

such an enquiry any plea can be raised by the person against whom the summons is issued to show that he was not liable.

Whilst we are considering the observations made by Stirling L. J., it would be necessary to refer to another English decision in *Weir & Co., v. WeVicar & Co.*,⁽²²⁾ in which it has been held that in an action against a firm a person who, being served as a partner, enters an appearance under protest denying that he is a partner in accordance with the provisions of O. XLVIII-a, r. 7, is not entitled to dispute the liability of the firm, and consequently cannot obtain an order for an issue to try the question of his partnership before the other issues in the action. When it was urged before the Court that this view might cause hardship, the argument was repelled by Bankes L. J. in these words (p. 133):

"A member of a partnership on becoming a partner takes upon himself the responsibility for everything that his partners may do in the conduct of the partnership, whether it be in the ordering of goods, or failing to defend an action, or admitting, however wrongly, the liability of the firm."

Similarly, Scrutton L. J. observed (p. 135):

"Order XLVIII.a, r. 8, assumes that judgment has already been obtained against the firm by proper service, and then proceeds to point out who are the persons against whom it is to be enforced. The appellant desires to invert the procedure, and to suspend the obtaining of judgment against the firm until after it has been ascertained who are the persons against whom the judgment when obtained will be enforceable. There is nothing in the rules which allows of such a proceeding....."

Therefore, in our opinion, it would not be reasonable to take the view that the observations made by Stirling L. J. really support the view for which Mr. Chhatrapati contends*.....

[The rest of the judgment is not material to the report].

Appeal dismissed.

G. N. V.

22. [1925] 2 K. B. 127.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

SHIDDU RAMA SHAGALE (ORIGINAL CREDITOR), PETITIONER *v.*

BASAWA RAMAYYA SWAMI (ORIGINAL DEBTOR), OPPONENT.*

Bombay Agricultural Debtors' Relief Act (Bom. XXVIII of 1947), s. 32 (2) (V)—Bombay Tenancy Act (Bom. XXIX of 1939), ss. 2A, 3, 3A—Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), s. 4 (c)—Debtor giving possession of his land to creditor under Thevi Patta—Application by debtor to Debt Adjustment Court to adjust his debts—Whether Court competent to order delivery of possession to debtor when creditor has right of a protected tenant under Bombay Tenancy Act.

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*Civil Revision Application No. 1938 of 1953.

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KISHANDAS
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Under the provisions of s. 32 (2) (v) of the Bombay Agricultural Debtors' Relief Act, 1947, the Court adjusting the debts of a debtor is competent to pass an order for the delivery of possession of any property notwithstanding the tenancy rights set up by the creditor.

A debtor executed in 1940, a *thevi patta* in favour of the creditor and put him in possession of his land. The debtor subsequently applied for the adjustment of his debts under the Bombay Agricultural Debtors' Relief Act, 1947. On the question whether the Court was competent to pass an order for delivery of possession of the land to the debtor,

Held, (i) that under the Bombay Tenancy Act, 1939, the creditor was entitled to plead the status of a protected tenant and that he was not liable to be evicted,

(ii) that s. 32 (2) (V) of the Bombay Agricultural Debtors' Relief Act, 1947, confers upon the Court administering the provisions of the Act powers to order delivery of possession of any property notwithstanding any law or custom to the contrary, and

(iii) that notwithstanding the provisions of the Bombay Tenancy Act, 1939, which was the earlier Act, the Court was competent to pass an order for delivery of possession under s. 32 (2) (V) of the Bombay Agricultural Debtors' Relief Act, 1947, which is a later Act.

CIVIL Revision Application against the decision of M. S. Hegade, Esquire, Assistant Judge, Belgaum, confirming the decision of G. S. Bhagwat, Esquire, Third Joint Civil Judge, Junior Division, at Chikodi.

The facts are sufficiently set out in the Judgment.

K. G. Datar, with H. B. Datar, for the Petitioner.

V. V. Divekar, for the Opponents.

Gajendragadkar J.—This revisional application raises a very short point under s. 32 (2) (v) of the B. A. D. R. Act. The petitioner is one of the two creditors of Basawa. It appears that on May 22, 1940, a *Thevi Patta* was passed in favour of the creditor. Subsequently, on April 20, 1943, a mortgage was executed between the same parties and in respect of the same property. The debtor Basawa applied for the adjustment of the debts due to the petitioner and to Parwati *kom* Balayya. In these proceedings the petitioner contended that the *Thevi Patta* amounts to a lease and a mortgage and his argument was that, though the debt due to him from the debtor can and should be adjusted under the provisions of the B.A.D.R. Act, it was not open to the Court administering the provisions of the Act to direct that the property belonging to the debtor should be restored to her. This contention was rejected by the learned Judge. An award has been passed adjusting the debts due from the debtor to her respective creditors and in respect of the petitioner an order has been passed that the property belonging to the debtor should be restored to her. It is this order which the petitioner challenged before the appellate Court. The learned appellate Judge has accepted the view taken by the learned trial Judge and he has held that under the provisions

of s. 32, sub-s. (2) (v) of the B.A.D.R. Act the Court adjusting the debts of a debtor is authorised to pass an order for the delivery of possession of any property notwithstanding the tenancy rights set up by the creditor.

