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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.

1952 *Nov.* 12

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.

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the issues which were determined by that award and therefore his debt was extinguished.

CIVIL REVISION APPLICATION against the decision of P. K. Kunte, Esquire, Civil Judge, Junior Division, Savantwadi, district Ratnagiri.

On November 13, 1950, a shop styled "Keshav Ghanshayam Shetye" (plaintiff) filed a suit in the Court of the Civil Judge (J. D.) at Savantwadi, against one Waman (defendant) to recover Rs. 97-8-9 at the foot of an account. The defendant *inter alia* contended that he was a debtor within the meaning of the Bombay Agricultural Debtors Relief Act, 1947, and that as the plaintiff had not preferred his claim to the Debt Adjustment Court in time it was extinguished under s. 15 of the Act. In proof of his status the defendant produced an award made under the Act adjusting the debts of two of his other creditors.

The trial Court held on the strength of that award that the defendant was a debtor and that the plaintiff's claim was extinguished although he was not a party to the award. The Court, therefore, dismissed the suit of the plaintiff on June 30, 1951.

The plaintiff applied in revision to the High Court.

T. N. Walawalkar, for the petitioner.

R. G. Samant, for the opponent.

Chagla C. J. A very interesting and important question under the B. A. D. R. Act arises on this revision application. The petitioner filed a suit in the Court of Small Causes, Savantwadi to recover a debt, and the learned Judge held that the debt was extinguished under s. 15 of the B. A. D. R. Act and non-suited the plaintiff, and the point that has been urged before me by Mr. Walawalkar on behalf of the plaintiff is that the learned Judge was in error in preventing the plaintiff from contending that the defendant was not a debtor within the meaning of the B. A. D. R. Act and therefore the provisions of s. 15 would not apply.

In this case an application for adjustment of debt was made by a creditor under s. 4 and on that application the Court held that the defendant was a debtor and passed an award adjusting the debts of the defendant. The defendant's contention before the learned Small Causes Court Judge was that inasmuch as an award has been made in his favour by the

B. A. D. R. Act Court and inasmuch as the debt of the plaintiff was not included in that award, the debt is extinguished under s. 15. Mr. Walawalkar's contention is that the award made by the B. A. D. R. Act Court was not binding on him as he was not a party to that award and therefore the adjudication before the B. A. D. R. Act Court that the defendant was a debtor was an adjudication which was not binding and conclusive as against him and it was open to him, to challenge that finding and to ask the Court before applying s. 15 to be satisfied that the defendant was a debtor. Under s. 15, debts mentioned in that section are to be extinguished and one of the debts which is mentioned is a debt in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of s. 14, and turning to s. 14 it provides for service of notices on debtors and creditors. Under sub-s. (*1*), when an application for adjustment of debts is received by a Court, a notice is to be served upon the debtors, unless the debtor is himself an applicant, and upon every creditor, other than the creditor who himself makes an application, whose names and addresses are given in the application, and sub-cl. (*b*) deals with a general notice which notice is to be given to the debtor and all creditors to submit a statement in the prescribed form within one month of the date of the service of the notice or publication of the general notice, whichever is later. Mr. Walawalkar's contention is that the general notice is to be given only to those creditors whose names and addresses are given in the application. It is not possible to put that interpretation upon the expression "all creditors" used in sub-cl. (*b*), because if the intention of the legislature was that general notice should be given only to those creditors referred to in sub-cl. (*a*) then the language used by the legislature would not have been "all creditors" but either "such creditors" or "the creditors". But the very fact that the legislature has used the general expression "all creditors" and not specified or limited the class of creditors to the class referred to in sub-cl. (*a*) makes it clear that the intention was to give a general notice for giving intimation to all creditors of the debtor. Mr. Walawalkar says that even if a general notice is given to all creditors, unless a creditor responds to that notice and files a statement and appears on the application for adjustment of debts, the ultimate award that is passed is an award between the parties to the application and a creditor who is not a party to that application or

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who has not answered the notice cannot be bound by that award. Mr. Walawalkar says that an award under the B. A. D. R. Act is not a judgment *in rem* within the meaning of s. 41 of the Evidence Act and therefore it does not bind the whole world, but it only binds the parties to that award. Mr. Walawalkar says that unless this view is taken of the law, it will cause great hardship to creditors who may not be aware of the general notice given under sub-cl. (*b*) and who may not file a statement as required by that sub-section. Mr. Walawalkar further says that he should be given an opportunity to litigate the question as to whether the debtor is a debtor within the meaning of the B. A. D. R. Act, otherwise the result would be that his debt would be extinguished without his being given an opportunity to contest that issue. I admit that there is considerable force in Mr. Walawalkar's argument, but in order to decide this question I have got to look at the scheme of the B. A. D. R. Act as a whole.

