opinion be regarded as relevant or applicable at the stage of the present execution proceedings. Besides, the present proceedings are a continuation of the proceedings in suit, and the suit was filed long before the Tenancy Act came into operation. Section 89 (2) of the Tenancy Act provides that proceedings in respect of rights which are saved and in our opinion the appellant's decretal rights are saved, would be continued and disposed of as if this Act had not been passed, if it is shown that the said proceedings had been instituted before the date on which the Act came into operation. If the present execution proceedings are a continuation of the suit and if the suit was filed long before the Act came into operation, it would not be open to the judgment debtor to invoke the provisions of s. 63 in support of his plea that a lease should not be executed in favour of the decree holder. We must, therefore, hold that the lower appellate Court was in error in applying the provisions of s. 63 of the Tenancy Act to the present proceedings. If a plea under s. 63 cannot be raised against the claim made by the decree-holder in the present execution proceedings, there is no reason why the executing Court should refuse to execute the decree for specific performance.

In the result, the appeal must be allowed, the order passed by the lower appellate Court must be set aside and that of the executing Court restored with costs throughout.

Appeal allowed.

G. N. V.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

RAMCHANDRA VITHAL PALSULE, APPLICANT (ORIGINAL CREDITOR No. 1) *v.* PAYAGONDA ANANTGONDA PATIL AND ANOTHER, OPPONENTS (ORIGINAL DEBTORS).*

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Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947) s. 22 Second Proviso—Kolhapur State (Application of Laws) Order 1949 paragraph 5—Kolhapur Debt Conciliation Act—Mode of taking accounts—Whether the amount determined as due from the debtor under the Kolhapur Debt Conciliation Act could further be reduced under s. 22—Whether the Second Proviso is ultra vires *the Kolhapur State (Application of Laws) Order, 1949.*

Notwithstanding the determination of the amount due from a debtor under the Kolhapur Debt Conciliation Act the debt so determined, though binding on the parties under the second Proviso to s. 22, is liable to be reduced under s. 22 of the Bombay Agricultural Debtors Relief Act.

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*Civil Revision Application No. 405 of 1955, with Civil Revision Application No. 406 of 1955.

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The second Proviso to s. 22, even though it reduces the amount so determined, is not *ultra vires* paragraph 5 of the Kolhapur State (Application of Laws) Order, 1949, inasmuch as the said Proviso does not affect the vested right of the creditor to recover the amount so determined as if the order of the Conciliation Court was a decree.

Alagappa v. *Nachiappa*,[1] *Starey* v. *Graham*,[2] relied on.

Delhi Cotton Co. v. *Income-Tax Commissioner*,[3] distinguished.

CIVIL Revision Application against the decision of S. M. Khatavkar, Esquire, Assistant Judge at Kolhapur, confirming the decision of G. S. Dhawale, Esquire, Joint Civil Judge, Junior Division, at Kurundwad.

The material facts are set out in the Judgment.

M. V. Paranjape, for the Applicant in both C. R. As.

G. R. Madbhavi, for Opponents Nos. 1 and 2 in C. R. A. 405/55 and Opponent No. 1 in C. R. A. 406/55.

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

Gajendragadkar J.—The short point of law which arises in these two revisional applications falls to be considered under the Second Proviso to s. 22 of the Bombay Agricultural Debtors Relief Act, 1947. The petitioners before us are the creditors and on their behalf Mr. Paranjape has strenuously contended that the Courts below acted illegally in submitting the debts due to the petitioners to the cuts prescribed by s. 22 of the Act. His argument is that the effect of the Second Proviso to s. 22 is that the amount which has already been determined as due to the creditors from their debtors shall be binding on the parties and the said amount shall not be submitted to any further cut under s. 22 of the Act. The answer to the point thus raised by Mr. Paranjape would depend on the construction of the said Second Proviso.

Before dealing with this point, it would be relevant to mention a few material facts which give rise to the point. The two creditors before us are Utturkar and Palsule. In favour of Utturkar a mortgage bond had been executed on July 22, 1926, for Rs. 1,000. In favour of Palsule three mortgage bonds were executed and the total amount due under these mortgage bonds was Rs. 6,500. It appears that the Conciliation Board was established at Ichalkaranji under the Kolhapur Debt Conciliation Act of 1939. The debtors applied to the Board to effect a settlement of their debts. Ultimately a settlement was reached and was reduced to writing in the form of an agreement as required by s. 14 (*1*) of the Act. This settlement was duly registered by the Chairman of the Board. By this agreement the debt due to Palsule was reduced from Rs. 11,999 to Rs. 9,100 and it was made payable by 13 annual instalments of Rs. 700 each. Similarly the debt due to Utturkar was settled at Rs. 960 and was made payable by 12 instalments of Rs. 80 each. It appears that subsequent to this settlement some