Mr. Datar for the petitioner contends that the lower appellate Courts has misconstrued the effect of the provisions of s. 32, sub-s. (2) (v). It is common ground that the tenancy rights which are set up by the petitioner would be governed by the provisions of the earlier Tenancy Act XXIX of 1939. Section 2 A of the said Act defined "tenant" and it cannot be disputed that under this definition a mortgagee in possession of mortgaged property would have to be regarded as a tenant. Section 2 A had provided that a person lawfully cultivating any land belonging to another shall be deemed to be a tenant and this clause would naturally include even a mortgagee in possession. When Legislature enacted the subsequent Tenancy Act LXVII of 1948, the definition of "tenant" has been so clarified as to exclude mortgagees in possession. Section 4, sub-s. (c) of the new Act expressly excludes a mortgagee in possession from the class of persons who should be deemed to be tenants. That was not the position under the earlier Tenancy Act of 1939. Mr. Datar is, therefore, entitled to contend that, inasmuch as the petitioner was put in possession of the property by virtue of the terms of the Thevi Patta, he became a mortgagee in possession and as such was entitled to be treated as a tenant under s. 2 A of the old Act. Mr. Datar then argued that, though the petitioner did not satisfy the requirements of s. 3 of the earlier Act which defined protected tenants, by virtue of the provisions of s. 3 A he was nevertheless entitled to the privileges of a protected tenant. Section 3 A had provided that every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act. The Act of 1946 came into force on November 8, 1946 and at the time when the status of the creditor was in dispute the requirements of s. 3 A had been satisfied. It must, therefore, be conceded that, so far as the provisions of the earlier Tenancy Act of 1939 are concerned, the creditor was entitled to plead the status of a protected tenant, and if that be so, it must also be conceded that under the relevant provisions of the earlier Tenancy Act he was not liable to be evicted.

But the rights which the creditor can set up under the provisions of the earlier Tenancy Act would not avail him in the present proceedings because s. 32, sub-s. (2) (v) of the B.A.D.R. Act expressly authorises the Court administering the provisions of this Act to order delivery of possession of any property of the debtor notwithstanding any law or contract to the contrary. The B. A. D. R. Act and the earlier Tenancy Act are both

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Acts of the same Legislature and in point of time the B.A.D.R. Act is subsequent to the earlier Tenancy Act. If clause (v) of sub-s. (2) of s. 32 authorises the Court to direct possession of the property of the debtor to be restored to him notwithstanding any law to the contrary, Mr. Datar would not be entitled to contend that the order passed by the Courts below is either illegal or improper. All that Mr. Datar has been able to establish is that, under the relevant provisions of the earlier Tenancy Act, his client, who was a protected tenant, could not have been evicted by the debtor who was the creditor's landlord in a sense. But it is just because there is a provision to the contrary under the Tenancy Act that s. 32 (2) (v) of the B.A.D.R. Act has expressly provided that, notwithstanding such contrary provisions in other statutes, a debtor should be given possession of his land under s. 32 (2) (v). The policy underlying the provisions of s. 32 (2) (v) is, in my opinion, very clear. When debts of agricultural debtors are being adjusted on terms favourable to the debtors, on grounds of social justice Legislature desired that after the debts were adjusted and awards were made embodying the terms on which the debts should be adjusted it was essential that the agricultural debtors should be put in possession of their agricultural lands, and in order to make this provision effective Legislature took the precaution of laying down that an order for possession of their agricultural lands should be passed in favour of debtors though there may be provisions to the contrary in some other laws or though there may be contracts to the contrary between the parties. The words used in s. 32 (2) (v) are, in my opinion, clear and unambiguous, and if the words indicate that an order for possession should be passed despite other provisions to the contrary in any other statute, I do not see how Mr. Datar can contend that the order for possession passed by the Courts below is either improper or illegal. In my opinion, the construction put by the Courts below on the provisions of s. 32 (2) (v) of the B.A.D.R. Act is obviously right.

In the result, the revisional application fails and the rule is discharged with costs.

Rule discharged.

K. B. S.
