APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Dixit.

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CHATRAPPA TIPPANNA HADPAD, AND OTHERS (ORIGINAL DEBTORS), APPLICANTS *v.* DASTAGIRSAHEB MAHAMADSAHEB KHODKA, AND ANOTHER (ORIGINAL CREDITORS), RESPONDENTS.* *Feb.* 21

Bombay Agricultural Debtors' Relief Act (XXVIII of 1947), ss. 17 (1) 43, 32—Decision of Court under s. 17 (1)—Whether appeal lies against such decision—Whether failure to appeal against the said decision prevents party from challenging the decision in appeal against the award—Civil Procedure Code (V of 1908), s. 105 (2).

Section 43 of the Bombay Agricultural Debtors' Relief Act, 1947 having made specific provision permitting an appeal from every order passed under s. 17 of the Act, an appeal lies against a decision of the Court on the preliminary issues under s. 17 (*1*) of the Act.

Paragouda Sanagouda v. *Shyamu*,[1] followed.

Narayan Ganesh v. *Waman Laxman*,[2] not followed.

Dattatraya v. *Radhabai*,[3] and *Chanmalswami* v. *Gangadharappa*,[4] distinguished.

A mere failure to appeal against the decision of the Court on the preliminary issues under s. 17 (*1*) of the Act does not prevent a party from challenging its correctness when an appeal is filed against the final award made under s. 32 of the Act.

Maharajah Moheshur Sing v. *The Bengal Government*,[5] referred to.

Civil Revision Application from the decision of R. R. Karnik, District Judge at Bijapur reversing the decision of S. G. Chikkerur Joint Civil Judge (J. D.) at Muddebihal.

There were certain transactions between Chatrappa and others (applicants-debtors) and Dastagirsaheb and another (Opponents-creditors); and the dispute with respect to those transactions resulted in an award decree dated October 16, 1931.

On August 15, 1945 the applicants-debtors made an application to the Debt Adjustment Board contending that the relationship of debtor and creditor continued to subsist in spite of the award decree. The Chairman of the Debt Adjustment

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* Civil Revision Application No. 841 of 1950.

[1] (1950) 53 Bom. L. R. 752.

[2] (1950) C. R. A. No. 948 of 1949, decided by Gajendragadkar J. on October 5, 1950 (unreported).

[3] (1920) 23 Bom. L. R. 92.

[4] (1914) 39 Bom. 339.

[5] (1859) 7 Moo. I. A. 283.

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Board raised preliminary issues under s. 35 of the Bombay Agricultural Debtors' Relief Act, 1939 and on May 26, 1946 held that the applicants were debtors under the Act and that the total amount of their debts did not exceed Rs. 15,000. Under the Bombay Agricultural Debtors' Relief Act, 1947, the Boards were abolished and the matter was taken before the Joint Civil Judge, Muddebihal. On April 2, 1949, the Judge made an award holding that Rs. 550-12-0 were due to the Opponents from the applicants and the latter were ordered to pay the sum by instalments.

On appeal the opponents-creditors contended that the Chairman of the Debt Adjustment Board was wrong in holding that the applicants were debtors within the meaning of the Bombay Agricultural Debtors' Relief Act. The applicant-debtors raised a preliminary objection that as no appeal was filed against the decision of the Chairman, it was not open to the Opponents-Creditors to agitate the question in appeal against the final award. The appellate Judge held that there could be no appeal against a finding declaring a person to be a debtor and that, therefore, it was open to the creditors to raise the question of status of the applicants in the appeal filed by the opponents against the award. On merits, the Judge held that the relationship of debtor and creditor did not subsist between the applicants and their creditors and consequently they would not be held to be "debtors" within the meaning of the Act.

The applicants applied in revision to the High Court.

The application was heard.