1. [1953] Mad. 996. 2. (1899) 1, Q. B. 406.
3. (1928) 30 Bom. L R 60, P. C.

instalments were paid by the debtor. Then the Kolhapur State with its feudatory Jahagirs was merged with the State of Bombay and as a result of the merger the Bombay Agricultural Debtors Relief Act was made applicable to the merged area with some modification and the Court to administer the provisions of the Act was constituted at Kurundwad. Before this Court both the parties made applications for adjustment of their debts. These applications were consolidated. Preliminary issues were found in favour of the debtors and the Court then proceeded to adjust the debts under the provisions of s. 22 of the Act. The learned Judge in applying the provisions of s. 22 assumed that the amounts which were found due to the two creditors were binding between the parties. But nevertheless he proceeded to apply the cuts to these two amounts as prescribed in sub-s. (*2*) and (*3*) of s. 22. The result was that Rs. 1,160 were declared to be due to Palsule and Rs. 16 to Utturkar. The other debts due from the same debtors were likewise adjusted and an award was passed under s. 33 of the Act on March 31, 1953. Against this award the two creditors preferred appeals to the District Court at Kolhapur. The learned Assistant Judge who heard these appeals noticed the fact that in the District of Kolhapur conflicting views had been taken by the appellate Court as to the effect of the Second Proviso to s. 22. He however held that the Second Proviso on which the creditors relied did not preclude the imposition of the statutory cuts prescribed by s. 22. In the result he agreed with the conclusion of the learned trial Judge and dismissed the appeals. That is why the creditors have come to this Court in revision and on their behalf Mr. Paranjape has argued that in directing that amounts found due to the creditors by the Conciliation Court under the Kolhapur Act should be further exposed to the artificial cuts prescribed by s. 22, the Courts below have misconstrued the effect of the Second Proviso to s. 22.

In dealing with this argument it would be necessary to bear in mind the material provisions of the Kolhapur Debt Conciliation Act and to examine the provisions of s. 22 of the Bombay Agricultural Debtors Relief Act in the light of the Second Proviso which has been subsequently added to s. 22. The scheme of the Kolhapur Debt Conciliation Act generally appears to be to encourage voluntary conciliation and settlement of disputes between creditors and debtors in respect of debts to which the Act applied. Section 4 authorised the debtor or any of his creditors to make an application to the Board appointed for the relevant area. After the application thus made was examined, notice calling upon the creditors to submit a statement of debts was issued under s. 9. Section 14 (*1*) provided that if the creditor to whom not less than forty per cent of the total amount of the debtor's debts were owing, came to an amicable settlement with the debtor, such settlement shall

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forthwith be reduced to writing in the form of an agreement. Sub-section (2) of s. 14 required the said agreement to be registered within one month from the date of its making. If no amicable settlement was arrived at under sub-s. (1) of s. 14, the application was liable to be dismissed under s. 21. Section 22 (1) dealt with the grant of a certificate by the Board in respect of certain debts. Under this section, if any creditor refuses to agree to an amicable settlement, the Board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor. The effect of this certificate is specified in sub-s. (2) of s. 22. In a case where the certificate has been issued, if the creditor sues to recover the debt in a Civil Court, the Court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit or any interest on the debt after the date of such certificate. Where an agreement is registered under s. 14 (2), it becomes capable of enforcement as if it were a decree of a Civil Court. When an agreement is not reached and has, therefore, not been registered, the penalty against the creditor in cases falling under s. 22 (1) is that he would be deprived of his costs and interest in case an action for recovery of the debt is instituted by him in the ordinary Civil Court. Broadly stated, this is the scheme of the Kolhapur Debt Conciliation Act, which it is necessary to remember in dealing with the merits of the arguments which have been urged before us by Mr. Paranjape. It is clear that if an agreement is entered into and is registered, the amount determined by the agreement cannot be disputed by either of the parties in execution proceedings; and as I have just indicated the agreement itself has to be treated as if it were a decree for the purpose of enforcement. In other words, the creditor who has agreed to the conciliation of his debts with his debtor under s. 14 and who has entered into an agreement which is ultimately registered under the said section, may be described as a decree-holder in whose favour an agreement has been passed which is capable of execution as if the agreement was a decree and the amount which has been settled by the agreement would be treated as a decretal amount which the creditor is entitled to recover in execution proceedings.

