

## APPELLATE CIVIL

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

1952  
July, 30

NAGESH PUNDALIK PRABHU (ORIGINAL DEBTOR), PETITIONER v.  
MANJAYYA KRISHNA KAMAT AND OTHERS, (ORIGINAL CREDITORS),  
OPPONENTS.\*

*Bombay Agricultural Debtors' Relief Act (Bom. XXVIII of 1947)  
s. 2 (5) (b) (iv)—Application for adjustment of debt due by un-  
divided Hindu family—Family claiming to be 'debtor'—Computation  
of aggregate income of members—Income, meaning of—Whether  
separate income of members is to be taken into account.*

The income referred to in the expression "aggregate of such incomes of the members of which" (i.e. the undivided Hindu family) occurring in s. 2 (5) (b) (iv) of the Bombay Agricultural Debtors' Relief Act, 1947, means the income of the members of the family which they earn as members of the family and which income goes to the coffers of the joint family. Therefore, in computing the aggregate for the purpose of determining whether the family is a "debtor" within the meaning of the section, it is not permissible to take into account the incomes of the members which are the separate incomes of the members. Only those incomes are to be taken into consideration which are blended with the joint family property.

CIVIL REVISION APPLICATION against the decision of B. V. Manjeshwar, District Judge, Karwar, confirming the order passed by S. R. Deshpande, Civil Judge, Junior Division, of Honawar.

The facts appear from the judgment.

G. P. Murdeshwar, for the petitioner.

G. N. Vaidya, for the opponents.

CHAGLA C. J. Applications were made by creditors against the petitioner and his two brothers. The trial Court held that the petitioner and his two brothers constituted a joint and undivided Hindu family and the family was not a debtor within the meaning of the Act because their non-agricultural income exceeded the agricultural income beyond the sum of Rs. 1,500 laid down in the Act. In arriving at the non-agricultural income of the family both the Courts below have taken into consideration the income of the two brothers of the petitioner, one of whom is a Mamlatdar and the other is a bank clerk in Bombay, and Mr. Murdeshwar's contention is that in no view

\* Civil Revision Application No. 1288 of 1951.

of the case can the income of the Mamlatdar and the income of the bank clerk be treated as joint family income. Mr. Murdeshwar is right that even a coparcener may have separate earning and if he earns by his own exertions and without the aid of joint family property, his earnings will not form part of the joint family property unless he blends his earnings with the joint family property. Of course, the law has gone much further now because according to Dr. Jayakar's Act, the Hindu Gains of Learning Act, even where a man has received education with the help of joint family property, his separate earnings will not thereby become part of joint family property. Therefore, prima facie it seems that the earnings of the Mamlatdar and of the bank clerk cannot be taken into account in considering the aggregate income of the joint family under s. 2 (5) (b) (iv).

Now, Mr. Vaidya has two answers to give to this submission of Mr. Murdeshwar. The first is that on a true construction of s. 2 (5) (b) (iv) what is got to be considered is not income of the joint family but the income of each member of the family, whether that income is separate income or income which belongs to the joint family, and Mr. Vaidya draws my attention to the two parts of sub-cl. (iv) which emphasises his contention. Sub-cl. (iv) is in the following terms,

"the annual income of which (i. e. the Hindu undivided family) from sources other than agriculture and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such income of the members of which does not exceed Rs. 1,500".

Mr. Vaidya therefore, says that when you are considering the proportion of agricultural income to non-agricultural income, you may consider only the income of the joint family as such, but when you are considering the total income of Rs. 1,500 then you must not consider the income of the family as such but you must consider the aggregate of each member of the family. Therefore, according to Mr. Vaidya, even though the income of the Mamlatdar and of the bank clerk may be their own separate earnings, still as they are members of the family their income must be taken into consideration in determining the aggregate for the purpose of sub-cl. (iv). There is considerable force in Mr. Vaidya's argument, but I am unable to accept it because there does not seem to be any reason why the Legislature should have adopted one criterion for the first part of sub-cl. (iv) and a different criterion for the second part of sub-cl. (iv). Mr. Vaidya says that the policy of the

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Legislature may be that where a family consists of members whose incomes are large, then relief should not be given to such a family under the B. A. D. R. Act. But that suggested policy seems to be opposed to the underlying policy of the Act. Take the very case before me. Mr. Murdeshwar's client has a small land and a small income. According to him he does not get any assistance from the Mamlatdar or from the bank clerk and he has to depend upon what yield the land gives. Now, if I were to put the construction which Mr. Vaidya asks me to do, I would have to deny to Mr. Murdeshwar's client the relief which he seems eminently to deserve. Therefore, in my opinion, although the Legislature has used circumlocutory language when it could have used direct language, the expression "aggregate of such incomes of the members of the family" means income of the members of the family which they earn as members of the family and which income goes to the coffers of the joint family. In determining the aggregate for the purposes of sub-cl. (iv) it is not permissible to take into account the incomes of the members which are the separate incomes of the members. Only those incomes are to be taken into consideration which are blended with the joint family property.

The other contention of Mr. Vaidya is that no opportunity was given to him to establish that in fact the income of the Mamlatdar and the income of the bank clerk are not their separate incomes but they constitute joint family incomes because they are blended with the joint family assets. There is some justification for Mr. Vaidya's contention because the point does not seem to have been argued in the trial Court and no reference is also made to it in the judgment of the lower appellate Court.

I would, therefore, set aside the order of the Courts below and I will direct that the matter should go back to the trial Court and the trial Court will determine the income of the undivided Hindu family in the light of the judgment which I have delivered. An opportunity will be given to Mr. Vaidya's client to establish that the income of the Mamlatdar and the income of the bank clerk constitutes joint family income and not their separate incomes. Rule absolute. No order as to costs.

*Rule absolute.*

M. W. P.