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Vyas J.

For the above mentioned reasons, we are of the opinion that this appeal filed by the State of Bombay must be allowed and the order of acquittal passed by the learned Sessions Judge in favour of the accused persons must be set aside. We convict all the accused of an offence under s. 66 (b) of the Bombay Prohibition Act, and looking to the fact that this is the first conviction of the accused, we propose to give them the benefit of s. 92 of the Act. Accordingly, while convicting all the accused under s. 66 (b) of the Bombay Prohibition Act, we instead of sentencing them to any term of imprisonment, direct that they be released on their executing bonds with one surety each for Rs. 100 to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour. The accused must appear before the trial Court within a period of fifteen days from today in order to execute the bonds.

Appeal allowed.

K. B. S.

APPELLATE CIVIL

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

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Jan. 8 JETHABHAI RAMBHAI AMIN AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 4), PETITIONERS v. RAO LAXMANRAO BHAILAL AND OTHERS (ORIGINAL PLAINTIFFS AND REMAINING DEFENDANTS), OPONENTS.*

Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), ss. 19, 2 (4), 17, 32—Suit for possession and mesne profits—Mesne profits, a debt—Suit when liable to be transferred to Debt Adjustment Court—Jurisdiction of special Courts under Act.

The Special Court set up under the Bombay Agricultural Debtors Relief Act, 1947, has only jurisdiction to try a suit to the extent that it is in respect of a debt; it has no jurisdiction at all to try a suit in any other respect; and it tries a suit in respect of a debt because it has to decide the preliminary issues under s. 17, and to adjust the debts in order that ultimately it should pass an award under s. 32. If a suit deals with any other matter, then the jurisdiction of the Civil Court remains unaffected.

Hence a suit which is primarily for possession and incidentally for mesne profits, which undoubtedly constitutes a debt within the meaning of the definition used in the Act, becomes liable to be transferred to the Special Court under s. 19 (1) only when the Civil Court comes to a

* Civil Revision Application No. 461 of 1951.

conclusion that the plaintiff has proved his title and the defendants are in wrongful possession and reaches a stage when the question of the determination of mesne profits arises. At that stage the Civil Court should pass a decree for possession in favour of the plaintiff and transfer the suit to the Debt Adjustment Court in order to determine the question of mesne profits. The Debt Adjustment Court should then determine whether any mesne profits are payable by the defendants, and also what is the quantum of the mesne profits; and this the Debt Adjustment Court should decide both in order to answer the preliminary issues under s. 17 and ultimately for the purpose of adjusting the debts and for passing an award under s. 32. If the preliminary issues are decided against the defendants, the Debt Adjustment Court should re-transfer the suit under s. 19 (4).

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Douloo Tukaram v. Sidlinga Appanna,⁽¹⁾ disapproved.

CIVIL REVISION APPLICATION from the decision of B. M. Thorat, Civil Judge (Senior Division), Baroda.

On February 3, 1948, plaintiffs brought a suit in the Court of the Civil Judge (Senior Division) at Baroda to recover possession of certain lands and a sum of Rs. 10,500 by way of past mesne profits. The plaintiffs also prayed for future mesne profits and costs.

On August 1, 1949, while the suit was pending, the Baroda State was merged with the State of Bombay and the Bombay Agricultural Debtors Relief Act, 1947, was made applicable to it as from the same date. The period of making an application under s. 4 thereof expired on January 31, 1950.

On January 9, 1951, defendants Nos. 1 and 4 applied to the said Court that the suit in so far as it related to past and future mesne profits was one for recovery of a debt and it should be transferred as a whole to the Debt Adjustment Court since they were debtors within the meaning of the Act.

The plaintiffs denied that the defendants were debtors and contended that the suit would not be one in respect of a debt unless and until the amount of the mesne profits was determined after holding that the plaintiffs were entitled to it.

The learned Judge upheld the plaintiffs' contention and rejected the application of the defendants Nos. 1 and 4. He observed in his judgment as follows:—

“In short at present that liability cannot be said to be in existence and, therefore, the claim for it is not covered by the definition of the word ‘debt’ given in s. 2 (4) of the B. A. D. R. Act in this respect. I may refer with great respect to the observation made by the reverend

⁽¹⁾ (1949) S. A. No. 596 of 1949, decided by Bavdekar J., on January 22, 1951 (Unrep.).