I will now consider the scheme of s. 22 of the Bombay Agricultural Debtors Relief Act. Section 22 first requires the Court to inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim. The object of making this inquiry is ultimately to determine the amount due to each of the creditors at the date of the application made under s. 4. The inquiry is a preliminary inquiry and ultimately leads to

the determination of the amount due to each creditor. Once the inquiry into the history and merits of the transactions is completed, the task of determining the amount begins and in determining the amount several rules have been prescribed by the relevant sub-sections of s. 22. Sub-section (*1*) provides for the manner in which the accounts of principal and interest have to be taken. In regard to a debt which is evidenced by a decree it has been laid down by the Proviso to sub-s. (*1*) that if such decree does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-third and one-third of the amount awarded by such decree shall, for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively. In other words, having laid down the procedure which has to be adopted in taking accounts under sub-s. (*1*), a special provision has been made in respect of the decretal amount and a general rule has been prescribed for dividing the decretal amount into principal and interest, if the decree does not give any clear indication as to the said respective amounts. Then follow sub-ss. (*2*), (*3*) and (*4*) which direct the amount to an artificial cut by the rule of thumb. Sub-section (*2*) deals with transactions which commenced before January 1, 1931, and it provides that the amount found due in respect of principal as well as in respect of interest under such transactions shall each be separately reduced by 40 per cent notwithstanding that a decree or order of a Civil Court was passed in respect of any such amount or portion thereof. A similar cut, though at the reduced rate of 30 per cent, is prescribed by sub-s. (*3*) in respect of transactions which commenced on or after January 1, 1931 but before January 1, 1940. Sub-section (*4*) then lays down that in the case of transactions which commenced on or after January 1, 1940, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at rate not exceeding 6 per cent per annum, whichever is the lowest. In other words, the artificial cut prescribed by sub-ss. (*2*) and (*3*) is not available in respect of transactions which commenced on or after January 1, 1940. Sub-section (*5*) then provides for the crediting of the amount received from the debtor in a special way, and sub-s. (*6*) applies the rule of damdupat. It would thus be seen that the most important feature of the provisions of s. 22 is the artificial cut to which the amount due to the creditor by way of principal or interest is submitted under the provisions of sub-ss. (*2*) and (*3*). The rule prescribed is no doubt a rough and ready rule, but it would be legitimate to assume that the Legislature enacted this artificial rule in order to give protection to the debtors on the assumption that the period prior to January 1,

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1931, was marked by high prices and how purchasing power of money. Legislature appears to have thought that the period of 9 years following January 1, 1931, was a period of depression and low prices, whereas after January 1, 1940, when the second World-War had intervened currency had inflated and prices had soared high. Indeed it may not be inappropriate to describe these concessions as the most beneficial concessions granted to the debtors under s. 22 of the Act. Mr. Paranjape contends that however beneficient these concessions may be, the debtors who have already entered into a voluntary conciliation in respect of their debts under the Kolhapur Act are not entitled to invoke these concessions because of the specific provisions contained in the Second Proviso to s. 22 of the Bombay Agricultural Debtors Relief Act. It is, therefore, necessary to consider this Proviso now.

Before dealing with this Proviso however, it would be material to consider the First Proviso which was enacted at the time when the Act was passed. Under this Proviso it has been laid down that where the transactions between the parties have commenced more than 30 years before January 30, 1940, any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement. It is clear that in respect of transactions to which this Proviso applies the first part of s. 22 is inapplicable. Where the transactions between the parties fell under the First Proviso, a preliminary inquiry into the history and merits of the case is not intended to be held. It is equally clear that what this Proviso prohibits is merely the preliminary inquiry into the history and merits of the case; it leaves open the application of the other rules prescribed by s. 22 for the determination of the amount due from the debtor to the creditor even in respect of these transactions. The Second Proviso was added after the merger of the Kolhapur State with the State of Bombay. This Proviso lays down :

> "Provided further that where any amount due to a creditor is determined by a competent tribunal or authority under any law in force in the Kolhapur State relating to the conciliation or adjustment of the debts of the agriculturists corresponding to this Act, the amount so determined shall be binding on the parties."

