APPELLATE CIVIL

Before Mr. Justice Dixit and Mr. Justice Vyas.

CHIMANLAL CHHOTALAL SHAH *v.* VAJESANG CHANDABHAI THAKORE.* 1955 *Sept.* 27

Bombay Agricultural Debtors Relief Act (Bom. XXXVIII of 1947), s. 57 —Bombay Agricultural Debtors Relief (Amendment) Act (Bom. XXXVII of 1950)—Extended time under s. 57 (1) for making application under s. 4 of the Act, when available.

The benefit of the extended time under sub-s. (*1*) of s. 57 of the Bombay Agricultural Debtors Relief Act, 1947, for making an application under s. 4 of the Act is not available if on the date on which the territory of a State merged with the State of Bombay,

(*a*) the debtor and the creditor both resided outside the merged territory and the debtor's property was also situated outside it; or

(*b*) the creditor resided in the merged territory, but the debtor resided outside it and the debtor's property was also situate outside it; or

(*c*) the creditor resided in the merged territory and the debtor's property was also situated in the merged territory, but the creditor could not have enforced his remedy against that property for the recovery of debts due to him; or

(*d*) the creditor resided in the merged territory, the debtor's property was also situated inside it and the creditor could have enforced his remedy against that property for the recovery of the debts due to him, but where no fresh application is made within six months from the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950, i. e., within six months from November 8, 1950.

Reference made by Sumant C. Bhatt, Esquire, District Judge, Ahmedabad.

The facts material for the Reference are sufficiently set out in the judgment.

V. S. Desai, Assistant Government Pleader, for the Referor.

C. S. Trivedi, for *S. N. Patel,* for Respondents Nos. 6 and 7.

A. M. Joshi, for Respondent No. 4.

Vyas J.—These are references made by the District Judge of Ahmedabad and they raise an important question of construction of s. 57 of the Bombay Agricultural Debtors' Relief Act, 1947. The points which we have to consider in these references are whether the benefit of extended time under sub-s. (*1*) of s. 57 for making an application under s. 4 is available in cases where, upon the date on which the territory of a merged State merged with the State of Bombay, (a) the debtor and creditor both resided outside the merged territory and the debtor's property was also situated outside the merged territory; (b) the creditor resided in the merged territory, but the debtor resided outside the merged territory and his property was also situated outside the merged territory; (c) irrespective of where the debtor or the creditor resided (*i*) the

*Civil Reference No. 3 of 1955 with Civil Reference No. 10 of of 1955.

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debtor had property in the merged territory, but the creditor could not enforce his remedy against that property for the recovery of the debts due to him, (*ii*) the debtor had property in the merged territory and the creditor could enforce his remedy against that property for the recovery of the debts due to him, but where no application under s. 4 was made within six months from the date of the coming into operation of the Bombay Agricultural Debtors' Relief (Amendment) Act XXXVII of 1950.

In order to understand how these points arise, it is necessary to state the facts. Reference No. 3 of 1935 has arisen out of an order passed by the Civil Judge, J. D., Dehgam, in applications Nos. 4312 of 1950 and 3125 of 1950 under the Bombay Agricultural Debtors' Relief Act. Reference No. 10 of 1955 has arisen out of an Order of the same learned Judge in application No. 1450 of 1950. On January 31, 1950, an application No. 4312 under the B. A. D. R. Act, 1947, was filed in the Court of the Civil Judge, J. D., at Dehgam, by a debtor of the name of Vajesang and it was filed against eight creditors, some of whom are residents of Palundra and the rest of Bahiyal. It would appear that Vajesang has properties in Palundra and elsewhere. On the same date, January 31, 1950, one Chimanlal, one of the creditors of Vajesang, also filed an application No. 3125 in the Dehgam Court against Vajesang for the adjustment of the debts which were due to him from Vajesang. This Chimanlal is also a resident of Palundra and ordinarily lives there. It may be noted in passing that another application, viz., application No. 5526 was also made by another debtor. It was made on June 13, 1949. It was an application against a creditor of Palundra and it was filed in a Court in the Daskroi Taluka of the Ahmedabad District. This application was transferred to the Dehgam Court and was consolidated with the abovementioned two applications, viz. applications Nos. 4312 and 3125. So far as application No. 5526 is concerned, it was rejected by the Dehgam Court on the ground that it did not contain necessary particulars, and so far as the other two applications, viz. Nos. 4312 and 3125 of 1950 are concerned, they were dismissed by the learned Judge as being not maintainable as "they were not made in the Court within whose jurisdiction the debtor ordinarily resided and within the prescribed time." The learned Judge held that s. 57 of the Act did not apply to these applications as they were not made within six months from November 8, 1950, the date on which the Bombay Act XXXVII of 1950 (Bombay Agricultural Debtors' Relief (Amendment) Act, 1950) came into operation, but were made much earlier. In the view of the learned Judge s. 57 did not apply to proceeding already pending on November 8, 1950. The learned Judge observed :

