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It is then urged, in the alternative, by Mr. Madbhavi that the proper Court to which the application should have been made was the trial Court, and not the District Court. Mr. Madbhavi says that the decree of the trial Court was confirmed by the District Court, the appellate Court did not vary or reverse the decree, the decree remained unaffected, and therefore the plaintiff should have gone to the trial Court. Now, I know that some High Courts have taken the view that unless the decree of the trial Court is superseded by the appellate Court, the application for an amendment of the decree must be made to the trial Court. I am unable to agree with that view. If a decree of confirmation is passed by the appellate Court, the decree of the trial Court merges in the decree of the appellate Court, and it is impossible to say that the decree of the trial Court is still in existence and it could be amended. The decree which is in existence and which can be executed is the decree of the appellate Court, and not the decree of the trial Court. The fact that the appellate Court does not vary the decree of the trial Court does not make any difference to the legal position that ultimately it is the decree of the appellate Court which is the substantive decree and which must be amended if an amendment is sought.

The application, therefore, fails. The rule is discharged with costs.

Rule discharged.
K. B. S.

APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice.

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NABI BAVADIN NADAF (ORIGINAL DEBTOR), APPLICANT *v.* MURIGEPPA DHULAPPA BULLI AND OTHERS (ORIGINAL CREDITORS), OPPONENTS.*

Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), s. 2 (5) (a) (iv)—*Application for adjustment of debts—Non-agricultural income of applicant less than Rs. 500 but exceeding 33 per cent of his total annual income—Applicant whether a debtor.*

An individual whose non-agricultural income does not exceed Rs. 500 is a debtor within the meaning of s. 2 (5) *(a)* *(iv)* of the Bombay Agricultural Debtors Relief Act, 1947, even though such non-agricultural income exceeds 33 per cent. of his total annual income.

*Civil Revision Application No. 761 of 1951.

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Anant Dharma Patil v. *Mangaldas*,[1] distinguished.

CIVIL REVISION APPLICATION against the decision of C. S. Deodhar, District Judge at Belgaum in appeal from the order passed by M. P. Ghanti, Joint Civil Judge (Junior Division) at Athani.

The facts material to this report appear from the judgment.

K. G. Datar with *H. B. Datar*, for the petitioner.

V. N. Lokur, for opponents Nos. 2, 3, 11, 12 and 14.

M. G. Chitale for Government Pleader, for opponent No. 17.

CHAGLA C. J. The question which arises in this revisional application is whether the petitioner is a debtor within the meaning of the B. A. D. R. Act. He has satisfied all the qualifications, and the only controversy is with regard to the qualification under s. 2 (5) (*a*) (*iv*). That clause provides that a 'debtor' means an individual whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent. of his total annual income, or does not exceed Rs. 500, whichever is greater. Now, in this case, the agricultural income of the debtor is Rs. 200, and the non-agricultural income is Rs. 340. Therefore it is clear that the non-agricultural income does not exceed Rs. 500. But the view taken by both the Courts below is that, inasmuch as the non-agricultural income exceeds 33 per cent. of his total income, he is not a debtor. Now, the Judges below have overlooked the fact that the Legislature has not used the expression "and" but "or" and has further emphasized that fact by stating "whichever (of the two amounts mentioned) is greater". Therefore, in this case, as the non-agricultural income is less than Rs. 500, the debtor satisfies the qualification laid down by the statute.

Reliance has been placed by Mr. Lokur on a judgment of Mr. Justice Shah in *Anant Dharma Patil* v. *Mangaldas*.[1] Now, the learned Judge there was called upon to construe, not s. 2 (5) (*a*) (*iv*), but s. 2 (5) (*b*) (*iv*) which deals with an undivided Hindu family; and s. 2 (5) (*b*) (*iv*) provides that a 'debtor' means an undivided Hindu family the annual income of which from sources other than agriculture and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed Rs. 1,500. Therefore, in the case of an undivided Hindu family two conditions have got to be satisfied: the non-agricultural

[1] (1950) 52 Bom. L. R. 678.

