## APPELLATE CIVIL

*Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.*

RAGHUNATH GAMBHIRSHET WANI, PETITIONER *v.* GANPAT MOTIRAM MAHAR AND OTHERS, OPPONENTS.* 1952 *Nov.* 10

*Bombay Revenue Tribunal Act (XII of 1939), ss. 4, 7—Bombay Tenancy and Agricultural Lands Act (LXVII of 1948), s. 76—Whether Tribunal can review its decision—Tribunal's powers to condone delay in filing review application—Constitution of India, arts. 226, 227—High Court's power to interfere with Tribunal's decision.*

Under the Bombay Revenue Tribunal Act, 1939, the Tribunal has the power to review its own decision even when exercising its revisional powers under s. 76 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Although an application for review is made to the Tribunal after the period of limitation provided under s. 7 of the Bombay Revenue Tribunal Act, 1939, it is competent to the Tribunal to condone the delay for sufficient cause in view of the proviso to that section which makes the provisions of the Indian Limitation Act, 1908, applicable; and although the Tribunal does not expressly state that the delay has been condoned it must be assumed that the Tribunal was conscious of its powers and was satisfied that there was sufficient cause for condoning delay.

As the Tribunal has jurisdiction to entertain a review application, the High Court in exercise of its powers under arts. 226 and 227 of the Constitution, cannot interfere with the decision of the Tribunal to see whether the facts entitling the Tribunal to review its own decision existed or not.

Civil Application under art. 227 of the Constitution.

The facts are sufficiently stated in the judgment.

*Y. V. Chandrachud,* for the petitioner.

*I. C. Bhatt,* for opponent No. 1.

*H. M. Choksi,* Government Pleader for opponents Nos. 2 to 4.

*Chagla C. J.* This petition raises a rather important question as to whether the Revenue Tribunal has the jurisdiction to review its own decisions. The facts briefly are that an application was made by the petitioner who is the landlord for possession from his tenant on the ground that he had not paid rent for three years. The Mamlatdar, the Prant Officer and the Revenue Tribunal all took the view that the landlord was entitled to possession and ordered possession. The order

* Special Civil Application No. 1311 of 1952.

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of the Tribunal was passed on September 27, 1950. On September 20, 1951, the opponent applied for review of the decision of the Tribunal and on June 13, 1952, the Tribunal made an order reviewing its decision and holding that the landlord was not entitled to possession. The ground for the Tribunal coming to this decision was that on July 23, 1951 the Tribunal had taken the view in another matter that a landlord was not entitled to possession, even though the tenant was in default in payment of rent unless the landlord gave a notice and terminated the tenancy. The Tribunal has observed in the order that it passed on June 13, 1952, that this aspect of the law was observed when they gave the decision on September 27, 1950, and therefore this was a proper case for reviewing its decision.

Now, the first question is as to whether the Tribunal has jurisdiction to review its own orders. It is perfectly true that a Tribunal or a Court has no inherent jurisdiction to review its own decisions. Such power must be conferred expressly by statutes, and Mr. Chandrachud has drawn our attention to the fact that in the Bombay Tenancy Act which gives revisional powers to the Revenue Tribunal under s. 76, there is no provison with regard to review. Attention has also been drawn to r. 25 which the Tribunal has framed under ss. 76 and 82 of the Act and that rule provides that in deciding appeals and applications for revision, in matters not provided for in these rules the Tribunal shall, so far as may be, follow the procedure laid down under the relevant provisions of the Code of Civil Procedure, 1908, and in this connection Mr. Chandrachud is right when he contends that the provisions of the Code of Civil Procedure are only made applicable in the actual hearing and deciding all appeals and applications for revision. This rule cannot confer any jurisdiction upon the Tribunal to entertain a review application which follows upon a decision in an appeal or in an application for revision. Then we have Act XII of 1939. It was by that Act that the Bombay Revenue Tribunal was set up and its powers and functions are defined in s. 4 and the powers and functions there set out relate to revenue matters. Then we have s. 7 which in terms expressly confers upon the Tribunal the power of review. But the contention of Mr. Chandrachud is that s. 7 is limited by s. 4 and the power of review is only conferred upon that Tribunal which exercises the powers and functions mentioned in s. 4. Therefore, according to Mr. Chandrachud, when the Legislature conferred fresh powers upon the

Revenue Tribunal by giving it revisional powers under s. 76, inasmuch as the Legislature did not confer upon the Tribunal the power to review its own decisions when exercising those revisional powers, it is not open to the Tribunal to fall back upon s. 7 in order to find a jurisdiction to review its own decisions. In our opinion, that is not the proper interpretation to put upon s. 4 and s. 7 of Act XII of 1939. That Act sets up a new Tribunal and s. 7 confers upon that Tribunal generally certain power viz. the power and jurisdiction to review its own decisions. Section 4 defines its functions and so long as this Act stood on the statute book the only functions which the Tribunal could discharge were the functions mentioned in s. 4 and in discharging those functions it could exercise the power of review conferred upon it under s. 7. But when the Tenancy Act was passed further functions were allocated to the Tribunal and one of those functions was the power to act as a revisional body in certain tenancy matters specified in the Tenancy Act. But when the functions of the Tribunal were increased the Tribunal still had the power to review its decisions conferred upon it under s. 7. The power to review conferred upon it under s. 7 was not limited to the exercise of the functions enumerated in s. 4 but that power attached to the Tribunal as such and it could always be exercised by the Tribunal, whatever powers might be conferred upon it from time to time. Therefore, the power to review is the power that attaches to the Tribunal as such irrespective of what jurisdictions may be conferred upon it from time to time by the Legislature. Therefore it would not be correct to say that as s. 76 of the Tenancy Act conferred a new power upon the Tribunal that power had to be exercised without the power of review conferred upon it under s. 7. As we said before, that power attached to the Tribunal as such and the Tribunal could review its own decisions in whatever capacity those decisions might be arrived at and whatever jurisdiction the Tribunal might be exercising. Therefore, in our opinion, when exercising its revisional powers under s. 76, the Tribunal has the power to review its own decisions.

