question to be determined is whether the privy, cesspool, etc., is to be provided in respect of building or in respect of land; and then this section ends up by saying that the notice is to be served upon the owner of such building or land. Therefore, under that section also the primary question to decide is whether the privies are required for a building or for land, and if the privies are required for a building, then it is only the owner of the building who would be liable. Under that section, too, if you had a case where there was land and a building put upon that land and the owner of the building and of the land were different, then if the privies were required for the building, the owner of the land would not be liable.

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In my opinion, therefore, the view taken by the Additional Sessions Judge is right. I accept the reference and set aside the order of conviction and sentence passed by the learned Special Magistrate, First class, Poona. Fine if paid to be refunded.

Conviction and sentence set aside.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagala, Chief Justice.

SHANKAR NAGU MANE (ORIGINAL APPLICANT), PETITIONER *v.* MAHIBUB BANDU BAGWAN AND ANOTHER (ORIGINAL CREDITORS), OPPONENTS.*

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Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), ss. 4, 24 (2)—Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1939), ss. 17, 45 (1)—Application by agricultural labourer challenging sale to be in nature of mortgage—Applicant debtor within Act of 1939—Failure to apply for adjustment of debts under old Act—Application barred under s. 4 of new Act—Maintainability of application under s. 24 (2) of new Act.

Sub-section (2) of s. 24 of the Bombay Agricultural Debtors Relief Act, 1947, does not exclude a person who could have been but has not been, adjudicated a debtor under the provisions of the Bombay Agricultural Debtors Relief Act, 1939. Therefore, if an agricultural labourer makes an application before August 1, 1947, challenging a sale to be in the nature of a mortgage, such application is maintainable under s. 24 (2) notwithstanding that his application for adjustment of debts is barred under s. 4 of the new Act because of the establishment of a Debt Adjustment Board under the old Act.

* Civil Revision Application No. 585 of 1951.

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SHANKER NAGU v. MAHIBUB BANDU

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CIVIL REVISION APPLICATION against the order of V. S. Bakhale, District Judge, Sholapur, confirming the order passed by K. M. Hanbarhatty, Civil Judge, Junior Division, at Pandharpur.

On July 24, 1947, one Shankar Nagu More (applicant) made an application under s. 4 of the Bombay Agricultural Debtors Relief Act, 1947, to the Civil Judge (J. D.) at Pandharpur for a declaration that a sale, dated February 15, 1932, was really in the nature of a mortgage. A Debt Adjustment Board had been established in Pandharpur on January 1, 1942, under the Bombay Agricultural Debtors Relief Act, 1939, and the applicant who was a debtor within the meaning of that Act could have made an application for adjustment of his debt under it before June 30, 1943, but he failed to do so.

On September 17, 1947, the trial Court rejected the application on the ground that it was filed after the expiry of the period prescribed under the old Act.

On appeal to the District Judge at Sholapur, the applicant claimed relief under s. 24 (*2*) of the Act of 1947. The learned Judge was of opinion that the applicant could avail of that section only if he did not come within the definition of a debtor which was in force before June 30, 1943. He, therefore, remanded the matter for a finding on the following issues, viz., (*i*) whether the applicant was a debtor under Act of 1939; (*ii*) whether he was entitled to apply under s. 17 (*1*) of that Act; (*iii*) whether the real nature of the transaction could be determined under s. 45 (*1*) of that Act; and (*iv*) whether the applicant was an agricultural labourer.

The trial Court having certified its findings on the first three issues in the affirmative, the District Judge held that the applicant could not on those findings make an application under s. 24 (*2*) as an agricultural labourer and that a finding on the last issue was unnecessary. In the result he dismissed the appeal on December 19, 1950.

The applicant applied to the High Court in revision.

Y. V. Chandrachud, for the petitioner.

V. S. Desai, for opponent No. 1.

CHAGLA C. J. The petitioner made an application under s. 4 of the B. A. D. R. Act for the adjustment of his debts. That application was dismissed and there was an appeal to the learned District Judge who confirmed the order of the trial Court.

Now, it has been found as a fact that a Board for adjustment of debts was established in Pandharpur, the area with which we are concerned, on January 1, 1942, and the last date for making an application for the adjustment of debts under the old Act of 1939 was June 30, 1943, and it has been found that the petitioner was a debtor within the meaning of the old Act and he should have made an application under the provisions of the old Act. If that be so, it is clear that his application under s. 4 of the present Act is barred. Section 4 requires three conditions. He must be a debtor, he must make an application before August 1, 1947, and also in the area in which he resides no Board under the repealed Act must have been established before February 1, 1947. Therefore, if a Board was established prior to February 1, 1947, the section bars his application. If the Board was established after February 1, 1947, then the application must be made before August 1, 1947. It is not disputed before me by Mr. Chandrachud that the decision of the Courts below that the petitioner's application was barred under s. 4 is correct, but what is contended is that the petitioner should have been permitted to make an application under s. 24 (2). There is no finding by the Courts below as to whether the petitioner is an agricultural labourer within the meaning of the Act. That finding was thought unnecessary because the view taken by the learned District Judge was that if the petitioner was a debtor within the meaning of the Act of 1939, then he could not make an application under s. 24 (2) as an agricultural labourer. In other words, the view taken was that it is only those persons who were not debtors within the meaning of the old Act who could maintain an application as agricultural labourers under s. 24 (2), and what I have to consider in this application is to examine the validity of that argument.

