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1942 onwards, the payment became a payment as a result of usage. Surely after 1947 the payment, as we have pointed out, was illegal and an employer by making an illegal payment cannot confer upon the employee the right to demand that payment as something in the nature of a privilege or something as arising out of usage. Mr. Vyas rather naively suggests that if the employer could make this payment notwithstanding the award from 1947 to 1951, there was no reason why he should not have given a notice following the procedure and in the meanwhile go on making payment. Surely even an employer is entitled to say that "I think although I have committed breach of law in the past, I now want to become law abiding". According to Mr. Vyas, the Bombay Industrial Relations Act does not permit the employer to follow the law or to become law abiding in the case of payment of additional wages. In our opinion, the Labour Appellate Tribunal was right when it took the view that in view of our decision in *Daru* v. *Ahmedabad Spg. & Mfg. Co., Ltd.*,[3] the only conclusion it could come to was that no notice under s. 42 (*1*) was required on the part of the employer and the employer was entitled to make a change in the payment of wages to his employees, if in doing so he was doing what the law required and changing something which the law permitted.

The result is that the petition fails. No order as to costs.

Application dismissed.

K. B. S.

3. (1955) 57 Bom. L. R. 887.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

DANAPPA SATVEERAPPA TERANIKAR (ORIGINAL CREDITOR) PETITIONER *v.* MALGONDA ANANDA KANADE (ORIGINAL DEBTOR) OPPONENT.*

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Bombay Agricultural Debtors' Relief Act, (Bom. XXVIII of 1947), ss. 22, 46—Civil Procedure Code, (Act V of 1908), O. XXXIV, r. 7—Application by debtor for adjustment of his mortgage-debt—Whether accounts from date of application to date of award can be taken.

A debtor applied under s. 4 of the Bombay Agricultural Debtors' Relief Act, 1947, that his mortgage-debt be adjusted. On the question whether accounts from the date of application to the date of the award could also be taken,

Held, (*i*) that under s. 22 of the Bombay Agricultural Debtors' Relief Act, 1947, accounts could be taken only upto the date of the application

* Civil Revision Application No. 553 of 1954.

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and there was no provision in the Act for taking accounts from the date of the application to the date of the award;

(*ii*) that the accounts from the date of the application to the date of the award could, however, be taken under O. XXXIV, r. 7 of the Code of Civil Procedure, 1908, inasmuch as under s. 46 of the Act the provisions of the Code of Civil Procedure, 1908, apply to proceedings under ch. II of the Act,

Dattatraya v. *Mahomedkhan*,[1] relied upon.

Vithoba Nilu Naik v. *Bhagirathi Babu Rane*,[2] referred to.

CIVIL Revision Application against the decision of V. G. Jamkhandi, Esquire, District Judge, Kolhapur, confirming the decision of V. K. Patil, Esquire, Joint Civil Judge, Junior Division, Gadhinglaj.

The facts are set out in the Judgment.

B. M. Kalagate, for the Applicant.

K. B. Sukthankar, for the Opponent.

Gajendragadkar J.—This revisional application raises a short question under the Bombay Agricultural Debtors' Relief Act which is not easy to decide. The question is in respect of the accounts that are required to be taken in the adjustment of debts. The relevant sections to which my attention has been drawn in the course of hearing of this revisional application are ss. 22, 23, 31, 32 and 46. Broadly stated, the effect of ss. 22, 23, 31 and 32 is that accounts have to be taken in the manner prescribed by s. 22. The profits have to be determined in appropriate cases in the manner prescribed by s. 23 and the amounts due by the debtor to the creditor have to be scaled down in the manner laid down by s. 31 sub-s. (2). Section 32 then provides for the making of an award. While taking accounts under these relevant sections, the last date up to which accounts are taken is the date of the application. But it is obvious that some time is bound to elapse between the making of the application and the passing of the award. The question which is raised for my decision in the present revisional application is whether accounts can be taken between the debtor and the creditor between the date on which the application was made and the date on which the award has been passed. It does appear that in respect of this period there is a lacuna in the provisions of the Act and Mr. Kalagate for the creditor has contended that there is no jurisdiction in the Bombay Agricultural Debtors' Relief Act Court to take such accounts. That is how the short point which I have to decide is whether accounts can be taken between the creditor and the debtor subsequent to the making of the application and up to the date when the award is made.

1. (1934) 37 Bom. L. R. 76.

2. (1952) Civil Revision Application No. 157 of 1952 decided by Chagla C. J., on November 28, 1952 (unrep.).

