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benefit of those tenants who evade their obligations or who are not willing to pay the rent due from them. We are accordingly of the opinion that the word 'rent then due' in cl. (*b*) of sub-s. (*3*) of s. 12 should be construed to mean all rent in arrears or outstanding, including rent which cannot be recovered through the process of the Court owing to the bar imposed by the Limitation Act. A similar view has been taken by the Madras High Court in *Vasudeva Udpa* v. *Krishna Udpa,*[10] in which the Madras High Court had to interpret s. 114 of the Transfer of Property Act, which also contains provisions for relieving tenants against forfeiture for non-payment of rent. It was held in this case that under s. 114 a tenant can be relieved against forfeiture of lease incurred by non-payment of rent only on payment of all arrears of rent, including such as may be barred by limitation, together with such interest as might be legally due thereon.

The view taken by the District Judge was, therefore, correct. The rule will, therefore, be discharged with costs.

Rule discharged.

G. N. V.

10. (1920) 44 Mad. 629.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

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RAMCHAND KUNDANMAL OSWAL, APPLICANT (ORIGINAL CREDITOR No. 2) *v.* SARDARSING MOHANSING RAJAPUT AND ANOTHER, OPPONENTS (ORIGINAL DEBTORS).*

Bombay Agricultural Debtors' Relief Act (Bom. Act XXVIII of 1947), ss. 14, 15, 19—Darkhast transferred to B. A. D. R. Court—Whether decree holder to file a statement under s. 14—Whether decretal debt extinguished in the absence of such statement.

Where a Darkhast for execution of a decree is transferred to the Court under s. 19 of the Bombay Agricultural Debtors' Relief Act, 1947, it is not necessary for the decree-holder to file a statement under s. 14.

Held, therefore, that a decretal debt is not extinguished under s. 15 merely because the decree-holder had failed to file a statement under s. 14.

Civil Revision Application against the decision of B. D. Nadkarni, Esquire, District Judge, West Khandesh at Dhulia in appeal from the Award passed by N. A. Sapre, Esquire, Joint Civil Judge, Junior Division, at Dhulia.

The material facts are fully stated in the Judgment.

*Civil Revision Application No. 548 of 1954.

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RAMCHAND KUNDANMAL v. SARDARSING MOHANSING

Gajendragadkar J.

Y. V. Chandrachud, Advocate for the Applicant.

G. N. Vaidya, Advocate for the Opponents.

Gajendragadkar J.—This revision application raises a short question under ss. 14 and 15 of the B.A.D.R. Act. The question arises in this way. The petitioner obtained a decree against the opponents in Suit No. 170 of 1943 for Rs. 1,200. It was a decree on mortgage. The decree was put in execution and a Darkhast was filed. This Darkhast was transferred to the B.A.D.R. Act Court under s. 19 and it was then numbered as Application No. 21009 of 1947. It would appear that in this proceeding the debtor pleaded a subsequent adjustment as a result of which only Rs. 200 were due from him to the decree-holders. The debtor also applied for the adjustment of his debts and his application was numbered 14472 of 1947. The two applications were then consolidated and were fixed for hearing on August 8, 1951. On this date the debtor No. 1 was examined, but creditor No. 1 was absent. In the result, the learned Judge dismissed the creditor's application. Ultimately on September 25, 1951, an award was passed and in this award the petitioner's claim was rejected on the ground that he had failed to prove his debt. Against this award the petitioner preferred an appeal. He contended that it was for the opponents to prove the alleged adjustment and since in their evidence the opponents had not deposed to the adjustment, the award should have recognised the whole of the decretal debt as due and adjustable and the petitioner's claim should have been adjusted on that footing. The lower appellate Court allowed the appeal only in part. He held that the amount of Rs. 200 which had been admitted by the debtors as due from them to the decree-holder should be awarded to the petitioner. The rest of the claim was rejected. It is this order which is challenged before me by Mr. Chandrachud on behalf of the creditor.

