

No. 92 of 1936 should have been heard on merits. I see no force in this contention. Mr. Gokhale's client is the judgment-debtor. The application of the auction purchaser is to obtain possession from the judgment-debtor, and under O. XXI, r. 95, if the property is in possession of the judgment-debtor or of some person on his behalf or of some person claiming under the title created by the judgment-debtor, the Court is empowered to give possession to the auction purchaser and to remove any obstruction caused by the judgment-debtor or anyone on his behalf. This is not a case where a stranger is in possession where certain inquiry may be necessary. It seems that although the sale was confirmed in 1936, and we are in 1951, the ingenuity of Mr. Gokhale's client is not yet by any means at an end, and if this matter was again sent down to the executing Court, I am sure some very ingenious defences would be put forward as to why the auction purchaser should not be given possession. I am not disposed to encourage any further continuation of this unduly long litigation.

The result is that the application fails. Rule discharged with costs.

*Rules discharged.*

M. W. P.

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### APPELLATE CIVIL

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*Before Mr. M. C. Chagla, Chief Justice.*

RAMCHANDRA HUKUMCHAND (ORIGINAL OPPONENT), PETITIONER *v.*  
TUKARAM SAVALARAM PANASARE (ORIGINAL APPLICANT),  
OPPONENT.\*

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*Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), s. 2 (5)*  
(a) (iii)—Application for adjustment of debts filed by ordinary resident of Mahad in Mahad Court—Applicant cultivating lands in Bhore State during material period—Bhore not part of Bombay Province—Maintainability of application—Subsequent merger of Bhore with Bombay Province and extension of Act to it—Effect of subsequent events—Preamble to Act—Reference to preamble when permissible.

On June 17, 1947, an ordinary and permanent resident of Mahad made an application to the Mahad Court under s. 4 of the Bombay

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\* Civil Revision Application No. 3 of 1951.

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Agricultural Debtors Relief Act, 1947, for adjustment of his debts contending that a certain transaction was a mortgage though ostensibly a sale. For the material period prescribed by s. 2 (5) (a) (iii) of the Act, he was cultivating lands personally but those lands were situate in the Bhor State which was not then a part of the Bombay Province. Bhor integrated with the Province of Bombay in 1949 and the Bombay Agricultural Debtors Relief Act was made applicable to it on March 30, 1950. It was contended by the applicant that he was a "debtor" within the meaning of the Act at the date of the application and that in any event the Court could take into consideration the change in his status brought about by the integration of Bhor and the subsequent application of the Act to it:

*Held*, (i) that the expression "land" used in s. 2 (5) (a) (iii) was intended by the Legislature to be land within the Province of Bombay and not as land anywhere in the world, and, therefore, the applicant was not a debtor and his application was not maintainable when it was presented;

(ii) that the application of the Bombay Agricultural Debtors Relief Act to the Bhor State did not mean that an application which was not maintainable in Mahad Court when made became maintainable by reason of the fact that Bhor subsequently became part of the State of Bombay.

If the language of a section is clear it is not permissible to look at the preamble, but when the language is not clear and is ambiguous it is open to the Court to construe a section in the light of the preamble because it supplies a clear guide as to what was the object of the Legislature in placing a certain law on the statute book.

Civil Revision Application against the decision of B. V. Manjeshwar, Esquire, District Judge, Kolaba, reversing the decision of P. T. Patil, Esquire, Civil Judge at Mahad.

Tukaram (opponent) was a permanent resident of Mahad in Kolaba district. He owned some lands in Mahad taluka which he sold in 1939 to Ramchandra (petitioner). From 1942 to 1945 the opponent temporarily resided at Sindewadi, a village in Bhor State, and he personally cultivated some lands there.

A debt Adjustment Board was established at Mahad under the Bombay Agricultural Debtors Relief Act, 1939, on May 1, 1945. On October 31, 1945, the opponent applied to the Board for adjustment of his debts alleging that the sale deed of 1939 passed by him in favour of the petitioner was in the nature of a mortgage. On the enactment of the Bombay Agricultural Debtors Relief Act, 1947, the application was sent for disposal to the Civil Judge at Mahad where it was admitted to file on June 17, 1947. Bhor integrated with the State of Bombay in 1949, and the Bombay Agricultural Debtors Relief Act was made applicable to it on March 30, 1950.