K. G. Datar, for the applicants.

G. R. Madbhavi, for the opponent No. 1.

RAJADHYAKSHA J. This is an application by certain debtors who were the applicants in a debt adjustment application No. B-154 of 1945 before the Chairman of the Debt Adjustment Board at Muddebihal. It appears that between the applicants and the creditors there were certain transactions and the dispute with respect to those transactions resulted in an award decree dated October 16, 1931. The terms of the award decree were as follows :—

"The respondents (debtors) should pay the appellants (creditors) within two years, that is, before 16-10-1933, Rs. 900 with interest thereon at 18 per cent. The amount was to remain a charge on the land in dispute. If the respondents failed to pay the sum within the said period,

the appellants should obtain possession of the land as purchasers and enjoy possession thereof as absolute owners. Thereafter, the respondents will have no proprietary rights on the land.

In case of necessity the respondents should pass a sale deed according to the desire of the plaintiff-appellants. If they do not pass the sale deed the plaintiffs should get it executed through the Court at the expense of the defendants."

The applicants-debtors contended that they could not pay the amount as ordered and, therefore, they voluntarily surrendered the land to the creditors at the expiry of two years with an oral agreement that the creditors should enjoy possession in lieu of interest and satisfaction of the principal. Nearly twelve years after that i.e., on August 15, 1945, the applicants-debtors made the debt adjustment application in question contending that the relationship of debtor and creditor continued to subsist in spite of the award decree, and in support of that allegation, relied upon the oral agreement which I have just referred to. The Chairman of the Debt Adjustment Board raised preliminary issues as required by s. 35 of the Bombay Agricultural Debtors' Relief Act, 1939, corresponding to s. 17 (*1*) of the Bombay Agricultural Debtors' Relief Act, 1947. The issues raised by him were :

"(1) Whether the debt due to creditor No. 1 from the debtors under the decree in civil suit No. 740 of 1931 still subsists?

(2) Are the applicants debtors under the Act?

(3) Whether the total amount of debts claimed as being due from them does not exceed Rs. 15,000 on May 1, 1945?"

It appears that the Chairman recorded only the statement of one of the debtors and relying on the statement and on the the fact that the debtors had voluntarily delivered possession of the land, the value of which was nearly double the amount of debt due to creditor No. 1, he came to the conclusion that there must have been an oral agreement as suggested by the debtors. He, therefore, gave a decision on those preliminary issues, holding that the applicants were debtors under the Act and that the total amount of debts claimed as being due from them did not exceed Rs. 15,000. This finding was given on May 26, 1946. The matter stood at that stage for nearly two years. The matter was thereafter taken before the Joint Civil Judge, Junior Division, Muddebihal, under the Bombay Agricultural Debtors' Relief Act, 1947, by which the Debt Adjustment Boards were abolished and the matters were directed to be proceeded with before the Courts. The learned

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Judge decided the other issues between the parties and ultimately made an award, holding that Rs. 550-12-0 were due to the creditors from the debtors. The debtors were ordered to pay the sum by instalments. This award was given on April 12, 1949.

Against that award an appeal was filed by the creditors in the District Court of Bijapur, being Miscellaneous Appeal No. 25 of 1949. It was contended before the learned District Judge by the creditors that the Chairman of the Debt Adjustment Board was wrong in holding that the respondents to the appeal were debtors within the meaning of the Bombay Agricultural Debtors' Relief Act. To that, it appears, a preliminary objection was taken on behalf of the debtors that as no appeal had been filed against the decision of the Chairman, dated May 25, 1946, it was no longer open to the creditors to agitate that question in an appeal against the final award. The learned District Judge took the view that under s. 43 read with s. 17 of the Act there could be no appeal against a finding declaring a person to be a debtor and that, therefore, it was open to the creditors to raise the question of status of the respondents in the appeal filed by them against the final award in the case. On merits the learned Judge held that the relationship of a debtor and creditor did not subsist between the present applicants and their creditors and consequently they could not be held to be debtors within the meaning of the Bombay Agricultural Debtors' Relief Act. In coming to this conclusion the learned District Judge largely proceeded to interpret the decree in suit No. 740 of 1931 and on his reading of the decree the present applicants could not be said to be debtors under the Act and, therefore, they could not claim to have an adjustment of their mortgage debt. On this basis he allowed the appeal, set aside the award of the trial Court and dismissed the application of the applicants-debtors under the Bombay Agricultural Debtors' Relief Act. Against that order the applicants have come in revision.