It is perfectly clear that the whole object of putting this Act on the statute book was to give relief to agricultural debtors and relief was to be given in the manner provided in the Act. All the debts of the debtor were to be adjusted. Not only some debts, not only debts of those creditors who had applied or whose names had been given by the debtor, but in order to work the machinery set up under the B. A. D. R. Act it was absolutely necessary that all the creditors should be before the special Court and all the debts of the debtor should be adjusted. This is clear from the fact that before the Court proceeded to adjust the debts it had to try certain preliminary issues under s. 17, and one of the preliminary issues was whether the total amount of debts due from such person on the date of the application exceeded Rs. 15,000. It would not be possible for the Court to decide this issue unless it knew who all the creditors of the debtor were and what was the amount of the debts. Further, s. 13 provided for consolidation of all applications made against the same debtor. Again, the object was that all the debts of the debtor should be adjusted. Then when we look further into the machinery provided by the Act, it provides for scaling down of debts, it provides for determining the paying capacity of the debtor, and it ultimately provides that unless the debts of the debtor are capable of being paid in 12 annual instalments he must be adjudicated insolvent, and it further provides that no application or proceeding in regard to insolvency of a debtor

shall lie in or shall be dealt with by, any other Court. Therefore the whole purpose, the whole object of the Act was to relieve an agricultural debtor of all his debts, to make provision for the manner in which he should discharge those debts, and if he was not in a position to discharge those debts to adjudicate him insolvent and give him relief by giving him the protection of insolvency.

If Mr. Walawalkar's contention were to be accepted, it would lead to considerable difficulties which are almost insurmountable in working this Act. In the first place, according to Mr. Walawalkar it would be open to a Civil Court to come to a conclusion as to the status of the applicant contrary to the decision arrived at by the special Court. Further, it would be open to a Civil Court to hold that the debtor was liable to pay a debt over and above the debt mentioned in the award, and further difficulties would also arise if the debtor was adjudicated insolvent. The debtor would not be bound possibly by the order of the special Court which proceeded on the basis that the person who was adjudicated insolvent was a debtor, and even if the creditor was bound by the order of adjudication, even so the special Act does not make any provision for the debt of a creditor who had not filed his statement with regard to it under s. 14, and it is difficult to understand what the effect of the insolvency would be upon the debt of such a creditor. Therefore Mr. Walawalkar is not right when he says that the award made under the B. A. D. R. Act is an award between the debtor and such of the creditors as have been mentioned in the application or upon whom notice has been served under s. 14 (*a*). The award is between the debtor and all his creditors and it is for that reason that the award is binding upon all the creditors and not because it is a judgment *in rem* within the meaning of s. 41 of the Evidence Act. The legislature has provided for notice to be given to all the creditors and an opportunity is given to all the creditors to come forward and prove their debts. If a creditor fails to do so, the award may be *ex-parte* against him, but all the same it is binding upon him. It may be that in a particular case the creditor may not come to know of the general notice and that may result in a hardship, but it would be unsafe to base a legal argument upon an individual hardship which might take place in certain cases. As against this individual hardship we have got to consider the object of the legislature in passing the law, the scope and ambit of the

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statute, and the fact that special Courts were set up for a special purpose. If Mr. Walawalkar's interpretation were to be given effect, then it would seriously impair the machinery set up under the Act and would also seriously interfere with the object the legislature had in mind in giving relief to agricultural debtors. Therefore, I refuse to be swayed by the argument strongly urged upon me by Mr. Walawalkar that a creditor may be bound by an award although he in that particular case did not have an opportunity of contesting the issues which were determined by that award.

In my opinion, therefore, the learned Judge below was right in the view that he took. The result is that the revision application fails. Rule discharged with costs.

Rule discharged

M. W. P.

ORIGINAL CIVIL

Before Mr. Justice Tendolkar.

1952 *Nov.* 17

SANWALDAS GOBINDRAM, PETITIONER *v.* THE STATE OF BOMBAY AND ANOTHER, RESPONDENTS.*

The Bombay Refugees Act (XXII of 1948), s. 7—Order made under s. 7 —Whether s. 7 ultra vires *the legislature of State of Bombay.*

The pith and substance of the Bombay Refugees Act, 1948, is the relief and rehabilitation of the displaced persons. Prior to the enactment of the Constituent Assembly Act, IV of 1949 being the Government of India (Third Amendment) Act, 1949, which inserted item No. 31C in the Concurrent Legislative List in schedule VII of the Government of India Act, 1935, there was no item of this nature in the provincial or concurrent legislative lists. In any event, s. 7 of the Act was not within the competence of the Bombay State legislature and was *ultra vires* of the said legislature.

Held, therefore that the order made under s. 7 of the Act was without jurisdiction.

The Director of Rehabilitation, Government of Bombay, M. R. Yardi, (2nd Respondent) served an order on Sanwaldas Gobindram (the petitioner) dated June 11, 1952 under s. 7 of the Bombay Refugees Act, 1948, requiring the petitioner to leave the Chembur Colony with all his belongings within three days of the service of the order and forbidding him from

* Miscellaneous Petition No. 170 of 1952.