Mr. Desai has drawn my attention to the scheme of the present Act. Under the old Act Boards were established and time was fixed within which applications were to be made. Boards were not established at the same time in all the areas, but some Boards were established subsequently, and as Boards were established time was fixed in relation to the establishment of the Boards. Therefore, when the new Act came to be passed it was provided that where Boards were established prior to February 1, 1947, no application could be made under s. 4 because an application could have been made to these Boards under the old Act, and even under the new Act time for making

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the application was limited to August 1, 1947. Now, what is urged before me by Mr. Desai is that a person who satisfied the qualifications of a debtor under the old Act could have made an application under the old Act and, therefore, it could not have been the intention of the Legislature that although he failed to make an application under the old Act and, therefore, his right to get his debts adjusted was barred he should now come, as it were, by a side-wind under s. 24 (2). Under the old Act there was no right specially given to agricultural labourers. Either a person was a debtor or he was not. If he was a debtor within the meaning of the old Act he had a right to have his debts adjusted. If he was not, he had no right to have his debts adjusted. Under the new Act special rights are conferred upon agricultural labourers. Mr. Desai may be right and the intention of the Legislature may have been what he suggests it was, but I must construe the Act as I find and unless the intention appears in language used by the Legislature I cannot go outside the ambit of the section and speculate as to what the Legislature intended.

Now, one important and unmistakable distinction between s. 4 and s. 24 (2) is that there is no limitation laid down in s. 24 (2) as it is laid down in s. 4 that the application could be made only if a Board was not established prior to the 1st of February 1947 in the area where the debtor resides. The only qualification laid down in s. 24 (2) is that the agricultural labourer must make an application before August 1, 1947. Therefore, if a person is found to be an agricultural labourer and if he makes an application before August 1, 1947, the application is perfectly valid and it must be disposed of according to law. In this particular case the application of the petitioner is made prior to August 1, 1947. He alleges that he is an agricultural labourer and he is challenging a transfer as being in the nature of a mortgage. It is difficult to understand on a plain reading of this sub-section how it could be said that the petitioner is not entitled to maintain his petition. There is nothing in sub-s. (2) which suggests that the agricultural labourer referred to in sub-s. (2) is an agricultural labourer other than a person who could have been adjudicated a debtor under the provisions of the old Act. I do not see why this qualification should be read into the sub-section. Mr. Desai says that when a declaration is made that the transfer is a mortgage, the applicant shall, notwithstanding anything contained in the definition of debtor in sub-s. (5) of s. 2, be

deemed to be a debtor for the purposes of the Act, and, therefore, Mr. Desai wants me to read into s. 24 (2) the provisions of s. 4, and Mr. Desai says that as the position of the agricultural labourer is to be the same as that of a debtor, higher rights cannot be given to him than are given to the debtor under s. 4 (*1*). I am not prepared to accept that contention as well. It is obvious that the Legislature wanted to give wider relief to an agricultural labourer than to a debtor. It may be that a similar provision as contained in s. 4 is not included in s. 24 (*2*) because the old Act did not give any relief to agricultural labourers at all. Perhaps the Legislature did not think of this complication which has arisen in this case on which Mr. Desai has relied that although an agricultural labourer was not defined under the old Act, cases may arise where an agricultural labourer may be held to be a debtor under the old Act. Whatever that may be, the mere fact that after his application has succeeded and an agricultural labourer is deemed to be a debtor within the meaning of the Act does not lead to the inference that the provisions of s. 4 (*1*) are to be made applicable to s. 24 (*2*). Therefore, in my opinion, the learned District Judge was in error when he held that the issue as to agricultural labourer was unnecessary if it was held that the petitioner was a debtor within the meaning of the old Act.

I would, therefore, set aside the order passed by the learned District Judge, send the matter back to the Debt Adjustment Court, and direct that an inquiry be held as to whether the petitioner is an agricultural labourer within the meaning of s. 24 (*2*). If he is an agricultural labourer, as his petition was presented before August 1, 1947, the Court will proceed to consider his application on merits. If it is held that he was not an agricultural labourer, then his application will stand dismissed. Rule absolute with costs.

Rule absolute.

M. W. P.