The first point argued by Mr. Datar is that the learned District Judge was wrong in holding that no appeal lay from a decision of the B. A. D. R. Act Court under s. 17 (*1*) of the Act on the preliminary issues (*a*) whether the person for the adjustment of whose debts the application has been made is a debtor, and (*b*) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000. On this point there have been two conflicting decisions of single Judges of

this Court. In *Narayan Ganesh* v. *Waman Laxman*[1] Mr. Justice Gajendragadkar held that the findings recorded by the Judge on the preliminary issues under s. 17 (*1*) do not amount to an order and that a District Judge cannot entertain an appeal from those findings under s. 43 of the Act. The learned Chief Justice, on the other hand, held in deciding *Paragouda Sanagouda* v. *Shyamu*[2] that an appeal from a decision of a Court under s. 17 (*1*) of the Act is competent and that the District Judge has jurisdiction to hear the appeal. It does not appear that the earlier decision of Mr. Justice Gajendragadkar was brought to his notice. We have in this application to consider which of the two views appeals to us more. With great respect, we are in agreement with the view taken by the learned Chief Justice.

Section 17, so far as is relevant, reads as follows :—

"(1) On the date fixed for the hearing of an application made under s. 4, the Court shall decide the following points as preliminary issues:—

(*a*) whether the person for the adjustment of whose debts the application has been made is a debtor;

(*b*) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

(2) If the Court finds that such person is not a debtor or that the total amount of debts due from such person on the date of the application is more than Rs. 15,000, the Court shall dismiss the application forthwith."

Under s. 43 (*1*) (*ii*) an appeal lies from every order passed under s. 17 of the Act. Prima facie, therefore, an appeal can lie from every order passed under s. 17, whether it be under sub-s. (*1*) or sub-s. (*2*). What has been contended before us by Mr. Madbhavi for the creditors is that an order dismissing a debtors' application under s. 17 (*2*) of the Act is an "order" and, therefore, an appeal lies against that order under s. 43 of the Act. He argued however that a decision on the preliminary issues under s. 17 (*1*) of the Act is a mere finding and not an 'order' and that, therefore, that decision does not attract the applicability of s. 43 of the Act inasmuch as no "order" is passed. In order to consider the validity of this contention one has to refer to the definitions contained in s. 2 of the Act. Under sub-cl. (*15*) thereof, words and expressions used in the Act, but not defined, have the meanings assigned to them in

[1] (1950) C. R. A. No. 948 of 1949, decided by Gajendragadkar J., on October 5, 1950 (Unrep.).

[2] (1950) 53 Bom. L. R. 752.

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the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be. The word "order" has not been defined in the Bombay Agricultural Debtors' Relief Act, 1947. It must, therefore, be given the same meaning as is given to that word under the Code of Civil Procedure. Under s. 2 (*14*) of the Civil Procedure Code the word "order" means the formal expression of any decision of a Civil Court which is not a decree. We see no reason why the decision of a Court under sub-s. (*1*) of s. 17 should not be deemed to be an 'order' as that decision constitutes the formal expression of a decision of a Civil Court on certain preliminary issues. In that view we think that a decision of a Court under sub-s. (*1*) of s. 17 is an order and, therefore, an appeal can lie therefrom under s. 43 (*1*) (*ii*) of the Act.