Mr. Paranjape contends that when this proviso says that the amount so determined shall be binding on the parties it is an absolute direction and there would be no justification for imposing any further cuts on the said amount. In other words, the argument is that once it is shown by a creditor that the amount due to him has been determined under the provisions of the Kolhapur Debt Conciliation Act the creditor is entitled

to recover the whole of the amount from his debtor without the application of any of the rules prescribed by s. 22 of the Bombay Agricultural Debtors Relief Act. We are not disposed to accept this argument. In terms this is a further Proviso to s. 22. Indeed the word "further" has been advisedly used in this Proviso. The object of this Proviso is to place the transactions which have been the subject-matter of conciliation agreements under the Kolhapur law on the same footing as the transactions covered by the First Proviso to s. 22. Just as in regard to transactions under the First Proviso the preliminary inquiry under s. 22 is prohibited but the application of the remaining rules for determining the amount is allowed, so in the case of transactions which have become the subject matter of a conciliation agreement under the Kolhapur law there would be no inquiry into the merits and history of the transactions and the adjustment of the debts will begin with the assumption that the amount determined by the conciliation machinery is binding between the parties. The amount so determined is binding between the parties only in this limited sense that the determination of the said amount will not be reviewed and reconsidered by inquiring into the previous history and nature of the dealings between the parties. When it is stated that "the amount so determined shall be binding on the parties", it is not intended to exclude the application of the other relevant rules prescribed by s. 22. The First Proviso has also used the same expression, "as binding between the parties", and in our opinion the effect of this expression which is used in both the Provisos must be same. It is true as Mr. Paranjape contends that in the First Proviso we have the additional clause, "no inquiry into the history and merits of the case shall be made prior to the date of such settlement", whereas this additional clause is not reproduced in the Second Proviso. It seems to us that the Legislature thought it unnecessary to reproduce this addtional clause in the Second Proviso because the Second Proviso is enacted beginning with the words "Provided further". In other words, the second clause will be as much applicable to the Second Proviso as to the First. On principle it seems difficult to understand why the amount determined by conciliation agreement under the Kolhapur law should shave been placed by the Legislature on a higher footing than the amount determined by a decree passed by a Court of competent jurisdiction in the State of Bombay. Even in regard to the amount determined by decrees passed by Courts of competent jurisdiction, the artificial rule about cuts applies. We are satisfied that by enacting the Second Proviso all that the Legislature intended to do was to prevent an inquiry being held into the history and merits of the transactions covered by the said conciliation agreement but to require that the amounts determined by the said agreement should nevertheless be subjected to cuts in the same manner as the amounts determin-

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ed by decrees passed by Courts of competent jurisdiction are subjected to the same cuts. In our opinion, therefore, the lower appellate Court was right in holding that the claim for exemption from the application of sub-ss. (2) and (3) of s. 22 which was made by the creditors in respect of the amounts due to them is not well founded.

Mr. Paranjape then contends that if this construction is accepted, the Proviso would be *ultra vires* because it is inconsistent with paragraph 5 of the Order, called the Kolhapur State (Application of Laws) Order 1949. Paragraph 5 of this Order lays down that save as expressly provided in this Order, all enactments in force in Kolhapur State and all other laws and other enactments, mentioned in the paragraph, shall stand repealed: Provided that the repeal by this Order of any such enactments shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or, any indemnity already granted or the proof of any past act or thing. Mr. Paranjape's argument is that under s. 14 (2) of the Kolhapur Debt Conciliation Act, the conciliation agreement could be executed as if it was a decree and it could be executed on the assumption that the decretal amount would not be exposed to the risk of any further cut. If this right which has been safeguarded by the Proviso to paragraph 5 of the Order, referred to above, is sought to be effected, the Second Proviso to s. 22 of the Bombay Agricultural Debtors Relief Act would be *ultra vires*. We are disposed to think that this argument is based on a wrong assumption as to the nature of the right which the creditor obtained as distinguished from the nature of the right which is safeguarded by the Proviso. We have not been referred to any section in the Kolhapur Debt Conciliation Act which positively laid down that the decretal amount determined by the conciliation agreement shall not be reduced. It is true that under the said Act normally the amount would be binding between the parties and the creditor would be entitled to recover it. But the only right which the creditor had was to execute the order as if it was a decree and that right is not taken away by the application of the material rules s. 22. The position of the petitioners is analogous to the position of a decree-holder in the rest of the State of Bombay. What is saved by the Proviso to paragraph 5 of the Order is a vested right accruing to him under any of the Acts or laws which were repealed by the Order. The right of the decree-holder to execute the decree is not affected. It is true that the decretal amount is exposed to the risk of a further cut by the statutory method prescribed and the material sub-sections of s. 22. But that does not in our opinion come within the mischief of the

Proviso to paragraph 5 of the Order. If the petitioners' argument is accepted, the whole of the act would be inapplicable to their claim and perhaps a similar claim may and can be made by all creditors in the District of Kolhapur.

