
(1950) 11 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 851 of 1949

Paragouda Sanagouda and Another

APPELLANT

Vs

Shyamu Pandurang Waman

RESPONDENT

Date of Decision : 22-11-1950

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 17, 17(1), 17(2), 20, 24

Citation : AIR 1952 Bom 54 : (1951) 53 BOMLR 752 : (1951) ILR (Bom) 572

Hon'ble Judges : Chagla, C.J

Bench : Single Bench

Advocate : T.S. Jahagirdar, for the Appellant; K.G. Datar, for the Respondent

Judgement

[1] This revision application raises an interesting question as to whether a decision by the Debt Adjustment Court that the applicant is a debtor and that the total amount of his debts do not exceed Rs.16,000 is subject to appeal to the District Court.

[2] The provision with regard to appeal is to be found in Section 43 of the B.A.D.K. Act and Section 43 (1)(ii) provides that an appeal shall lie from every order passed u/s 17. The very ingenious argument advanced before me is that this provision only applies to an order passed u/s 17 (2) and not to a decision given u/s 17 (1). Section 17 (a) provides that if the Court finds that a person is not a debtor or that the total amount of his debts is more than Rs. 16,000, then the Court shall dismiss the application. Therefore, what is contended is that it is only when an order is made dismissing the debtor's application that an appeal lies u/s 43. It is further pointed out that Section 20 provides for an order to be made when the Court holds that the applicant is a debtor and that his debts do not exceed rupees 15,000, and the order to be made u/s 20 is that the Court shall proceed to take accounts in the manner hereinafter provided. What is urged is that an order u/s 20 is not made appealable and the only order that the Court passes when it decides that the applicant is a debtor and that his debts do not exceed Rs. 15,000, is an order u/s 20; no order is passed u/s 17(1). An order is

the formal expression of any decision of a civil Court which is not a decree, and the question that I have to decide is whether when a Court decides u/s 17 (1) in respect of the status of the applicant whether that decision constitutes an order or not. There is certainly a decision and the question is whether there is any formal expression of that decision which would constitute, the decision an order. In order to make an order u/s 20 the Court has got first to hold that the applicant is a debtor and that his debts do not exceed Rs. 15,000. Having held that the Court has to give a formal expression to that decision in its judgment, and having given formal expression to that decision, it has then to make an order u/s 20 directing that the Court should proceed to take accounts in the manner provided under the Act. In the case here also the learned Judge has decided that the joint family of the applicant is a debtor because in this case we are concerned with a joint family. I fail to see why this decision which is embodied in the judgment is not a formal expression of the decision required u/s 17 (1).

[3] There are other reasons also which lead me to the conclusion that a decision u/s 17 (1) is appealable. If the Legislature's intention was that only orders under; Section 17 (a) should be made appealable, there was nothing easier than for the Legislature so to provide, because we find in Section 43 that where appeals are restricted to orders made under certain sub-sections of sections in the Act, Section 43 so provides. For instance, appeals are provided only against orders passed under Sub-section (a) of Section 36 and not orders passed under Sub-section (1) of Section 36. Therefore, one would have expected the Legislature to provide that appeals shall lie only against orders passed u/s 17 (2) if that was the intention of the Legislature. The very fact that the Legislature provides that an appeal lies against every order passed under S.17 clearly indicates that appeals are not confined to orders passed u/s 17(2), and the expression "every order passed u/s 17," also lead one to the inference that the only order contemplated is not an order u/s 17(2). If that were so, then one would have expected in Section 43 different language and what would have been provided would have been, "An appeal shall lie from the order passed u/s 17 or from the order passed u/s 17 (2)." Further, when we turn to the other provisions of Section 43 it is clear that appeals are provided from declarations to be made by the Debt Adjustment Court under different circumstances. For instance, an appeal is provided from every order passed under Sub-section (3) of Section 8. That sub-section merely provides for the recording of a settlement and that recording is treated as an order. Then turning to Section 24, that section provides for a declaration to be made with regard to a transfer purporting to be a sale to be in the nature of a mortgage. There again, the declaration to be made by the Court is treated as an order. Again, u/s 28 which deals with fraudulent alienations or encumbrances the section empowers the Court to declare alienations or encumbrances which were created with intent to defeat or delay any of the creditors of the debtor to be void. Here again, the declaration is to be treated as an order. Similarly, in my opinion, the decision given by the Court u/s

17 (1) must be looked upon as an order which is made appealable u/s 43. It has been contended that the decision given u/s 17(1) is at best an interlocutory order and it would ultimately come to be embodied in the award which is made appealable. I see no reason why the Legislature could not have made an order which may be an interlocutory order subject to appeal, and there seems to be sound policy underlying the intention of the Legislature to make such order appealable. If such an order were not appealable, then the matter would have to proceed to an award, accounts would have to be taken, and when the award ultimately went up in appeal to the District Judge, it would be at that stage that the creditor would be entitled to contend that the applicant was not a debtor and that his debts exceeded Rs. 15,000. If the District Court were to accept the contention of the creditor, then the result would be that the award would have to be set aside and all the time taken up by the Court in taking accounts and investigating into the affairs of the debtor would be entirely wasted.

[4] Therefore, taking all the circumstances into consideration, I am of the opinion that the appeal from a decision u/s 17(1) is competent and the District Judge had jurisdiction to hear the appeal. Application fails. Rule discharged with costs.

[5] Rule discharged.