On July 6, 1948, the trial Court found that the applicant was not a debtor and therefore it dismissed his application by observing as follows:

"The B. A. D. R. Act is purely a Bombay Act and as such it has no control over foreign territories. So Bhore State cannot come under the scope of this Act. Sub-s. (5) of s. 2 of B. A. D. R. Act defines the word debtor and describes it as 'an individual who is indebted and who holds lands used for agricultural purposes', though there is no limitation placed on the word holds yet it is made clear in sub-s. (7) of s. 2 of that Act and according to it the term holder means the holder as defined in cl. 11 of s. 3 of the Bombay Land Revenue Code which is again a Bombay Act and does not contemplate the holder of the land outside Bombay Presidency."

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On appeal the District Judge set aside the order and remanded the case to the trial Court for disposal according to law on September 7, 1950. In his judgment he observed.

"Then with regard to the second ground, the words used in s. 2, sub-s. 5 (iii) of the Act show that a person would be entitled to the status of a debtor if he has been cultivating land personally for 2 years preceding the date of the coming into operation of the Act. The clause does not provide that the land which is personally cultivated must be situate within the Province of Bombay. Therefore the appellant would be a debtor if he cultivated land personally in Shindewadi in 1942 to 1945."

The petitioner applied in revision to the High Court.

A. G. Desai, with M. G. Chitale, for the petitioner.

M. M. Virkar, for the opponent.

CHAGLA C. J. This is an application in revision against a decision of the District Judge, Kolaba, by which he held that opponent No. 1 was a debtor and his debts could be adjusted under the B. A. D. R. Act. It appears that the debtor made an application under s. 4 for adjustment of his debts on June 17, 1947, to the Mahad Court and he contended that a certain transaction was a mortgage though ostensibly a sale. The learned trial Judge held that the appellant was residing not in Mahad but in the Bhore State and also that he was cultivating lands personally not in Mahad but in the Bhore State and on that ground he dismissed the application of the debtor holding that he was not a debtor within the meaning of the Act. The learned District Judge came to a contrary conclusion. He held that the debtor was an ordinary and permanent resident of Mahad. With regard to the second ground the learned Judge took the view that it was sufficient for the purposes of the Act

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if the debtor was cultivating land during the material period anywhere.

Now, when the application was made by the debtor on June 17, 1947, Bhor was not a part of the State of Bombay, and in order to maintain the application under the B. A. D. R. Act the debtor had to be a resident in a local area for which a Board was established and he had to satisfy the definition of a debtor given under s. 2 (5). For the purposes of this revision application we are concerned with the definition contained in s. 5 (a) (iii) which provides:

“Who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act.”

It is not disputed that the debtor was personally cultivating land for the material seasons, but the question that falls for determination is, what is the land referred to in this sub-cause. Did the Legislature intend that if a debtor cultivated land anywhere in the world during the material period he would satisfy this qualification laid down by the Legislature? It is difficult to hold that that was the object of the Legislature, because when we turn to the preamble it is clear that this Act was intended for the relief of agricultural debtors in the Province of Bombay. Therefore relief was to be given not merely to a debtor in the Province of Bombay, but to an agricultural debtor in the Province of Bombay, and only that debtor would be an agricultural debtor who cultivated land in the Province of Bombay. The Legislature was only interested in those people who were cultivating land within its territorial jurisdiction and to whom relief was to be given because they were indebted. It is impossible to believe that the Legislature wanted to give relief to agriculturists from other parts of India merely because they might have become indebted in the Province of Bombay. If the language of a section is clear, it is not permissible to look at the preamble; but when the language is not clear and is ambiguous, it is open to the Court to construe a section in the light of the preamble, because the preamble supplies a clear guide as to what was the object of the Legislature in placing a certain law on the statute book. Construing this sub-section in the light of the preamble, it is clear that the land was not intended as land anywhere in the world, but it was intended to be land within the Province of Bombay.