Mr. Madbhavi invited our attention to the view taken in decisions under the Civil Procedure Code that mere findings by a Court are not subject to appeal. For instance, it was held in *Dattatraya* v. *Radhabai*[1] that the finding on an issue whether a party to a suit is an agriculturist preliminary to taking of accounts under the provisions of the Dekkhan Agriculturists Relief Act, is not a preliminary decree within the meaning of ss. 2 and 97 of the Civil Procedure Code. Basing his argument on the analogy to be drawn from this decision Mr. Madhbhavi contended that the finding whether a person for the adjustment of whose debts an application has been made is a debtor and whether the total amount of his debts on the date of the application exceeds Rs. 15,000 or not is also a mere finding from which no appeal can lie. Similarly, it was held in *Channalswami* v. *Gangadharappa*,[2] that a decision in favour of the plaintiff upon a preliminary defence that the matters in dispute are caste questions outside the jurisdiction of civil Courts does not amount to a preliminary decree attracting the provisions of s. 97 of the Civil Procedure Code. But all these decisions proceed upon the distinction which the Code draws between a final decree, a preliminary decree, an appealable order and other findings and orders. Unless a particular expression of opinion of the Court falls under one of the three first named categories, no appeal lies against it. That, however, cannot have any bearing where there is a specific provision permitting an appeal as in O. XLIII of the Civil Procedure Code or as

[1] (1923) 23 Bom. L. R. 92.

[2] (1914) 39 Bom. 339, s. c. 16 Bom. L. R. 954, F. B.

in the case before us under s. 43 of the Bombay Agricultural Debtors' Relief Act. Section 43 of the Act having made specific provision permitting an appeal from every order passed under s. 17 of the B. A. D. R. Act, the general principles to be deduced from decisions under the Civil Procedure Code, that there can be no appeal against a mere finding of a Court cannot apply.

Further, as the learned Chief Justice has pointed out in his judgment, if the intention of the Legislature was that only the decisions under s. 17 (*2*) of the Act should be made appealable nothing could have been easier than for the Legislature so to provide. Section 43 itself makes it clear that where appeals are intended to be restricted to orders made under certain sub-sections of sections of the Act, there is a specific reference to those sub-sections in s. 43 of that Act. For instance, s. 43 (*1*) (*i*) provides for an appeal from every order passed under sub-s. (*3*) of s. 8 and similarly s. 43 (*1*) (*v*) provides for an appeal from every order passed under sub-s. (*2*) of s. 36. If, therefore, it was the intention of the Legislature to make appealable an order under sub-s. (*2*) of s. 17 only and not a decision under sub-s. (1) of s. 17, s. 43 (*1*) (*ii*) should have referred to "every order passed under section 17 (*2*)" and not to "every order passed under section 17". This reasoning, of course, postulates that a decision under s. 17 (*1*) is an "order".

It was then argued by Mr. Madbhavi that a decision under sub-s. (*1*) of s. 17 cannot be regarded as an order inasmuch as there is no command of the Court in recording a finding on the two preliminary issues and that, therefore, such finding cannot be regarded as an order. To this argument also a reply has been given in the judgment of the learned Chief Justice. The word "order" used in s. 43 is not confined in its implication to commands of the Court. Section 43 refers to 'orders' under ss. 8 (3), 24 and 28 from which an appeal lies. The learned Chief Justice observes :

"For instance, appeals are provided from every order passed under sub-s. (*3*) of s. 8. That sub-section merely provides for the recording of a settlement and that recording is treated as an order. Then turning to s. 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, under 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

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by the Court under s. 17 (*1*) must be looked upon as an order which is *made appealable under s. 43.*"

If then the word "order" as used in s. 43 (*1*) (*i*), (*iii*) and (*iv*) can include mere records made or declarations given, we see no reason why the same word should be given a more restricted meaning in s. 43 (*1*) (*ii*) so as to confine it to commands of the Court and not to include decisions given under s. 17 (*1*) of the Act.