Mr. Chandrachud contends that his client has obtained a decree from a Court of competent jurisdiction and in fact when the Darkhast application was filed to execute the decree it had been transferred under s. 19, and that unless the judgment-debtor proves that the decretal debt is satisfied or is adjusted or is otherwise barred it was incumbent on the B.A.D.R. Act Court to take the debt as proved and to deal with it under the provisions of the Act. In my opinion, this argument is obviously sound. It is difficult to understand how the learned Judge who heard the adjustment applications came to the conclusion that because of the absence of the decree-holder it followed that his debt had not been proved. In fact, the decree-holder in such a case had merely to produce the decree which he had obtained, and since the application before the adjustment Court was the result of a transfer made by the executing Court under s. 19, it was hardly necessary for the decree-holder to take elaborate

steps to prove his debt beyond producing the decree. The decree has been referred to in the Darkhast application and the executing Court has transferred the Darkhast application to the B.A.D.R. Act Court. Therefore, it seems to me that the learned Judges below were in error in taking the view that in the absence of proof about the subsistence of the debt the decree-holder was not entitled to any claim at all. The lower appellate Court has no doubt given relief to the petitioner to the extent of Rs. 200, but that is on the ground that this amount was admitted by the judgment-debtor. Even this conclusion is based upon the erroneous approach to the problem. It is for the debtor to prove how the decretal amount claimed in Darkhast is adjusted or barred.

Mr. Vaidya who appears for the opponents has, however, attempted to justify the conclusion of the lower Courts with an ingenious argument. He contends that in fact the decretal debt due to the petitioner is extinguished under s. 15 of the Act. He concedes that he has not challenged the order of the lower appellate Court holding that Rs. 200 are due to the petitioner; but he argues—and rightly—that even so it would be open to him to support the rest of the order on the ground that the lower appellate Court has given more relief to the petitioner than he deserved in law and it is this argument raised under ss. 14 and 15 of the Act which calls for a decision in the present revisional application. Mr. Vaidya has invited my attention to the provisions of s. 15 and he argues that the present decretal debt is one to which the last portion of sub-s. (*1*) of s. 15 applies. Section 15, sub-s. (*1*) deals with the extinction of debts due from debtors and one of the classes of debts to which the rule of extinction applies is covered by such debts as are due from debtors in respect of which statements are not submitted to the Court by the creditors in compliance with the provisions of s. 14. In other words, if a debt is due from a debtor and the creditor has not submitted a statement in compliance with the provisions of s. 14 in respect of the debt due to him, the said debt shall be deemed to be extinguished. It is common ground that on the application made by the debtor for the adjustment of his debts a general notice was issued under s. 14. It is also common ground that in response to this general notice the petitioner did not file a statement and that provides the material on which Mr. Vaidya bases his argument about the extinction of the debt under s. 15. If it was necessary for the petitioner to file a statement in response to the general notice under the provisions of s. 14, Mr. Vaidya would be right. If, on the other hand, it was not necessary for the petitioner to submit his statement though a general notice may have been issued under s. 14, the argument as to the extinction of the debt must

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fail. That is why it is necessary to examine the provisions of s. 14.

Now, s. 14 requires service of notices on debtors and submission of statements of debts by creditors. Sub-clause (*a*) of s. 14 provides that the Court shall give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application; and sub-clause (*b*) provides for the publication of a general notice requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later. Mr. Vaidya naturally relies on the latter portion of sub-cl. (*b*) of s. 14 and he contends that all creditors are required, in response to the publication of a general notice, to submit statements in the prescribed form; and if this obligation can be inferred from the words of s. 14 (*b*) his argument will receive support that the debt has been extinguished under s. 15. It is true that the words used in s. 14 (*b*) are general and *prima facie* they seem to require all creditors to submit a statement in the prescribed form. But in construing these words, we must have regard to the provisions contained in s. 14 (*a*) itself. If it appears that under s. 14 (*a*) an individual notice is not required to be issued to the present petitioner, then it would be difficult to hold that his failure to submit a statement in response to a general notice would be fatal to his claim. In considering the effect of the provisions of sub-cls. (*a*) and (*b*) of s. 14, it would be necessary to bear in mind that the forms which are prescribed for making an application for adjustment of a debt as well as for submitting statements in response to the notice show that the application for adjustment of a debt by the creditor is identical with the statement which he is required to file in response to the notice. Form II is in respect of an application for adjustment of debts made by a creditor and Form V is in respect of statements required to be submitted by creditors in response to a general notice. The details required to be filled in both the forms are exactly alike, and apart from anything else, in commonsense it seems very difficult to understand why the same party should be required as a matter of legal obligation to submit the same statement in the same form twice over during adjustment proceedings. Besides, s. 14 (*a*) clearly provides that, if the creditor himself has made an application for adjustment of debts due to him, notice of the application for the adjustment in question is not required to be issued to him, and that would be obviously fair. If the debtor applies for adjustment of his debts, the notice of his application is given to all his creditors and not to himself. Similarly, if the creditor applies for adjustment of debts due to him from specified debtors, notice of the application would