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Chief Justice Beaumont in the concluding paragraph of 35 Bom. L. R. page 485 (A. I. R. 1933 Bom. 250). Though that case was under the repealed B. A. D. R. Act, 1937, the principle involved in it is the same because the definition of the word debt in it was substantially the same as in the present Act. I, therefore, hold that so long as the liability in respect of the amount of damages claimed in the suit is not fastened on the defendants, the suit will not be one in respect of a debt and, therefore, at this stage it cannot be transferred to the Special Court under the B. A. D. R. Act as prayed for in the present application. It will however be considered after the liability is hereafter fastened on the present applicants after deciding the main allegation of the plaintiffs on which the suit is founded. In any case that allegation will have to be decided by this Court under sub-s. (6) of s. 19 and the suit as a whole as prayed for in the present application cannot be transferred to the Special Court."

Defendants Nos. 1 and 4 applied in revision to the High Court.

N. V. Karlekar, for petitioners.

A. S. Pradhan, for opponent No. 1.

Chagla C. J. The plaintiffs filed a suit for possession and mesne profits. Their allegation was that they had a title to the land, that the defendants were in wrongful possession, and that the defendants were liable to pay mesne profits for the period during which they were in wrongful possession. The suit was filed in a Court which was in the State of Baroda. Baroda was merged with the State of Bombay on August 1, 1949, and the Bombay Agricultural Debtors Relief Act was applied to the State of Baroda. The last date for making an application under the Bombay Agricultural Debtors Relief Act as applied to the Baroda State was January 31, 1950, and an application was made by the defendants on January 9, 1951, for the transfer of this suit to the Debt Adjustment Court. The learned Civil Judge to whom the application was made took the view that the suit could not be transferred at that stage. It is from that order that this revisional application has been preferred.

Now, as the suit was pending at the date when the application could be made under s. 4 of the Act, if the suit was one to which s. 19 applied and which was liable to be transferred, it was incumbent upon the learned Civil Judge to transfer the suit. And the question we have to consider is whether a suit for possession, in which mesne profits are claimed, is a suit which is liable to be transferred under s. 19 (1) of the Bombay Agricultural Debtors Relief Act. Now, the scheme of the Bombay Agricultural Debtors Relief Act has been considered

by this Court in several decided cases, and every time the Court considers the scheme of the Act, it is confronted with several difficulties, and an attempt has always got to be made as best as one can to reconcile various sections of the Act. A reconciliation can only be brought about if one considers the main object of enacting the Bombay Agricultural Debtors Relief Act and how that object can be achieved, and also by trying to avoid insuperable difficulties in the administration of justice. Bearing these considerations in mind, let us consider what the scheme of the Act is with regard to the transfer of suits.

Special Courts under the Bombay Agricultural Debtors Relief Act were set up in order, first, to determine the preliminary issues under s. 17; and those issues were whether the person, for the adjustment of whose debts the application has been made, was a debtor, and whether the total amount of debts due from such person on the date of the application exceeded Rs. 15,000. The Court had jurisdiction to proceed further provided both these issues were answered in favour of the debtor. The further jurisdiction that was conferred upon the Special Courts was to adjust the debts of the debtor with a view ultimately to pass an award under s. 32. The award was passed after scaling down the debts in accordance with the scheme laid down in the Act. Now, it is very pertinent to note that the Debt Adjustment Court did not have the jurisdiction to pass any decree in favour of the plaintiff which was unconnected with the debt which the plaintiff was claiming from the defendant. The only jurisdiction that the Special Court had was to make an award. But with regard to those issues that may arise in the suit, in respect of which a decree might have to be passed by a Court, the jurisdiction of the civil Court was not taken away. Therefore, in the present case, where we have a suit for possession and for mesne profits, if the plaintiffs prove their title to the land, it would not be competent to the Debt Adjustment Court to pass a decree for possession in favour of the plaintiffs. The jurisdiction, therefore, which vested in the civil Court to pass a decree for possession remains unaffected by the passing of the Bombay Agricultural Debtors Relief Act.

