

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.
 CHANDULAL SARUPCHAND MARWADI (ORIGINAL PLAINTIFF),
 APPELLANT v. BHAI BUWAJIRAO DESHMUKH (ORIGINAL DEFENDANT)-
 RESPONDENT.*

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Jan. 16

*Bombay Agricultural Debtors' Relief Act (XXVIII of 1947), s. 56—
 Amendment by Bombay Act LXX of 1948, effect of—Dekkhan Agri-
 culturists' Relief Act (XVII of 1879), effect of repeal and re-enactment
 of.*

The effect of s. 56 of the Bombay Agricultural Debtors' Relief Act, 1947, as amended by Bombay Act LXX of 1948, is that the proceedings pending on May 27, 1947, to which the Bombay Agricultural Debtors' Relief Act, 1947, did not apply but to which the Dekkhan Agriculturists' Relief Act, 1879, would have applied if that Act had been then in force, would nevertheless be governed by the provisions of the Act of 1879.

First Appeal from the decision of A. A. Badshah, Civil Judge, Senior Division, at Thana.

The facts are set out in the judgment.

K. V. Joshi, for the appellant.

V. B. Rege, for the respondent.

CHAGLA C. J. The defendant executed a promissory note on May 11, 1942, for Rs. 4,800 in favour of the plaintiff and the plaintiff filed a suit on the April 18, 1945, in the Court of the Civil Judge, Senior Division, Thana, for Rs. 5,645 being the principal and interest on that promissory note. On April 1, 1942, a Board was established under the B. A. D. R. Act (XXVIII of 1939) and the suit was transferred to the Board. On January 29, 1947, the Board held that the defendant had failed to establish his status, whereupon on April 9, 1947, the suit was retransferred to the Civil Court, and on June 29, 1948, the Court passed a decree in favour of the plaintiff. In passing that decree the Court applied to the defendant the Deccan Agriculturists' Relief Act, took accounts as required by s. 13, and passed a decree for Rs. 3,383-2-6 and not as prayed for by the plaintiff. It is not disputed that the defendant is an agriculturist within the meaning of the D. A. R. Act. The only question raised by Mr. Joshi before us is that the D. A. R. Act was not applicable and, therefore, the Court was in error in applying the provisions of that statute.

Now, when Act XXVIII of 1939 was passed, the legislature made a provision with regard to the D. A. R. Act and that provision is to be found in ss. 85 and 86 of the Act. Section 85

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provided that on the date on which the Board was established the D. A. R. Act shall cease to have force in such area, and s. 86 continued the operation of the D. A. R. Act for a period of three years in respect of transactions entered into before the date on which the Board was established. As pointed out before, the Board in this case was established on April 1, 1942, and the transaction on which the suit was based was entered into on May 11, 1942. Therefore, it is clear that on the passing of B. A. D. R. Act of 1939 the D. A. R. Act ceased to have application and its application was not continued under s. 86 as far as the transaction in suit was concerned. If the position rested thus there would be no difficulty and Mr. Joshi's contention must prevail. But the Legislature amended the B. A. D. R. Act and passed another Act being Act XXVIII of 1947. That Act provided by s. 56 that on the expiry of a period of three years from the date of the coming into operation of this Act, the D. A. R. Act, 1879, shall cease to have force. Therefore, in effect the Act revived the D. A. R. Act for a period of three years. This provision was further amended by Act LXX of 1948 and as amended s. 56 (1) now reads as follows:

"Notwithstanding the repeal of the D. A. R. Act, 1879 by the B. A. D. R. Act, 1939, the first mentioned Act shall, in so far as it applies to transactions and proceedings to which this Act does not apply, be deemed to have been re-enacted with effect from the date of the coming into operation of this Act and shall continue in force for a period of three years from the said date."

Now, the question is whether on a true construction of s. 56 as amended, the D. A. R. Act applies to the present suit. Mr. Joshi is right in his contention that the ordinary principle of law is that parties are governed by the law in force at the date when a suit is instituted and any subsequent amendment or alteration of the law cannot affect pending proceedings. But this principle must always be read subject to the corollary that a Legislature could always expressly provide that pending proceedings be affected by an amendment of the law. The question is whether the Legislature expressly intended by the amending Act LXX of 1948 to affect pending proceedings. The D. A. R. Act was revived from May 27, 1947, and the Legislature provided that that Act should apply to all transactions which were alive at that date and in respect of which rights could be asserted and also that the Act should apply to all proceedings which were pending at that date to which the B. A. D. R. Act did not apply. Obviously, when the Legislature enacted the B. A. D. R. Act it was under the impression

that it was giving the same relief or greater relief to agriculturists than the D. A. R. Act afforded. Then it was discovered that the area covered by the B. A. D. R. Act was not necessarily the same as the area covered by the D. A. R. Act and the Legislature did not intend to deprive agriculturists of the rights that they had under the D. A. R. Act. Therefore, s. 56 as amended expressly provided that if a proceeding was pending on May 27, 1947, which could not be transferred to the Debt Adjustment Court but to which the D. A. R. Act would have applied if that Act had been in force, such a proceeding should continue to be governed by the provisions of the D. A. R. Act. But for this provision the result would have been that the agriculturist could neither have got the benefit of the B. A. D. R. Act nor the benefit of the D. A. R. Act. The Legislature was not prepared to continue this anomalous position and to put the agriculturists in a difficult situation which was never the intention of the Legislature. Mr. Joshi has relied on the first proviso to this section, but it is difficult to understand what the first proviso has to do with the construction of the sub-section itself. All that the proviso lays down is that if proceedings or suits are instituted before the expiry of the three years during which the D. A. R. Act was to continue in force, they shall be continued and disposed of as if the D. A. R. Act had continued in force even beyond the period of three years. This proviso was enacted in order to obviate the difficulty which may arise if when the B. A. D. R. Act ceased to be in force certain proceedings still remained on the file of the Court which were originally governed by the D. A. R. Act. As far as these proceedings were concerned they were to continue unaffected by the repeal of the D. A. R. Act.

Therefore, in our opinion, the matter is governed by s. 56 of the B. A. D. R. Act as amended and on a proper construction of that section it is clear that the defendant is entitled to the rights conferred upon him by the D. A. R. Act. If that be the true position, then all that the Court below has done is to hold an inquiry as required by s. 12 of the D. A. R. Act, take accounts as required by s. 13, and on the taking of accounts a sum of Rs. 3,383-2-6 only is found due to the plaintiff. The result, therefore, is that the appeal fails and must be dismissed. No order as to costs.

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Appeal dismissed.

K. B. S.