Mr. Justice Gajendragadkar who took a different view in *Narayan Ganesh* v. *Waman Laxman* seems largely to have been influenced by the consideration that a decision under s. 17 (*1*) does not involve an order or command by the Court. His attention does not appear to have been invited to the fact that the word "order" as used in s. 43 covers not merely commands but also records made and declarations given under different sections of the Act. Mr. Justice Gajendragadkar also seems to have thought that a comparison with the position under the old Act supports the view that a decision under s. 17 (*1*) is not made appealable under s. 43 (*1*) of the Act. With very great respect, we are unable to draw any such inference and we should have thought that the inference, if any, to be drawn is the other way about. Section 35 of the old Act of 1939 corresponds to s. 17 of the new Act of 1947. Section 9 of the old Act provided for appeals. In providing for appeals it clearly stated that an appeal would lie against an order made under sub-s. (2) of s. 35 (corresponding to sub-s. (2) of s. 17 of the new Act). But the new Act departed—we presume deliberately—from the wording of the old Act and instead of providing in s. 43 for appeals against orders under sub-s. (2) of s. 17 only, it provided for appeals against all orders under s. 17. If the intention of the Legislature was to carry forward the position under the old Act, s. 43 of the new Act would have made specific reference to sub-s. (2) of s. 17 only and not to s. 17 generally.

We are, therefore, of the opinion that an appeal lies under s. 43 of the Bombay Agricultural Debtors' Relief Act, 1947, against a decision of the Court on the preliminary issues under sub-s. (*1*) of s. 17 of the Act.

It was pointed out to us by Mr. Madbhavi that the decision holding the applicant to be a debtor and that his debts did not exceed Rs. 15,000 was made by the Chairman of the Debt Adjustment Board on May 25, 1946, when the 1939 Act was in force. Under that Act no appeal was provided, as I have

stated earlier, against decisions made under sub-s. (*1*) of s. 35 of the Act (corresponding to sub-s. (*1*) of s. 17 of the new Act). But s. 56 of the new Act provided for the continuance of the proceedings under the old Act. If we are right in the view that we take that s. 43 of the new Act provides for appeals against decisions under sub-s. (*1*) of s. 17, then a new right of appeal was given under the Act of 1947 which did not exist under the former Act. The Act of 1947 having made provision for the filing of appeals from decisions under sub-s. (*1*) of s. 17 of the Act omitted to prescribe any period of limitation for filing such appeals. This omission, however, was made good by Act No. LXX of 1948 by which a new clause was added to s. 43 of the Act. The new clause stated that "an appeal from the Court shall lie to the District Court, and the appeal shall be made within sixty days from the date of the coming into force of the Bombay Agricultural Debtors' Relief (Amendment) Act, 1948, or from the date of the order or award, as the case may be, whichever is later." That Act came into force on December 22, 1948, and it was then open to the creditors to file an appeal against the decision of the Chairman of the Debt Adjustment Board dated May 25, 1946, before February 22, 1949. It is, therefore, in our opinion, not correct to say that against the decision in this case which was given on May 25, 1946, no appeal could have been filed by the creditors.

It was next argued by Mr. Madbhavi that even if an appeal did lie against the decision of the Court under s. 17 (*1*) of the Act and no such appeal was filed, it did not preclude the creditors from challenging that correctness of the decision in an appeal from the final award made by the Court. In our opinion, this submission must be accepted. Section 43 of the Bombay Agricultural Debtors' Relief Act, 1947, gives a right of appeal against an order passed under s. 17 of the Act. There is no provision in that Act which says that if an appeal is not filed as provided by s. 43, the parties are precluded from agitating that question when the matter comes up in appeal against the final award under s. 32 of the Act. There is no such provision as is contained in sub-s. (*2*) of s. 105 of the Civil Procedure Code under which "when a party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness." We are, therefore, of the opinion that a mere failure of the parties to appeal from a decision under sub-s. (*1*) of s. 17 of the Act does not preclude them from challenging the correctness of