Mr. Virkar has tried to controvert this argument by pointing out the definition of an "agriculturist" in s. 2 of the Deccan Agriculturists' Relief Act. There "agriculturist" was defined as a person who by himself or by his servants or by his tenants earned his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, and Mr. Virkar's argument is that when the Legislature wanted to qualify land it did so in clear terms as in this statute. Now, the Deccan Agriculturists' Relief Act and the B. A. D. R. Act are not in *pari materia*. The Deccan Agriculturists' Relief Act was a Central Act which was made applicable to different districts from time to time by relevant notifications. As it was a Central Act the Legislature had to restrict the operation of the Act to the particular area where it was made applicable. If land had not been qualified in s. 2, it might have been argued that a person who cultivated land anywhere in India, whether the Act was made applicable or not, would come within the definition and therefore it was necessary to qualify the use of the expression "land" in that section. But it was not necessary to do so in the B. A. D. R. Act because the B. A. D. R. Act is a Provincial Act and its territorial application is confined to the Province of Bombay, and as the intention of the Legislature was that relief should be given to any person cultivating land anywhere in the Province of Bombay, the expression "land" in s. 5 (a) (iii) was not qualified.

The second contention urged by Mr. Virkar is that the Court should take into consideration the change in law and the change in status brought about by certain events that happened after June 17, 1947. Bhor integrated with our State in 1949 and the B. A. D. R. Act was made applicable to the Bhor State on March 30, 1950. It is, therefore, contended that after the integration of Bhor, Bhor became a part of the State of Bombay, and if the debtor was cultivating land in Bhor, he was cultivating land in a part of the State of Bombay, and therefore the definition is satisfied. What I have to consider is whether the application that was made on June 17, 1947, was an application which was maintainable under the provisions of the B. A. D. R. Act. The last date for making an application under s. 4 was August 7, 1947, and in order that a proper application should be made it had to be made by a debtor as defined by the Act. Therefore, when the debtor made the application on June 17, 1947, he was not a debtor, Bhor had not integrated with Bombay

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and he was not cultivating land in the State of Bombay. Therefore, his application was clearly not maintainable and was liable to be dismissed. I fail to see how the integration of Bhore in 1949 and the application of the B. A. D. R. Act on March 30, 1950, can possibly affect the maintainability of the application under s. 4 which has got to be determined at the moment when the application was made and not in the light of subsequent events. The only effect of applying the B. A. D. R. Act to the Bhore State was that agriculturists in Bhore also became entitled to the various reliefs given to agricultural debtors under the B. A. D. R. Act. But the application of the B. A. D. R. Act to Bhore State did not and could not mean that an application which was not maintainable in Mahad Court became maintainable by reason of the fact that Bhore in 1949 became part of the State of Bombay.

In my opinion, the learned Judge was in error in the conclusion that he came to. The result is that the order made by the learned Judge must be set aside and the order of the trial Court restored. Mr. Desai to have the costs of this Court. No order as to costs of the two lower Courts.

*Rule absolute.*

M. W. P.

### APPELLATE CIVIL

*Before Mr. Justice Bavdekar and Mr. Justice Chainani.*

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 August 9 MADHAVDAS DEVIDAS PUNEKAR AND OTHERS, APPELLANTS v.  
 VITHALDAS VASUDEVDAS PUNEKAR AND OTHERS, RESPONDENTS.\*

*Arbitration Act (X of 1940), s. 39—Appeal to High Court from order refusing to set aside award—Disposal of appeal by single Judge of High Court—Further appeal under Letters Patent—Whether Letters Patent appeal is competent.*

When a single Judge of the High Court disposes of an appeal preferred to it under s. 39 (1) of the Arbitration Act, 1940, there is no further right of appeal under the Letters Patent.

*Radhakrishnamurthy v. Ethirajulu Chetty & Co.*,<sup>(1)</sup> followed.

*Hanuman Chamber of Commerce v. Jassa Ram*<sup>(2)</sup> and *Banwari Lal v. Hindu College, Delhi*,<sup>(3)</sup> dissented from.

*Hurrish Chunder Chowdhry v. Kali Sundari Debia*,<sup>(4)</sup> and *Sardar Ali v. Dalimuddin*,<sup>(5)</sup> referred to.

\* Letters Patent Appeal No. 34 of 1950.

<sup>(1)</sup> [1945] Mad 564.

<sup>(2)</sup> [1948] A. I. R. Lah. 64.

<sup>(3)</sup> [1949] A. I. R. East Punjab

<sup>(4)</sup> (1882) L. R. 10 I. A. 4.

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<sup>(5)</sup> (1928) 56 Cal. 512.