"The principle of law is that the parties are governed by the law in force at the date when the suit is instituted and any subsequent amendment or alteration of the law cannot affect pending proceedings. Of course the legislature can expressly provide that pending proceedings will be affected by an amendment of the law. While enacting s. 57, Legislature has not provided that pending applications falling under the provisions of s. 57 should be treated to have been made under s. 57. On the contrary, Legislature has prescribed the time-limit of six months for making applications under s. 57."

It was for these reasons that the learned Civil Judge held applications Nos. 4312 and 3125 of 1950 to be incompetent. On appeal to the District Court, the learned District Judge framed two points of reference and those points are : (1) Whether the applications made on or before January 31, 1950, are to be deemed as applications filed under the proviso to s. 57 of the Bombay Agricultural Debtors' Relief Act ; (2) whether the amended s. 57 should be given retrospective effect as regards applications made on or before January 31, 1950, irrespective of the period prescribed. The learned District Judge answered both these points in the affirmative and made a reference to this Court for final pronouncement as to the legal position on these points as the points are general importance.

Palundra and Vedodra are villages in Dabhoda Bavishi. Until November 9, 1943, Dabhoda Bavishi was a part of the Sabarkantha agency. From November 9, 1943 to October 15, 1948, it formed a part of the Dehgam Taluka of the former Baroda State. On October 15, 1948, Dabhoda Bavishi merged with the State of Bombay and became a part of the Daskroi Taluka of the Ahmedabad District. These territorial changes were brought about by the Bombay (Enlargement of Area and Alteration of Boundaries) (Amendment) Orders, 1948, and Notification No. 2751/46/G, dated November 15, 1948, of the Government of Bombay. The Bombay (Enlargement of Area and Alteration of Boundaries) (Amendment) Order, 1948, was passed by the Governor-General of India. It was to take effect from October 15, 1948, though it was published in the Bombay Government Gazette Extraordinary Part IV-C on October 27, 1948. It may be noted that the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, which was passed by the Governor-General of India and which came into force on June 10, 1948, provided that the areas specified in the schedule to the said Order were thereby included in the territories of the Dominion of India and further provided that the added areas would form part of the Province of Bombay and that the boundaries of the Province of Bombay would be so altered as to comprise within them the added areas. In the schedule to this Order, we find certain entries under the Katosan Thana, viz. entries Nos. 223 to 232. By virtue of the Bombay (Enlargement of Area and Alteration of Boundaries)