Now, under s. 19 (1) all suits have to be transferred which are in respect of a debt; and the contention put forward by Mr. Karlekar is that, inasmuch as the plaintiffs claim mesne profits, and inasmuch as "debt" is very widely defined in the

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Act as "any liability in cash or kind", this is a suit in respect of a debt and it must be transferred under s. 19 (1). If we were to give effect to this contention and construe s. 19 (1) to mean that every suit, whether primarily for a debt or not, in which there is any relief sought which, if granted, would amount to a debt payable by the defendants to the plaintiff, would be a suit liable to be transferred under s. 19 (1), then considerable difficulties will arise and it will be impossible to reconcile the other provisions of the Act. Assuming that this suit was transferred as a whole, and at this stage, to the Bombay Agricultural Debtors Relief Act Court, then, according to Mr. Karlekar, the only Court that will be competent to try this suit would be the Debt Adjustment Court. Therefore, the Debt Adjustment Court will have to try the issues, both with regard to possession and with regard to mesne profits. Assuming that the Debt Adjustment Court came to the conclusion that the plaintiffs were entitled to possession, Mr. Karlekar is unable to get over the difficulty of how the Debt Adjustment Court, under those circumstances, would be able to pass a decree in favour of the plaintiffs. Mr. Karlekar suggests that a suit may be re-transferred to the civil Court under sub-s. (4) of s. 19. But the re-transfer contemplated under sub-s. (4) is only when preliminary issues are decided against the debtor, in which case the Debt Adjustment Court has no jurisdiction to deal with the application of the debtor at all. Sub-section (4) does not deal with a case where a transfer has been properly made under s. 19 (1). Then Mr. Karlekar suggests that sub-s. (6) might be an answer to this difficulty. We frankly confess that it is difficult to understand to what particular kind of cases sub-s. (6) would apply. That sub-section contemplates a suit being transferred to the Debt Adjustment Court and yet certain issues entirely unconnected with the adjustment of debts being tried by the civil Court. Mr. Karlekar says that the issues with regard to possession may be tried by the civil Court although the suit is transferred to the Debt Adjustment Court. The difficulty in the way of accepting this suggestion is that, even though the civil Court may try issues with regard to possession, it will be impossible for the civil Court to pass a decree for possession after it has determined the issues, because, if the suit stands transferred to the Debt Adjustment Court and the Debt Adjustment Court is seized of the suit, it is impossible to contend that some other Court can pass a decree in that

suit. Therefore, whichever way one looks at it, one is faced with serious difficulties if one were to accept the contention of Mr. Karlekar that every suit in which there is any relief claimed for a debt must be transferred under s. 19 (1). Therefore, we must try and give to the expression "all suits in respect of any debt" used in s. 19 (1) a construction which is more consistent with the real object which the Legislature intended to achieve by passing the Bombay Agricultural Debtors Relief Act. The Special Court set up under the Act has only jurisdiction to try a suit to the extent that it is in respect of a debt; it has no jurisdiction at all to try a suit in any other respect; and it tries a suit in respect of a debt because it has got to decide the preliminary issues under s. 17, and it has got to adjust the debts in order that ultimately it should pass an award under s. 32. If a suit deals with any other matter, then the jurisdiction of the civil Court remains unaffected. If that be the true position, then we have here a suit which is primarily for possession and incidentally for mesne profits, which would undoubtedly constitute a debt within the meaning of the definition used in the Act. Therefore, this suit would only become liable to be transferred when the Court reaches a stage when the question of the determination of mesne profits arises and when the Court is called upon to determine whether there is any debt payable by the defendants to the plaintiff. When the Court is trying issues as to possession, when the Court is trying issues as to the title of the plaintiff, when the Court is trying issues as to wrongful possession by the defendants, the Court is not trying any matter which has anything to do with a debt or with the adjustment of a debt. After these issues are tried, they may be decided in favour of the defendants, in which case no further question will arise and the plaintiff's suit will be dismissed. On the other hand, the Court may come to a conclusion that the plaintiff has proved his title and the defendants are in wrongful possession. It would be at that stage that the question of mesne profits will arise. Then the Court would pass a decree for possession in favour of the plaintiff and would transfer the suit to the Debt Adjustment Court in order to determine the question of mesne profits. The Debt Adjustment Court will then determine whether any mesne profits are payable by the defendants, and also what is the quantum of the mesne profits; and this the Debt Adjustment Court will decide both