The transaction in question took place on May 30, 1885. It was a possessory mortgage for Rs. 1,000. The property mortgaged consisted of two fields Survey No. 7 and Survey No. 17/3. The mortgagor had stipulated that, in case the mortgagee was required to pay assessment the mortgagor would be liable to pay interest on the amount of assessment so paid at 12 per cent per annum. Both the Courts have held that on taking accounts between the parties nothing is found due from the mortgagor to the mortgagee and an award has been passed to the effect that the mortgage is satisfied and a direction has been issued to the mortgagee to deliver possession of the mortgaged properties to the debtor. According to Mr. Kalagate, there are two infirmities in the judgment of the lower appellate Court. He argues that the judgment under revision does not show that the learned Judge really took accounts as required by s. 22; and he further contends that the conclusion recorded by the lower appellate Court in a general form, that however accounts may be made nothing would be found due to the mortgagee, is presumably based upon the assumption that accounts can be and should be taken between the date of the application and the date of the award. Before the learned District Judge it was urged by the petitioner that the mortgagee had paid assessment and taking into account the interest which the mortgagee thereby became entitled to recover from the mortgagor the amount due to him from the mortgagor in that behalf would be Rs. 1,330 up to the date of the application. Making a deduction of 40 per cent from this amount, the mortgagee would be entitled to claim Rs. 798. The learned District Judge took the view that, though this claim may be justified, after taking accounts the claim would not really survive because the mortgagee had received by way of income from the land more amount than he was entitled to receive by way of interest. It was common ground between the parties before the learned District Judge that the income from the lands up to 1942-43 was Rs. 75 per year and thereafter it was Rs. 200 per year. The learned Judge has observed that he was satisfied that, on taking accounts, nothing would be found due to the mortgagee. It does not appear from the judgment, however, that any accounts were actually taken by the learned District Judge as required by s. 22. Section 22 sub-s. (*1*) (*a*) required separate accounts of principal and interest to be taken, and sub-cl. (*b*) requires that in the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor. Then s. 22, sub-s. (*2*) deals with the taking of accounts of transactions which commenced before the January 1, 1931, and sub-s. (*6*) provides for the manner in which the amount due has to be determined. In my opinion, the learned District

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Judge should have taken accounts specifically under the relevant provisions of s. 22 and then proceeded to scale down the amount due, if any, to the mortgagee under s. 31, sub-s. (*2*). The general finding that nothing would remain due to the mortgagee is not satisfactory because we really do not know whether accounts had been made as laid down by s. 22. That is why I think it is necessary that the order passed by the learned District Judge should be set aside and the matter sent back to his Court with a direction that accounts should be properly taken as required by s. 22 and an award should follow thereafter.

In directing that accounts should be taken under s. 22, I must deal with the second point which has been raised by Mr. Kalagate and that is that no accounts can be taken from the date of the application to the date of the award. As I have already observed, if I were to go strictly by the terms of the relevant sections, it would have to be conceded that there is a lacuna in this matter and Mr. Kalagate would *prima facie* be justified in arguing that the Act has made no provision for taking accounts during such period. But, on the other hand, this lacuna should not, if possible, be allowed to defeat legitimate accounting between the parties. There is no doubt that until the award is passed the property is subject to the mortgage and the parties continue to be mortgagor and mortgagee. It is only after an award is passed that a statutory charge comes into existence. In every case some time is bound to be taken by the proceedings between the making of the application and the passing of the award and it would be extremely unreasonable to assume that Legislature intended that no accounts should be taken between the mortgagor and the mortgagee for the period in question. If the mortgage continues to subsist until the award is made, accountability between the mortgagor and the mortgagee must be deemed to be continued and accounts must be taken before the liability of the mortgagor is finally determined. I am, therefore, inclined to think that, though there is a lacuna in this matter in the provisions of the Bombay Agricultural Debtors' Relief Act, it would be legitimate to take recourse to the general provisions of the Code of Civil Procedure for the purpose of taking accounts during such period. Section 46 of the Act provides that the provisions of the Civil Procedure Code would apply to proceeding under Chapter II of the Act, save as otherwise expressly provided in the Act. In other words, if it had been expressly provided in the Bombay Agricultural Debtors' Relief Act that the relevant provisions of taking accounts which are included in O. XXXIV of the Code should not be invoked in adjustment proceedings, it would have been another matter. The only provision which can be regarded as material in this matter would be the provision of scaling down,

There is a provision as to how debts have to be scaled down under s. 31 and it must be conceded that when applying the Code of Civil Procedure for taking accounts subsequent to the making of the application and prior to the passing of the award it would not be open to the Court to invoke the provisions relating to scaling down contained in s. 31. But save for this provision, I do not see why the relevant rules for taking accounts contained in the Code of Civil Procedure should not be invoked in adjusting the debts under the provisions of the Bombay Agricultural Debtors' Relief Act. That is why, I think, the Courts below were right in assuming that, before the amount due to the mortgagee is finally determined, it would be necessary to take accounts of the dealings between the parties from the date of the application to the date of the award.