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(Amendment) Order, 1948, the abovementioned Order, i. e. The Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948 was amended and the amendment was that certain entries were to be added below entry No. 232 under the Katosan Thana. The added entries were 233 to 252. Entry No. 239 relates to Palundra and entry No. 241 relates to Vedodra. Thus the combined effect of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, and its amendment was that the Bavishi Thana comprising amongst other villages the villages of Palundra and Vedodra became a part of the Province of Bombay. The Notification No. 2751/46/G, which was issued by the Government of Bombay in the Political and Services Department on November 15, 1948 provided that the areas comprising the Matadari Estates of Bavishi Thana, viz., Harsoli, Amrajina-Muada, Lavad, *Vedodra,* Angutla, Vatwa, Harakjina-muada, Dabhoda, Salki, Bardoli and *Palundra* would merge with and form part of the Daskroi Taluka of the Ahmedabad District and would be administered accordingly. Effect was given to this order from October 15, 1948. Thus, the combined effect of the Bombay (Enlargement of Area and Alteration of Boundaries) (Amendment) Order, 1948, and the abovementioned Notification of the Government of Bombay was that the villages of Palundra and Vedodra merged with the State of Bombay and became part of the Daskroi Taluka of the Ahmedabad District. It may be noted that when these villages merged with the State of Bombay and became a part of the Daskroi Taluka of the Ahmedabad District on October 15, 1948, the Bombay Agricultural Debtors' Relief Act, 1947, was already in force in the Daskroi Taluka and, under the provisions of that Act, applications under s. 4 for the adjustment of debts were to be made before June 15, 1949. The abovementioned villages Palundra and Vedodra continued to be a part of the Daskroi Taluka of the Ahmedabad District till July 31, 1949. From August 1, 1949, they became a part of the Dehgam Taluka of the former Baroda State. It may be noted that the Baroda State had already become a part of the Dominion of India on May 1, 1949, and its complete integration in the State of Bombay took place on August 1, 1949. It was on that date, viz. August 1, 1949, that the villages of Palundra and Vedodra became a part of the Dehgam Taluka and this change was brought about by the Notification of the Government of Bombay No. 2755/46/F dated July 29, 1949. So far as the Dehgam Taluka is concerned, it may be noted that the Bombay Agricultural Debtors' Relief Act, 1947, was made applicable to that area with effect from August 1, 1949, and applications for the adjustment of debts were to be made before January 31, 1950. I have already pointed out above that applications Nos. 4312 and 3125 of 1950

were made on January 31, 1950 and the other two applications, viz., No. 1450 of 1950 and another which were made by the creditors of Vedodra against a debtor of that village, were made on January 28, 1950 and January 31, 1950, respectively.

Now, the question which arises out of the points referred to us by the learned District Judge of Ahmedabad is whether the provisions of s. 57 of the B. A. D. R. Act can apply to *these* application. Now, s. 57 (*1*) of the Act says:

"Notwithstanding anything contained in s. 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories—(*a*) if any debtor was owing debts to a creditor in a merged territory on the date on which such territory merged with the State of Bombay and if the place in which such debtor was ordinarily residing on the said date was outside such territory, such debtor, or (*b*) his creditor may make an application to the Court under s. 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors' Relief (Amendment) Act, 1950."

Then there is sub-s. (*2*) of this section which lays down :

"Nothing in sub-s. (*1*) shall entitle any debtor or creditor to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors Relief (Amendment) Act, 1950, he could have made an application under s. 4 of this Act,"

and this sub-section has a proviso which is in these words :

"Provided that, if the debtor had in such territory on the date on which such territory merged with the State of Bombay any property against which the creditor could have enforced his remedy for the recovery of the debts due to him from such debtor under any law in force in such territory immediately before the said date, such debtor or his creditor shall be entitled to make an application under sub-s. (*1*)."

It is clear that, for attracting the application of sub-s. (*1*) of s. 57, it must be shown that a debtor was owing debts to a creditor in a merged territory on the date on which such territory merged with the State of Bombay. Now, a question arises as to what is meant by 'a merged territory' and in order to ascertain its meaning, we must turn to the opening words of the section. The section opens with the words :

"Notwithstanding anything contained in s. 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories."