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income must bear a certain proportion to the total income, and it must not exceed Rs. 1,500. When the learned Judge was construing this sub-clause, it was argued before him that "or" must be read in place of "and". In support of this contention, the learned Judge's attention was drawn to s. 2 (5) (*a*) (*iv*), and the learned Judge took the view that "or" in that sub-clause meant "and", and in the case of the individual also both the conditions must be satisfied just as in the case of an undivided Hindu family. Now, if Mr. Justice Shah was called upon to construe s. 2 (5) (*a*) (*iv*), I would be bound by the decision and I would have certainly followed it. But it is clear that the observations of Mr. Justice Shah, although they are entitled to respect, are *obiter*. With very great respect to the learned Judge, not only was he confronted with the difficulty about the Legislature having used the word "or" in s. 2 (5) (*a*) (*iv*) and used the expression "and" in s. 2 (5) (*b*) (*iv*), but he was also confronted with the difficulty that in s. 2 (5) (*a*) (*iv*) the Legislature has used the expression "whichever is greater". The learned Judge overcame this difficulty by suggesting that the expression "whichever is greater" should be omitted altogether in construing s. 2 (5) (*a*) (*iv*). Now, I do not see how—again speaking with respect—it is possible to omit a particular expression used by the Legislature in construing a section. Effect must be given to the intention of the Legislature by looking at the language used by the Legislature; and if the Legislature deliberately and advisedly uses different language in the same section dealing with two different entities and emphasizes the difference by using the expression "whichever is greater", I do not see how it is possible to say that the position of an undivided Hindu family is the same under s. 2 (5) (*b*) (*iv*) as the position of an individual under s. 2 (5) (a) (iv). In my opinion, therefore, inasmuch as the non-agricultural income of the debtor is less than Rs. 500, the condition laid down in s. 2 (5) (*a*) (*iv*) is satisfied, and the Courts below were wrong in holding that the applicant is not a debtor.

I would, therefore, set aside the order of the trial Court and direct that the application of the petitioner should be disposed of according to law.

Mr. Chitale, who appears for the 17th opponent, urges that he should be given his costs because he should never have been made a party inasmuch as the Mamlatdar who advanced the *tagavi* loan to the petitioner is not a creditor whose debts can be adjusted under the Act. Now, this may be a very sound

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contention. But I fail to understand why Mr. Chitale's client has been waiting all this time to urge this point. He never raised this point in the Court of first instance, nor in the appellate Court. He should have asked the trial Court long ago to strike his name off as being unnecessary as a party. Heremained on the record in the two Courts below, and the petitioner is right in bringing him on the record as a party.

Rule made absolute. Mr. Lokur's clients to pay the costs throughout.

Rule absolute.

M. W. P.

APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice.

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BALMUKUND & CO. (ORIGINAL PLAINTIFFS), PETITIONERS *v.* MANGALDAS TRIBHUVANDAS MEHTA AND ANOTHER, (ORIGINAL DEFENDANTS NOS. 1 AND 3), OPPONENTS.*

Bombay Rents, Hotel and Lodging House Rates Control Act, (Bom. LVII of 1947), ss. 12 (1), 13 (e), 15—Termination of contractual tenancy—Tenant continuing as statutory tenant—Subsequent assignment of tenancy rights and delivery of possession to assignee—Invalidity of assignment—Breach of condition of tenancy—Whether tenant entitled to protection of Rent Act—Presidency Small Cause Courts, Act (XV of 1882), Chap. VII—Difference between proceedings under Chap. VII and suits under s. 28 of Rent Act—Practice.

Under s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, there is an obligation upon the tenant, if he wishes to be protected by the Act, to observe and perform the conditions of the tenancy other than the payment of rent, so long as those conditions are not in any way inconsistent with the provisions of the Act. One of the most important terms and conditions of any tenancy is that the tenant must either be in possession himself or he must part with possession to an assignee, a sub-tenant or a transferee provided an assignment, sub-tenancy or transfer is permitted, or he may give the premises to an invitee or a licensee. But it is not open to him to part with possession of the premises to an unauthorised person or to a trespasser. If he does so, he commits a breach of the terms and conditions of the tenancy under s. 12 and cannot claim protection of the Act.

By a notice, dated June 26, 1947, the plaintiffs, who were the landlords of a shop situate at Bombay, terminated the tenancy of the defendant No. 1. On November 30, 1949, defendant No. 1 executed a deed of

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* Civil Revision Application No. 885 of 1951.