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that decision when the matter comes before the District Court in an appeal against the final award. Moreover, a decision under sub-s. (*1*) of s. 17 cannot be treated as being on a higher footing than that of an appealable order under the Civil Procedure Code. Section 105 makes it clear that where an interlocutory order is appealable, the party against whom the order is made is not bound to prefer an appeal against it, but he may make the irregularity in the order a ground of objection in the memorandum of appeal, where an appeal is preferred from the decree in the suit in which the order was made. In other words, s. 105 allows an appealable order which has not been appealed from to be made the subject of appeal in an appeal from the decree: (*See* Mulla's commentary under s. 105 of the Civil Procedure Code). This is based on the observations of their Lordships of the Privy Council in *Maharajah Moheshur Sing* v. *The Bengal Government*,[1] and in subsequent cases and the principle underlying the decision is that an order appealable under s. 104 may be questioned under s. 105 in an appeal from the decree in the suit, although no appeal from the order has been preferred under s. 104. Sub-section (*2*) of s. 105 constitutes an exception to this general rule and it lays down that only in case contemplated by O. XLI, r. 23, where an order of remand has been made, the party which does not appeal from such order of remand is precluded from disputing the correctness thereof. In our opinion, therefore, a decision under sub-s. (*1*) of s. 17 is an appealable order under s. 43 of the Act and a mere failure to appeal from that order does not prevent a party from challenging its correctness when an appeal is filed against the final award.

It was argued by Mr. Datar that one cannot apply the analogy of the provisions of s. 105 because the award which is given under Bombay Agricultural Debtors' Relief Act, 1947, is not a 'decree'. We are not impressed by this submission. The award made under s. 32 of the Bombay Agricultural Debtors' Relief Act is in the nature of a decree. Just as a decree finally adjudicates the rights between the parties in an ordinary suit, similarly, an award made under s. 32 of the Bombay Agricultural Debtors' Relief Act, 1947, finally adjudicates the rights of the respective parties to the proceedings before the Court. Section 46 of the Act states that save as otherwise expressly provided in the Act, the provisions of the Code of Civil Procedure 1908, shall apply to all proceedings under chap. II of the Act.

[1] (1859) 7 M. I. A. 283.

In our opinion, therefore, it would not be wrong to apply s. 105 of the Code of Civil Procedure to orders which have been made appealable under s. 43 of the B. A. D. R. Act, and the mere fact that the Act uses the word "award" instead of the word "decree" does not, in our opinion, make any difference to the principle involved in the application of s. 105 of the Code of Civil Procedure.

We are, therefore, of the opinion that the learned District Judge was within his jurisdiction in entertaining an appeal against the decision of the Chairman of the Debt Adjustment Board under s. 35 (*1*) of the Act of 1939 (corresponding to s. 17 (*1*) of the Act of 1947), even though an appeal had not been filed as provided in s. 43 of the Act of 1947.

Coming then to the merits of the appeal before the learned District Judge, the learned Judge has reversed the finding of the lower Court on the ground that the award decree passed in 1931 brought to an end the relationship of debtor and creditor between the parties and that thereafter the applicants could not be said to be debtors so as to entitle them to take advantage of the provisions of the Bombay Agricultural Debtors' Relief Act. It was contended by Mr. Datar that the case of his clients (the petitioners) was not that the decree maintained the position of a debtor and creditor after it had been passed in 1931 but that when the possession of the land was handed over to the creditors in 1933, there was a contemporaneous oral agreement by which the applicants handed over possession of the land to the creditors in pursuance of which the creditors were to remain in possession and to pay themselves out of the usufruct of the land until both the debt and interest thereon were satisfied. It is undoubtedly true that the learned District Judge has not considered this aspect of the case, but instead of remanding the case to the learned District Judge, as Mr. Datar desired, we thought it best to look into the evidence as it stands to see whether the contentions put forward by the applicants have been made out.