It is evident that in the context the expression "merged territories" as used in s. 57 refers to merged States, and the merged State with which we are concerned in these references is the former Baroda State which ceased to be a foreign State from May 1, 1949, upon which date it became a part of the Dominion of India. Therefore, in our opinion, the expression "merged territory" in s. 57 (*1*) (*a*) means 'the territory of the merged State of Baroda' which of course would include the Dehgam Taluka which was a part of the former Baroda State. Thus, before s. 57 sub-s. (*1*), can apply, it must be shown that

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the territory in which a debtor was owing debts to a creditor was a territory not forming part of the State of Bombay on the date on which the territory of the Baroda State merged with the State of Bombay. In other words, in order to attract the operation of s. 57, sub-s. (*1*), it must be shown that on the date on which the territory of the Baroda State merged with the State of Bombay, i. e. on May 1, 1949, a debtor owing debts to a creditor was not amenable to the jurisdiction of the Bombay State. Now, in this case, as I have stated, the Dabhoda Bavishi in which the villages of Palundra and Vedodra are situated merged with the State of Bombay on October 15, 1948, and became a part of the Daskroi Taluka of the Ahmedabad District from that date. From October 15, 1948, onward till July 31, 1949, the villages comprising the Dabhoda Bavishi continued to form a part of the Daskroi Taluka. They became a part of the Dehgam Taluka on August 1, 1949. I have mentioned above that the Dehgam Taluka was a part of the former Baroda State which had become a part of the Dominion of India on May 1, 1949. It is thus clear that on May 1, 1949, the date on which the territory of the State of Baroda merged with the State of Bombay, the villages of Palundra and Vedodra of Dabhoda Bavishi formed a part of the State of Bombay and were subject to the jurisdiction of the State of Bombay. The applicant in application No. 3125 is a creditor of Palundra. It is an application against a debtor who is also a resident of Palundra. His property is situated in Palundra. The applicants in applications No. 1450/50 and another of 1950 are creditors residing in the village Vedodra. The debtor in both these applications is the same person, viz., Nathaji Bhulaji, and he too belongs to Vedodra. His property is also situated in Vedodra. It is thus clear that, so far as applications Nos. 3125 of 1950 and 1450 of 1950 and another of 1950 are concerned, debtors and creditors belongs to a territory which, on May 1, 1949, the date on which the territory of the former State of Baroda merged with the State of Bombay, did not form part of the said territory, but formed part of the State of Bombay and was subject to the jurisdiction of the State of Bombay. Therefore, so far as these applications are concerned, they cannot be governed by s. 57 of the Act and the applicants cannot have the benefit of extended time under sub-s. (*1*) of s. 57 for making an application under s. 4. Palundra and Vedodra were parts of the Daskroi Taluka of the Ahmedabad District between October 15, 1948 and July 31, 1949, and the B. A. D. R. Act was in force in that area. Under the provisions of the Act as applied to that area, applications under s. 4 were to be made before June 15, 1949. No application having been made by these debtors or creditors before that date, their right to make an application

lapsed on June 15, 1949, and it cannot be revived. These applications were, therefore, incompetent and not maintainable.

So far as application No. 4312 of 1950 is concerned, the debtor is a resident of Palundra. It is an application against eight creditors some of whom reside in Palundra and the rest in Bahiyal. It is true that Bahiyal was never a part of the Daskroi Taluka of the Ahmedabad District. It was not subject to the jurisdiction of the State of Bombay on the date on which the territory of the former Baroda State merged with the State of Bombay. It was a part of the Mehsana District of the Baroda State on the date on which the said State merged with the State of Bombay. Nevertheless, the application (No. 4312 of 1950) was made by a debtor whose place of ordinary residence was not in a merged territory, but was in Palundra. Under s. 4 of the Act, he had to make an application to the Court having jurisdiction in the area where he resided. Now, the area where he resided (Palundra) on the date on which the territory of the State of Baroda merged with the State of Bombay was a part of the Daskroi Taluka of the Ahmedabad District. It was a part of the Daskroi Taluka from October 15, 1948 to July 31, 1949, and during that time the B. A. D. R. Act was in force in the Daskroi Taluka. The last date for making an application in that area was June 15, 1949. Clearly, therefore, the applicant of application No. 4312 of 1950 ought to have made an application to the Court in that area before June 15, 1949. That was not done. It is true that some of the creditors of the applicant-debtor in this application were residing in Bahiyal in Dehgam Taluka a merged territory on the date on which the said territory merged with the State of Bombay. But even so, the debtor or his creditors ought to have made an application within six months from the date of the coming into operation of the Bombay Agricultural Debtors' Relief (Amendment) Act XXXVII of 1950. Bombay Act No. XXXVII of 1950 came into force on November 8, 1950. So the debtor or his creditors ought to have made an application on any date between November 8, 1950 and May 7, 1951. But that was not done. Proviso to sub-s. (*2*) of s. 57 would not apply, because even if it is assumed—for in the absence of evidence we can only assume—that the debtor had property in the merged territory on the date on which the said territory merged with the State of Bombay and if his creditors could have enforced their remedy against that property for the recovery of the debts due to them, even so sub-s. (*2*) of s. 57 of the Act would apply only if an application under s. 4 is made between November 8, 1950 and May 7, 1951. Section 57 was added to the Act on November 8, 1950, by the Bombay Act XXXVII of 1950 and sub-s. (*1*) says that an application may be made under