It is then pointed out that s. 7 lays down a period of limitation for an application for review and that period of limitation is 90 days from the date of the decision or order of the Tribunal. Now, in this case, as already stated the order of the Tribunal was passed on September 27, 1950 and the application for review was made on September 20, 1951,

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long after the 90 days contemplated by s. 7, but the proviso to sub-s. (2) of s. 7 makes the provisions of the Indian Limitation Act, 1908, applicable and therefore, notwithstanding the efflux of 90 days it would be competent to the Tribunal to condone the delay in making the application for sufficient cause. Mr. Chandrachud's grievance is that the Tribunal has not applied its mind to the question of limitation, that it has never considered the question of condonation of delay and in fact the delay has never been condoned and Mr. Chandrachud says that in the absence of condonation the Tribunal had no jurisdiction to entertain this revisional application. It is true that if we look at the order of the Tribunal it does not appear that the question of limitation or condonation was considered. But we should be reluctant to take the view that the Tribunal was not conscious of its own powers under s. 7 or the limitations upon those powers and when it did entertain an application after the period of limitation, we must assume that it was satisfied that there was sufficient cause for the condonation of the delay. There is a further aspect of the matter to which attention might be drawn. The question of limitation was not expressly raised by the petitioner when the review application was filed before it. It is true that the petitioner has mentioned the fact that the application was being made a year after the order was passed, but the point of limitation has not been taken in terms. Mr. Chandrachud has also relied on the rules framed under ss. 76 and 82 of the Act and he draws our attention to the fact that those rules only deal with appeals and revisional applications and not with review applications. The mere fact that the rules do not deal with review applications does not necessarily lead to the conclusion that the Tribunal has no jurisdiction to entertain review applications. Further s. 7 of the Act of 1939 deals with the procedure that has got to be followed by the Tribunal in review applications and perhaps the rule making authority thought it unnecessary to frame any special rules with regard to review applications. It has then been suggested that there is no error apparent on the face of the record, no allegation of discovery of new and important matter and no other sufficient reason existed which would justify the earlier order to be reviewed. Now, once we hold that the Tribunal had jurisdiction to entertain the review applications, it would not be for us dealing with the petition under arts. 226 and 227 of the Constitution to consider whether the facts which have to

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exist in order to entitle the Tribunal to review its own decision existed or not. That would be a question of merits and not a question of jurisdiction and it would be for the Tribunal itself acting within jurisdiction to decide whether a case has been made out for the exercise of its jurisdiction to review its own decision. The view taken by the Tribunal in this case seems to be that as the decision given by it on September 27, 1950, was in conflict with the decision given by it subsequently on July 23, 1951, there was an error apparent on the face of the record and that justified the Tribunal in reviewing its own decision. Whether we agree with that view of the Tribunal or not, it would not be for us to interfere with that decision of a Tribunal which was acting with jurisdiction.

The result is that the petition fails. The rule must be discharged with costs.

*Rule discharged.*

K. B. S.

## APPELLATE CIVIL

*Before Mr. M. C. Chagla, Chief Justice.*

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KESHAV GHANASHYAM SHETYE (ORIGINAL PLAINTIFF), PETITIONER *v.* WAMAN RANGAJI SAKHOLKAR (ORIGINAL DEFENDANT), OPPONENT.*

*Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), ss. 14, 15—Suit in Civil Court for recovery of debt—Defendant pleading extinguishment of debt by reason of award made by Debt Adjustment Court—Creditor not party to award—Binding nature of award—Creditor debarred from showing that defendant was not debtor.*

An award made under the Bombay Agricultural Debtors Relief Act, 1947, is an award between the debtor and all his creditors and not one between the debtor and such only of the creditors upon whom notice has been served under s. 14 (*a*). The award is therefore binding upon all the creditors including those who may not have come to know of the general notice issued under s. 14 (*b*).

In a suit filed by a creditor in a Civil Court for recovery of his debt, the defendant contended that inasmuch as an award had been made against him under the Bombay Agricultural Debtors Relief Act, 1947, in which he was held to be a debtor, the debt was extinguished under s. 15. The creditor, on the other hand, contended that he was not in fact a party to the award and it was still open to him to show that the defendant was not a debtor:

*Held,* upholding the defendant's contention, that the creditor was bound by the award even though he did not have an opportunity of contesting

* Civil Revision Application No. 1333 of 1951.