be issued to the debtors and other creditors of the debtors and need not be issued to the applicant himself. In dealing with the case of an applicant-creditor, it would be difficult to hold that, merely because a general notice is published, he is required by s. 14 (*b*) to submit a statement which would be exactly similar to the statement which he has already submitted in making an application under s. 4. Therefore, I am not prepared to accept the argument that in the present case the petitioner was required to furnish a statement in the prescribed form under s. 14 (*b*). It is true that in the present case the Darkhast application has been transferred under s. 19 and it may be that the Darkhast does not conform to Form II which is prescribed. But if Mr. Vaidya's argument is right, it makes no distinction between a Darkhast which is transferred under s. 19 and an application which is made by the creditor under s. 4 for adjustment of his debts. According to Mr. Vaidya, even if the creditor applies for adjustment of the debts due to him from his debtors in the prescribed form, he must still submit a statement in response to the general notice which is issued on the debtor's application for adjustment of debts. Therefore, I do not think that for the construction of s. 14 it makes any material difference that in the present case the Darkhast may not conform to the form prescribed. As a result of its transfer under the provisions of s. 19, the Darkhast application made by the creditor has to be treated as an application made under s. 4 and the position of the creditor in law must be deemed to be that of a creditor-applicant who has applied for adjustment of debts under s. 4. Therefore, I am not satisfied that the debt due to the petitioner is extinguished under s. 15.

Mr. Vaidya has then argued that the appeal preferred by the petitioner in the lower appellate Court and the present revisional application are bad for non-joinder. He argues that all the creditors who are interested in the award were necessary parties to the appeal and to the revisional application because as a result of the petition being allowed their position would be affected. An argument of non-joinder cannot, in my opinion, be successfully urged at the present stage. When the appeal was preferred, it was open to Mr. Vaidya's clients to raise the point of non-joinder: they did not do so. I do not think it would be right to allow this argument to be raised for the first time in a revisional application. When I make these observations I should not be taken to have assumed that there is any substance in the plea of non-joinder. I have not considered the point and since I take the view that the point should not be raised I do not propose to deal with it on the merits.

Lastly, Mr. Vaidya has argued that, when the Darkhast application made by the petitioner was dismissed for default, the

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petitioner should have preferred an appeal. There is no substance in this argument. Section 43 provides for appeals and I do not see any provision under which an appeal could have been made by the petitioner against the dismissal of the Darkhast for default. This order is ultimately merged in the final award and an appeal against the award has been filed by the petitioner.

The revisional application must accordingly be allowed and the matter sent back to the trial Court for adjustment of the debts due from the opponents on the footing that the Darkhast claim made by the petitioner is valid and subsisting. There would be no order as to costs in this Court and the lower appellate Court. Costs in the trial Court would be costs in the cause.

Order accordingly.

G. N. V.

APPEAL FROM ORIGINAL CIVIL, GENERAL AND INHERENT JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

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S. C. PRASHAR, INCOME-TAX OFFICER, MARKET WARD, BOMBAY AND ANOTHER, APPELLANTS (ORIGINAL RESPONDENTS NOS. 1 & 2) *v.* VASANTSEN DWARKADAS AND OTHERS, RESPONDENTS (ORIGINAL PETITIONER AND RESPONDENT NO. 3)*

Indian Income-Tax Act (XI of 1922), s. 34—Indian Income-Tax (Amendment) Act (XXV of 1953), ss. 1 & 18—Constitution of India, art. 14—Notice under s. 34 issued against stranger on expression of opinion by Income-Tax Appellate Tribunal—Remedy to issue such notice barred at date when Amending Act came into force—Whether such notice was valid?—Writ of Certiorari: Petition for such writ against Income-Tax Officer—Whether such Petition competent to Petitioner before recourse to remedies under Income-Tax Act?—Whether remedy by suit proper remedy instead of petition for writ?—Exceptions to rule that Courts will not grant relief by writ where relief by ordinary legal remedies available—Whether provisions regards strangers to assessment order offend against art. 14 of the Constitution?

Although (*i*) the law of limitation is procedural and (*ii*) it is open to the Legislature to extend the period of limitation an important right accrues to a party on the remedy of another person against him becoming barred by the existing law of limitation; such vested right cannot be affected except by the clearest and most express terms used by the Legislature.

The Income-Tax (Amendment) Act XXV of 1953 amending, *inter alia*, the second proviso to s. 34 of the Indian Income-Tax Act, 1922, which

*Appeal No. 1 of 1955 ; Miscellanaous Application No. 226 of 1954.