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s. 4 within six months from that date. In the present case, no application was made by any creditor of village Bahiyal between November 8, 1950 and May 7, 1951. Accordingly application No. 4312 of 1950, which was made on January 31, 1950, was also incompetent and not maintainable. Provisions of the proviso to sub-s. (*2*) of s. 57 cannot apply to it.

Section 57 confers a right upon debtors and creditors and the right conferred is that if the conditions prescribed in cl. (*a*) of sub-s. (*1*) of s. 57 are satisfied, debtors or their creditors may make an application to the Court under s. 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors' Relief (Amendment) Act, 1950. This right in subject to an exception and the exception is contained in sub-s. (*2*). Sub-section 2 says :

> "Nothing in sub-s. (*1*) shall entitle any debtor or creditor to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors Relief (Amendment) Act, 1950, he could have made an application under s. 4 of this Act."

Thus, the exception to the right which is conferred by sub-s. (*1*) of s. 57 is that the said right shall not be available to those debtors or creditors who could have made an application under s. 4 prior to the date of the coming into operation of the B. A. D. R. (Amendment) Act, 1950. This exception is whittled down by the proviso to sub-s. (*2*) and the proviso says :

> "Provided that, if the debtor had in such territory on the date on which such territory merged with the State of Bombay any property against which the creditor could have enforced his remedy for the recovery of the debts due to him from such debtor under any law in force in such territory immediately before the said date, such debtor or his creditor shall be entitled to make an application under sub-s. (*1*)."

Thus, if the debtor had in the territory of a merged State, on the date on which the said territory merged with the State of Bombay, some property and if the creditor could enforce his remedy against that property for the recovery of debts due to him from such debtor, then the right to make an application under s. 4 within six months from the date of the coming into operation of the Bombay Act XXXVII of 1950 would be available to such debtor or his creditor, even if the said debtor or creditor could have made an application under s. 4 prior to the date of the coming into operation of the Bombay Act XXXVII of 1950.

Now, so far as debtors and creditors in these applications, whose place of ordinary residence was in villages Palundra and Vedodra which were not parts of the territory of the merged State of Baroda on the date on which such territory merged with the State of Bombay, are concerned they could have made an application under s. 4 prior to the date of the coming into operation of the Bombay Act XXXVII of 1950. I have pointed