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in order to answer the preliminary issues under s. 17 and ultimately for the purpose of adjusting the debts and for passing an award under s. 32. This construction is also consistent with what is provided under s. 19, sub-s. (4), because that sub-clause clearly contemplates that, as soon as a suit is transferred, the Court must immediately proceed to try the preliminary issues under s. 17. Now, if the suit were to be transferred as it stands, it would be impossible for the Debt Adjustment Court to try the preliminary issues under s. 17. The first issue that the Court will have to try would be an issue with regard to possession and the title of the plaintiff. Now, the Act does not contemplate the Debt Adjustment Court trying any other preliminary issues than the issues referred to in s. 17. Therefore, looking to what is provided in sub-s. (4) of s. 19, it is clear that the Legislature intended that the suit should be transferred to the Special Court at a stage when that Court could immediately launch upon the trial of the preliminary issues under s. 17. That can only be done provided the civil Court has disposed of all other issues which have no connection with the preliminary issues under s. 17 and has passed the necessary decree if a decree has to be passed. The civil Court would then proceed to transfer the suit, and the Special Court would take up the suit at that stage, frame the preliminary issues under s. 17, decide the preliminary issues, and either go on with the suit or retransfer it under s. 19 (4) if the preliminary issues are decided against the debtor.

Our brother Mr. Justice Bavdekar had this question to consider in *Douloo Tukaram Patil v. Sidlinga Appanna Nille*⁽¹⁾ and the learned Judge took the view that the issue with regard to possession could not be said to be entirely unconnected with the adjustment of debts, and, therefore, that issue could not be tried by the civil Court under s. 19, sub-cl. (6), and, therefore, the whole suit, both for possession and for mesne profits, was liable to be transferred under s. 19 (1). With very great respect to the learned Judge, he failed to consider what the effect of such a transfer would be. He has also not considered whether it would be competent to the Special Court to pass a decree for possession if that Court was called upon to try the issue of possession. If that Court was not competent to pass the decree, the learned

⁽¹⁾ (1949) Second Appeal No. 596 of 1949, decided by Bavdekar J. on January 22, 1951 (unrep.).

Judge has not considered as to whether the civil Court could pass such a decree although the suit stood transferred to the Special Court. In view of the reasons given by us in our judgment, we find it difficult to accept the view taken by Mr. Justice Bavdekar in the second appeal just referred to.

We, are, therefore, of the opinion that the learned Judge below was right in the order that he passed. We, therefore, direct that the learned Judge will go on with the suit and try the issues which we have indicated and then follow the procedure which we have also indicated in this judgment.

No order as to costs.

Rule discharged.

M. W. P.

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APPEAL FROM ORIGINAL CIVIL

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

K. P. MUSHRAN, GENERAL MANAGER B. B. & C. I. RAILWAY
PETITIONER v. B. C. PATIL AND ANOTHER, RESPONDENTS.*

1951
August 24

Payment of Wages Act (IV of 1936), ss. 7, 8, 13, 15—Government of India Act 1935 (26 Geo. V C. 2), s. 241 (2), (4)—Indian Railways Act (IX of 1890), s. 47 (2)—Suspension of an employee—Subsistence allowance only given—Employee placed under compulsory leave—Full wages not paid—Employment continued—Whether employee entitled to full wages throughout the period he was in the employment—Railway Rules inconsistent with Payment of Wages Act—Such Rules void—Jurisdiction of the Authority under the Act to decide all claims arising out of deduction from wages and delay in payment of wages.—No error of law apparent on the face of the record—Writ of certiorari not available.

Section 241 (2) of the Government of India Act, 1935, provides that the conditions of service of persons serving His Majesty in a civil capacity in India shall be regulated, subject to the provisions of the section, in accordance with the rules prescribed by the various authorities mentioned in that sub-section. Section 241 (4) however provides that acts of the appropriate Legislature may also regulate the conditions of service of civil servants of His Majesty and it is specifically provided that in that case the rules made under s. 241 (2) by the various authorities would be subject to the provisions of such Acts of the Legislature.

The Payment of Wages Act is an Act passed by the Legislature under s. 241 (4) of the Government of India Act, 1935, and therefore to

* O. C. J. Mis. Appln. No. 179 of 1951: (with Mis. Appln. No. 179 of 1951).