accordance with the procedure applicable thereto."

7. There can be no dispute that the Authorised Officer is empowered to determine all questions in relation to or connected with a dispute raised by the creditor in his application u/s 7 of the Act. the jurisdiction of the civil Court in respect of all these matters is totally barred. The creditor is given a right to raise a dispute as to the eligibility of the debtor to the relief under the Act on any other ground including those mentioned in section 7. The grounds on which the eligibility of the debtor to the relief under the Act could be disputed u/s 7 are that (i) he is not a "debtor", (ii) he is not a "marginal farmer", (iii) he is not a rural artisan, (iv) he is not a "rural labourer", (v) he is not a "worker" and that the valuation of the immovable property of a worker is not what is stated by him. Even grounds other than these may be raised by the creditor and the Authorised Officer is enjoined by sub-section (6) to inquire into all such questions. The eligibility of a person to the benefits of the Act and the relief granted under the Act is undoubtedly a fact in issue and not a jurisdictional fact. That fact cannot be decided by a civil Court. To be specific, if an applicant claiming to be a debtor files an application that he owed a debt within the meaning of the Act, that that debt stood discharged u/s 4 and that the consequence provided u/s 4 (e) would follow viz. that he is entitled to be put in possession of the immovable property, the creditor is entitled under S.7 to dispute his eligibility. The question of eligibility can be determined only by the Authorised Officer and not a civil Court.

8. It is, therefore, necessary to analyse section 4 of the Act and find out as to what debts and what category of debtors are covered by section 4 of the Act. Section 4 reads as follows:--

"4. 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 marker 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; and the consequences as hereinafter set forth shall, with effect from the appointed day, ensue, namely:--

(a) no such debt due from a debtor on the appointed day shall be recovered from him or from or against any moveable or Immovable property belonging to them, nor shall any such property be 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;

(b) 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 :

Provided that, where a suit or proceeding is instituted jointly against such debtor or any other person, nothing in this clause shall apply to the maintainability of a suit or proceeding in so far as it relates to such other person ;

(c) 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 shall abate :

Provided that nothing in this clause shall apply to the sale of-

(i) any moveable property, held and concluded before that appointed day;

(ii) any immovable property

(d) every debtor undergoing detention in a civil prison in execution of any decree for money passed against him by a civil Court in respect of any such debt shall be released;

(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 section 6 or by any person authorised by them in this 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 section 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 recovery 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 non-obstante clause therein gives an overriding effect of the contents of this petition. It overrides anything contained in any other law for the time being in force of any contract or other instrument having force by virtue of any such law. It applies to every debt outstanding on the appointed day. It covers 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. Section 4 declares that such outstanding debt, including the amount of interest, if any, payable by a debtor shall be deemed to be wholly discharged. Amongst others, the two important consequences that ensue upon the debt standing discharges u/s 4 are those stated in clauses (a) and (b), viz. (i) such debt shall not be recoverable from the debtor personally on any manner and (ii) such property shall stand released in favour of such debtor and the creditor shall be bound to return the same to the debtor. The debtor is given a right to make an application in writing in that behalf to the creditor and the creditor is required to pass a receipt to the debtor acknowledging receipt of the application. Section 6 lays down that if a creditor fails to return the property to the debtor as required by clause (e) of section 7, apply to the District Magistrate to put him in possession. "Appointed day" is defined u/s 2(b) as meaning 22nd day of August 1975, the date when the Maharashtra Debt Relief Ordinance, 1975, came into force. "Debt" is defined in section 2(e) as follows :--

" "debt" means any liability in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest if the loan is taken by a worker, and with or without interest, in any other case), whether secured or unsecured, due from a debtor whether payable under a decree or order of any court of otherwise."

As per this definition only those debts as were outstanding on 22nd August 1975 would be debts within the meaning of the Act. "Debtor" is defined in section 2(f) as under :--

" "debtor" means a marginal farmer, rural artisan, or rural labourer whose total income from all sources did not exceed two thousand four hundred rupees during the year immediately before 1st day of August 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."

"Worker" is defined in section 2(o) as under :--

" "Worker" means a person who earns his livelihood through profession, calling or trade and also a person who is working in any factory (including a badli worker therein)."