out above that they could have, and ought to have, made an application before June 15, 1949 to a Court under the Act in the Daskroi Taluka of the Ahmedabad District. They did not do so and, therefore, sub-s. (*1*) of s. 57 cannot avail them. The proviso to sub-s. (*2*) also cannot assist them because, before the proviso can apply, it must be shown that the debtor had in a merged territory, in this case the territory of the merged State of Baroda, on the date on which such territory merged with the State of Bombay, some property and that his creditor could have enforced his remedy against that property for the recovery of the debts due to him. When these conditions are fulfilled, the debtor or his creditor shall be entitled to make an application within six months from November 8, 1950, the date on which the Bombay Act XXXVII of 1950 came into operation. If such an application is not made, i. e. if no application is made within six months from November 8, 1950, the proviso to sub-s. (*2*) cannot be invoked. No such application was made by any of the creditors or debtors with whom we are concerned in these references. Applications made on January 31, 1950 and January 28, 1950, cannot be said to be applications made under sub-s. (1) of s. 57. They were *ab initio* incompetent and not maintainable. The right which these applicants had to make an application had lapsed on June 15, 1949, and it could not be revived. If the conditions contemplated by the proviso to sub-s. (*2*) are fulfilled, a fresh application must be made within six months from November 8, 1950. An old application pending before the coming into force of the Bombay Act XXXVII of 1950 cannot be considered an application under sub-s. (*1*) of s. 57.

It is thus clear that if on the date on which the territory of the merged State of Baroda merged with the State of Bombay the debtor and the creditor both resided outside the merged territory and the debtor's property was also situated outside the merged territory, s. 57 cannot apply. If upon the above-mentioned date the creditor resided in a merged territory, but the debtor resided outside the merged territory and the debtor's property was also situated outside the merged territory, then also s. 57 cannot apply. If the creditor resided in a merged territory and if the debtor's property was also situated in a merged territory, but if the creditor could not have enforced his remedy against that property for the recovery of debts due to him, even then s. 57 cannot apply. Lastly, if the creditor resided in a merged territory, if the debtor's property was also situated in a merged territory and if the creditor could have enforced his remedy against that property for the recovery of the debts due to him, even so if no fresh application is made within six months from the coming into operation of the

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Bombay Act XXXVII of 1950, i. e. within six months from November 8, 1950 onward, the provisions of s. 57 cannot be invoked.

Turning to the order of reference made by the learned District Judge of Ahmedabad in reference No. 3 of 1955, we notice that he has stated :

"Dabhoda Bavishi was placed under the Daskroi taluka for revenue purpose, but not under a particular judicial district. There is some force in the contention that there was no court to which applications could be presented."

Now, if it is true that there was no Court in the Daskroi Taluka of the Ahmedabad District between October 15, 1948 and July 31, 1949, to which the applications under the Act could be presented, then of course the applicants of these applications could not be blamed for not making any application before June 15,1949. In that case, no question could arise of their having lost a right to apply under s. 4 of the Act on the ground that they had failed to make an application before June 15, 1949. The fact of the matter, however, is that the learned District Judge was in error when he said that there was no Court in the Daskroi Taluka at the material time to which the applications could be presented. We have only to turn to the fact that application No. 5526 which was made by a debtor against a creditor of Palundra was made in a Court in the Daskroi Taluka of the Ahmedabad District and it was made on June 13, 1949. It is clear, therefore, that the learned District Judge's observation that there was no Court in the Daskroi Taluka between October 15, 1948 and July 31, 1949, to which an application under s. 4 of the Act could have been made, is incorrect.

Then, in the course of his order, the learned District Judge has made these observations :

"As the Act was made applicable to Dehgam on August 1, 1949, for the first time, creditors whose remedy was against a property in the Dehgam Taluka did not file any application on or before June 15, 1949. Applications were made within six months from the date of the application of the Bombay Agricultural Debtors Relief Act to the Dehgam Taluka."

There is no substance in these observations. We cannot assume that on or before June 15, 1949, the debtors or creditors outside the merged territory had any reason to imagine that administrative changes would take place with effect from August 1, 1949. Till July 31, 1949, they were governed by the Act as it was in force in the Daskroi Taluka of the Ahmedabad District and under those provisions they had to make an application before June 15, 1949. They had no justification for not apply-

ing before that date. Then again the learned District Judge has said in his order of reference :

"The applicants who filed applications on or before January 31, 1950 could not have thought of the provisions which were to come in force, namely s. 57 which was enacted on November 8, 1950."