The decree of 1931 made it clear that if the amount of Rs. 900 was not paid by the applicants within a period of two years, i.e., before October 16, 1933, the creditors should obtain possession of the land as purchasers and enjoy possession thereof as absolute owners. Thereafter the respondents (the present applicants) would have no proprietary rights on the land. That being the position, it would, prima facie, seem

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startling if it was contended on behalf of the applicants that the creditors agreed to forego their rights under the decree and contended themselves by taking possession of the land and agreed to pay themselves out of the usufruct of the land. The transaction set up by the applicants is that of a usufructuary mortgage on the footing that the ownership of the property remained with the applicants. A mortgage of this type would require to be made in writing and duly registered, and it would be difficult, prima facie, to accept a suggestion that the creditors agreed to take the land not as owners but merely as usufructuary mortgagees. But even this case has not been made out by the applicants in their evidence. The only evidence that is on record is a statement of one of the applicants that the possession of the property was handed over to the creditors and that there was a contemporaneous oral agreement that the creditors should pay themselves out of the usufruct of the property. The only other document which is on record is the *vardi* which appears to have been given to the village authority that the possession of the land had been handed over. There is not a scrap of independent evidence to suggest that the handing over of possession was as a result of a contemporaneous oral agreement of the type referred to by one of the applicants in his deposition. The creditor was present at the time when the deposition was recorded and it appears from an application filed by the pleader for the creditors that he protested against the procedure adopted by the learned Chairman of the Debt Adjustment Board, Bagewadi. The application is to the following effect :

"The creditors contend that the applicants are not debtors and they have got other considerable non-agricultural income. In that connection material questions were asked but were not allowed. The Board even refuses to take down the questions and then overrule them. Though the Board was requested not to proceed with the matter pending the disposal of a transfer the Board wants to proceed with the matter and expresses an opinion that it is going to hold the applicants debtors. Under these circumstances, the creditors apprehend that they will not get justice in this Board. It is, therefore, prayed that the hearing be stayed pending the disposal of the transfer application."

On this application the only endorsement that the learned Chairman has made is "adjourned *sine die*". The averments made in the petition have not been denied and the endorsement would appear to mean that the request for the adjournment of further proceedings was granted by the Chairman. In spite of this the learned Chairman, merely on the interested statement of one of the applicants, proceeded to record a finding

that the applicants were debtors and that their debts did not exceed Rs. 15,000. We consider that the procedure adopted by the Chairman is wholly irregular. If anybody had a grievance, it is the creditors. But we see no reason why the debtors should not have led all the evidence that they had in their possession to prove their contention that the relationship of a debtor and creditor still continued to subsist in spite of the fact that in 1933 possession of the land was handed over to the creditors. We think there is no reliable evidence on which the finding of the learned Chairman could be sustained and we are of the opinion that the view taken by the learned District Judge that the finding of the learned Chairman was wrong is fully justified.

Under these circumstances, we see no occasion to interfere with the order passed by the learned District Judge. Accordingly, we reject this application and discharge the rule with costs.

Rule discharged.

K. B. S.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

DHANRAJ MILLS, LTD., APPELLANTS (ORIGINAL PETITIONERS) *v.* B. K. KOCHER AND OTHERS, RESPONDENTS.*

Cotton Control Order, 1949—Import Trade Control Order, 1948—Allocation of imported cotton—Unfair discrimination by Textile Commissioner—Constitution of India Arts. 14 and 226—Dishonest exercise of discretion by officer cannot be challenged by a petition under Art. 226 as being contrary to Art. 14.

Article 14 of the Constitution ensures to all persons residing in India equality before the law and equal protection of the laws and there is a prohibition against the State preventing it from denying to any person equality before the law and equal protection of the laws.

If, therefore, a law is so passed as to make discrimination or deny its application equally to all subjects, such a law can be challenged under art. 226 as offending against art. 14 of the Constitution.

Further, if the law itself permits discrimination in its application or is found to be unfair and unequal in its actual administration or if it

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* O. C. J. App. No. 14 of 1951:
Miscellaneous Appln. No. 346 of 1950.