9. From a reading of these provisions it would be abundantly clear that in order that a person may be entitled to apply for putting him in possession, (1) he must be a "debtor" within the meaning of the Act, (2) that "debt" must be outstanding on the appointed day and (3) that debt must be extinguished by the operation of

section 4. When the eligibility of that person is disputed, it is the Authorised Officer that must decide that question. The Authorised Officer, in such an event, is bound to go into the question whether the debt was outstanding on the appointed day or discharged earlier. In going into that question the Authorised Officer is not entering into what the real nature of the transaction is, but is only determining whether it stood discharged by virtue of section 4. If the debt is to stand discharged by the virtue of section 4 it must be outstanding on the appointed day, that is 22nd August 1975. The consequences mentioned in clauses (a) to (e) of section 4 would follow only if the debt stood discharged by virtue of section 4. It would therefore be necessary to examine in each case whether the person was a debtor and whether his debt was outstanding on 22nd August 1975. If such a person makes an application, the creditor may raise a question as to the eligibility of the person to the benefit of the Act and after enquiry possession may be ordered to be delivered by the Authorised Officer to the debtor. The creditor is thus given a right to raise the question of eligibility which includes the right to plead that the person who claims to be a debtor is not a debtor, that he is not a worker if he claims to be a worker and he may raise any other question including the valuation of the Immovable property if that is relevant for granting relief. That other question could be that the debt was not outstanding on the appointed day and that if stood extinguished much earlier and, therefore, the consequences mentioned in section 4 would not follow. The question of eligibility so raised has to be decided at the threshold by the Authorised Officer. If the debt is found to be one within the meaning of the Act and if that debt stood extinguished u/s 4 of the Act, then all other questions mentioned in sections 6 and 7 would arise for decisions. If on such enquiry it is found that the debt was not outstanding on 22nd August 1975 and consequently there could be no question of debt being extinguished on the appointed day by virtue of section 4, the debtor would not be entitled to the relief u/s 6. Hence no further enquiry is required and the application must be rejected at that stage itself and the stage of going behind the apparent nature of the transaction is not reached at all. When the creditor raises the question of eligibility it has necessarily to be determined by the Authorised Officer. But what the Authorised Officer would have to determine first is, if the debt was outstanding on the appointed day. If the answer to this question is in the affirmative, then further enquiry is necessitated. If, even according to the debtor, that debt stood extinguished before the appointed day by virtue of any agreement or any other contract between the parties prior to the appointed day, there is no occasion for any further enquiry. In such a case, sec. 4 itself would not apply and none of the consequence mentioned therein would ensue with the result that no application under sec. 6 for putting the debtor in possession would lie; nor would there be any occasion to enquire into the other objections mentioned in sec. 6 which the creditor could raise. In the two aforementioned cases, which have necessitated this reference, the question whether the debt was outstanding on the appointed day and whether it stood extinguished by virtue of section 4 of the Act did not arise and, therefore, there was no occasion to go into this aspect of the matter.

as observed by the Supreme Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra,

"A meaningful yet minimal analysis of the Debt Act, read in the light of the times and circumstances which compelled this enactment, will bring out the human setting of the statute. The bulk of the beneficiaries are rural indigents and the rest urban workers. These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them..... it is true that the creditor has to move, and not the debtor, before the authorised officer. As between the two, the money -lender is sure to be far shrewder and otherwise more capable of initiating proceedings. To case that obligation on the doctor-remember, in the bulk of cases he is the village artisan, landless labourer or industrial worker - is to deny relief in effect while bestowing it in the book....." The legislative intent however appears to be very clear that it intends to relieve the burden of certain class of debtors whose debts were outstanding on the appointed day. Section 6 and 7 do not apply to all debts. They only apply to a "debt" and the "debtor" within the meaning of the Act whose debt stood extinguished as laid down in section 4. Only in the course of implementing section 4, objections u/s 7 have to be considered and not independent of it. If the debts of the debtor stood extinguished much earlier, the Act does not permit re-opening of such transactions under sections 4,6, and 7. Only if according to one or the other party the debt was outstanding on the appointed day and the Authorised Officer finds that it stood extinguished by the operation of section 4 he acquires jurisdiction to afford relief u/s 6 read with section 7 of the Act.