There is hardly any need to go into the question of what the applicants might have thought or not thought as to what might happen or not happen after June 15, 1949. Till July 31, 1949, as I have just mentioned, they were governed by a particular law and they ought to have applied in accordance with the provisions of that law. In other words, they ought to have applied before June 15, 1949. The learned District Judge has also said in the course of his order :

"Probably the Legislature did not contemplate that persons whose case would fall under the proviso to s. 57 might have already made applications under the Act."

We do not see any substance in these observations either. We have no doubt that the Legislature clearly intended, and gave expression to that intention while enacting the proviso to sub-s. (2), that a fresh application must be made within six months from November 8, 1950, if an advantage is to be taken of the proviso to sub-s. (2). We, therefore, do not see any force or substance in the observations or in the reasoning upon which the learned District Judge has come to the conclusion that the various applications filed by the debtors and the creditors in these cases, namely, applications filed on January 31, 1950 and January 28, 1950, were maintainable and that the applicants could have the benefit of the extended time under s. 57 of the Act.

The two questions which the learned District Judge has framed for himself and has submitted for our decision after answering them himself in the affirmative have been rather loosely worded and do not take due account of the various points which really arise for consideration on the question of construction of s. 57 of the Act. Question No. 1 is :

"Whether the applications made on or before January 31, 1950, are to be deemed as applications filed under the proviso to s. 57 of the Bombay Agricultlral Debtors' Relief Act ? "

Our answer is in the negative. The proviso refers to the making of an application under sub-s. (1), and sub-s. (2) says that an application under s. 4 may be made within six months of the coming into operation of the Bombay Act XXXVII of 1950. The applications made on or before January 31, 1950, cannot be deemed as having been made between November 8, 1950 and May 7, 1951.

The second question framed by the learned District Judge :

"Whether the amended s. 57 should be given retrospective effect as regards applications made on or before January 31, 1950, irrespective of the period prescribed?"

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Our answer to this question also is in the negative. Section 57 does not say that the application pending on the date on which the Bombay Act XXXVII of 1950 came into operation may be deemed as applications made under s. 57. On the contrary, it provides explicitly that applications may be made within six months from the coming into operation of the Bombay Act XXXVII of 1950, i. e., within six months from November 8, 1950.

The points referred to us are answered accordingly. We direct that a copy of this judgment be transmitted to the Court of the learned District Judge and the Court of the learned District Judge shall, upon the receipt of this judgment, proceed to dispose of the cases in conformity with the decision of this Court.

These refrences have involved matters of some complexity. Several notifications and Acts were referred to and had to be construed. Mr. V. S. Desai has taken considerable trouble to help us to answer important points of law which are of general importance, and we feel that this is a case where the State should consider whether Mr. Desai should not be better compensated.

Mr. A. M. Joshi for one of the creditors has also rendered us a good deal of help by drawing up a statement of the various notifications in their chronological order and their purport. This help was useful to us in understanding the points involved in these references.

Dixit J.—I agree. As these references raise a question of general importance, I desire to add a few words with regard to the construction of s. 57 of the Bombay Agricultural Debtors' Relief Act, 1947. Section 4 (*1*) of the Act provides :

"Any debtor ordinarily residing in any Local area for which a Board was established under s. 4 of the repealed Act on or after February 1, 1947, or his creditor may make an application before August 1, 1947 to the Court for the adjustment of his debts."

This shows that under the Act an application under s. 4 (*1*) has to be made before August 1, 1947. When certain territory merged with the State of Bombay, a provision had to be made for applications in respect of debts due to a creditor in the merged territory. That is why ss. 57 and 58 were added to the Act by Bombay Act. No. XXXVII of 1950. The object in enacting s. 57 was evidently to make special provision permitting applications to be made in the merged territory at the instance of a debtor or his creditor. Section 57 consists of two sub-sections : Section 57(*1*) and s. 57 (*2*). Section 57 (*1*) has two clauses : clause(*a*) and cl. (*b*). Section 57 (*2*) has a proviso and it is upon the right construction of the language as used in s. 57 that the questions raised have to be answered. According to s. 57 (*1*), there are two conditions to be satisfied. (1) a creditor must reside in a merged territory and (2) his