Mr. Kalagate has invited my attention to a judgment delivered by the learned Chief Justice in *Vithoba Nilu Naik* v. *Bhagirathi Babu Rane*[3] in which the learned Chief Justice has pointed out that there is a lacuna in the matter and that in order to enable accounts to be made it would be legitimate to take recourse to the general provisions of the law. I do not find anything in this judgment which is inconsistent with the view that I am disposed to take in the matter. I should like to add that I feel fortified in coming to the conclusion that I have reached in this case by the decision of this Court in *Dattatraya* v. *Mahomedkhan*[4] Murphy and Macklin JJ. had to deal with a similar question under the provisions of s. 13 of the Dekkhan Agriculturists' Relief Act. Section 13 of the Dekkhan Act, which provided for the taking of accounts between agriculturists as defined under the Act and their creditors, had laid down, like s. 22 of the present Act, for the taking of accounts up to the date of institution of the suit, and it was in the light of this specific provision contained in s. 13 of the Dekkhan Act that this Court had to consider in *Dattatraya's* case whether accounts subsequent to the date of the suit could not be taken under the general provisions of O. XXXIV, r. 7; and the answer that was given by the learned Judges who decided this case was in favour of invoking O. XXXIV, r. 7, and taking accounts under its provisions. The material words used in s. 13 of the Dekkhan Act are substantially similar to the words used in the corresponding clause of s. 22 of the present Act, and I think it would be legitimate to rely upon the reasons given by Mr. Justice Murphy who delivered the judgment of the Bench in support of the view that I am taking in the present case.

3. (1952) Civil Revision Application No. 157 of 1952, decided by Chagla C. J., on November 28, 1952 (unrep.).

4. (1934) 37 Bom. L. R. 76.

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In the result, the revisional application would be allowed on the technical ground that accounts do not appear to have been properly taken. The order passed by the District Court would be set aside and the matter sent back to the learned District Judge with a direction that the accounts between the parties should be taken in the light of this judgment.

The costs incurred by the parties so far would be costs in the appeal before the learned District Judge.

Case remanded.

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

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THE CHALISGAON BOROUGH MUNICIPALITY, APPLICANT (ORIGINAL RESPONDENT) *v.* MULTANCHAND FULCHAND SANCHETTI, OPPONENT (ORIGINAL APPELLANT).*

Bombay Municipal Boroughs Act, (XVIII of 1925), ss. 3 (13) 78, 80, 81, 82—Amendment of Assessment List—Scheme of the Act—Whether Assessment List of a previous year can be amended.

Section 82 of the Bombay Municipal Boroughs Act does not empower a Municipal Borough to amend the assessment list of the previous year so as to impose a fresh liability after the close of the official year.

Municipal Borough of Sholapur v. *The Governor-General of India in Council,*[1] *Borough Municipality of Amalner* v. *The Pratap Spinning, Weaving and Manufacturing Co., Ltd.,*[2] *The Ahmedabad Municipal Corporation* v. *Kulinsingh Manibhai Seth,*[3] relied on.

Lokmanya Mills Ltd., v. *Barsi Municipality,*[4] referred to.

Subbappa Mallapa Hubballi v. *P. L. Benni,*[5] distinguished.

CIVIL Revision Application against the order passed by R. M. Mehta, Esquire, Additional Sessions Judge of East Khandesh, at Jalgaon, setting aside the decision of S. V. Tambe, Esquire, Resident Magistrate, First Class at Chalisgaon.

The facts are fully stated in the Judgment.

V. V. Divekar and *G. R. Samant,* for the Applicant.

R. B. Kotwal, for the Opponent.

Shah J.—Multanchand Fulchand Sancheti, whom I will hereafter refer to as 'the respondent' constructed a building within the limits of the Borough Municipality of Chalisgaon. The completion certificate in respect of the building was issued by

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* Civil Revision Application No. 89 of 1954.

1. (1947) 49 Bom. L. R. 752.
2. (1952) 54 Bom. L. R. 451.
3. (1955) 57 Bom. L. R. 259.
4. (1939) 41 Bom. L. R. 937.
5. (1948) 50 Bom. L. R. 701.