debtor must ordinarily reside outside such merged territory. The expression "merged territory" is not defined in Bombay Act No. XXXVII of 1950, but that expression has to be understood by reference to the Bombay Merged States (Laws) Act, 1950 (Bombay Act No. IV of 1950). Now, that Act also does not define the expression "merged territory." It only defines the expression "merged States" and the expression "merged States", according to s. 2, has the same meaning as in the States' Merger (Governors' Provinces) Order 1949. So far as, therefore, s. 57 (*1*) is concerned, there are two conditions and those conditions have reference to the residence of a creditor as well as of his debtor. When these conditions are satisfied, then it is open to a debtor or his creditor to make an application to the Court under s. 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors' Relief (Amendment) Act, 1950. Now, Bombay Act No. XXXVII of 1950 came into optration on November 8, 1950, so that an application under s. 4 must be made on or before May 8, 1951. A perusal of s. 57 (*1*) cls. (*a*) and (*b*), therefore, shows that a debtor or his creditor may make an application under s. 4 on or before May 8, 1951, if the two conditions mentioned above have been satisfied, and as I said, in such a case the test is one of residence of a debtor as well as of his creditor and has no reference whatever to the property or the place of property of the debtor. In a sense, s. 57 (*1*) confers upon a creditor and his debtor a right to make an application, provided the conditions mentioned in that section are satisfied. The right conferred by s. 57 (*1*) is, however, taken away in certain cases by s. 57 (*2*) which says that even if such a right exists in favour of a creditor or his debtor, the creditor or his debtor will not be entitled to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors' Relief (Amendment) Act, 1950, the debtor or his creditor was in a position to make an application under s. 4. Now, the test being one of residence of a debtor, if the debtor or his creditor could have made an application in the area in which the debtor was residing, then it is obvious that there was a remedy open to the debtor and his creditor by way of an application and neither the debtor nor his creditor having taken advantage of the remedy, it would not be open to the debtor or his creditor to take advantage of Bombay Act No. XXXVII of 1950. But then there is a proviso to s. 57 (*2*) and that proviso confers upon a creditor or his debtor a right and that right is with reference to the place of property. As under s. 57 (*1*), so also under the proviso to s. 57 (*2*), two conditions require to be satisfied. One of these two conditions is that the debtor must have, in the merged territory on the date on which such territory merged

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with the State of Bombay, property and the second condition is that it must be property against which the creditor could have enforced his remedy for the recovery of the debts due to him. It is only when these two conditions are satisfied that it would be possible for a debtor or his creditor to make an application as contemplated by sub-s. (*1*) of s. 57. The test under the proviso being the test of property and not the test of residence either of the debtor or of his creditor, it is obvious that the legislature thought it necessary to confer upon a debtor or his creditor the right to make an application because if the debtor had, in the merged territory, property, then it would be open to the debtor or his creditor to make an application contemplated by s. 57 (*1*). The proviso to sub-s. (*2*) of s. 57 is apparently with reference to mortgage transactions, so that if a debtor has property in the merged territory and that his creditor could have enforced his remedy for the recovery of the debts due to him, then in that event it would be open to a creditor or to his debtor to make an application under s. 4 as contemplated by s. 57 (*1*).

The result is as follows : To enable a debtor or his creditor to make an application contemplated by s. 57 (*1*) a creditor must, on the date of merger reside in a merged territory and his debtor must ordinarily reside outside such territory. This is the effect of s. 57 (*1*). But if it was possible for such a debtor or his creditor to make an application under s. 4 before s. 57(*1*) was enacted, the debtor or his creditor cannot make an application contemplated by s. 57 (*1*). That is the effect of s. 57 (*2*). There is, however, an exception to this and that is that if a debtor has, on the date of merger, property in the merged territory and his creditor could have enforced his remedy against such property for the recovery of debts due to him from such debtor, then it would be open to such a debtor or his creditor to make an application as contemplated by s. 57 (*1*).

Answer accordingly.

K. B. S.