Mr. Madbhavi for the debtors has referred us to a decision of the Madras High Court in *Alagappa* v. *Nachiappa*,[4] where it has been held that the decree-holder did not acquire any vested right under the prior decision of the Pudukkottai Court, since all that was then adjudicated upon in the prior litigation was that the judgment-debtor was an "agriculturist" within the meaning of the Regulation then in force and that does not mean that no subsequent enactment on the subject can ever apply to the case. The Proviso with which Rajamannar, C. J., was concerned in this case had laid down that the repeal by s. 5 of the Act of any corresponding law in force in any merged State immediately before the commencement of this Act shall not affect the previous operation of any such law; and the argument urged before the Court was that the adjudication under the previous Act was final and it could not be impaired or affected by the application of the subsequent Act. This argument was rejected by the learned Chief Justice. In our opinion, the observations made by Rajamannar, C. J., in dealing with the character of the right which had accrued to the party by virtue of the previous adjudication, as distinguished from the right which was safeguarded by the Proviso, may be of some help in deciding the point raised before us by Mr. Paranjape. The learned Chief Justice referred to the observations made by Channel J. in *Starey* v. *Graham*,[5] that a right acquired does not mean a "right" in the sense in which it is often popularly used. The right which a decree-holder has under a decree must be distinguished from the vested right which is the subject-matter of the Proviso to paragraph 5 of the Order with which we are concerned. On the other hand, Mr. Paranjape relied on the observations of the Privy Council in *Delhi Cotton Co.* v. *Income Tax Commissioner*,[6] where Their Lordships stated that the provisions before them which, if applied retrospectively, would deprive of their existing finality orders which, when the Statute came into force, were final (i. e. unappealable), are provisions which touch existing rights, and such provisions are not, therefore, to be construed retrospectively. Where, before the new enactment was passed, certain orders had become final, that was treated as a right which could not be affected by the subsequent enactment, unless the subsequent enactment appeared to be retrospective plainly and clearly. In our opinion, this principle can have no application to the point with which we are concerned. Mr. Paranjape's claim is that his right to execute the decree without any further cut is a right which falls within the Proviso to paragraph 5 of the Order. If the right which he

4. [1953] Mad. 996. 5. (1899) 1 Q. B. 406.
6. (1928) 30 Bom. L. R. 60, P. C.

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claims does not fall within paragraph 5, then Legislature was entitled to decide that even the rights of persons who have obtained conciliation agreements under the Kolhapur Debt Conciliation Act should be submitted to the cut in the same manner as the rights in favour of decree-holders in the rest of the State of Bombay are submitted to the cut. We are not prepared to hold that the right which flowed in favour of the creditor under s. 14 (2) of the Kolhapur Debt Conciliation Act can be said to have been affected by the application of the material rules under s. 22 of the Bombay Agricultural Debtors Relief Act, so as to make the said application *ultra vires*.

We must, therefore, hold that the learned Assistant Judge was right in confirming the award passed by the learned trial Judge in the present proceedings. In the result, the applications fail and the rules are discharged. Since a constitutional point was raised by Mr. Paranjape we issued notice to the Government Pleader and in response to the notice Mr. Desai has appeared to assist us. The petitioners and the opponents should bear their own costs of these revisions. The petitioner to pay the costs of the Government in Civil Application No. 405 of 1955.

Rule discharged.

G. N. V.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

1956 Apr. 13, 20

LAXMAN BABAJI GOGARE AND OTHERS, APPELLANTS (ORIGINAL DEFENDANTS) *v.* AKHARAM SAHEBRAM KHATOD, RESPONDENT (ORIGINAL PLAINTIFF).*

Bombay Agricultural Debtors Relief Act (Bom. Act XXVIII of 1947), ss. 14 (a), 15 (1) (2)—Promissory note for Rs. 15,351 executed by four brothers jointly—One of them declared a debtor upon his application for adjustment of his debts—Promissory note and the debt due thereunder not mentioned in the application—Creditor did not submit statement in reply to notice under s. 14 (a)—Whether the debt under the Promissory note extinguished under s. 15 (1).

Where in a suit to recover Rs. 15,351 due under a promissory note executed jointly by four brothers, it was contended by the defendants (the brothers) that one of them (defendant No. 4) had been adjudged a 'debtor' upon his application under the Bombay Agricutural Debtors Relief Act and his debts adjusted under the Bombay Agricultural Debtors Relief Act, the debt was extinguished under s. 15 (*1*) of the Act inasmuch as the debt under the promissory note had not been included in the said application.

Held, that the plaintiff ought to have filed his claim in answer to the general notice under s. 14 (*a*) but his failure to do so did not in the present case extinguish the debt on account of the provisions of s. 15 (*2*)

*First Appeal No. 636 of 1951 with First Appeal No. 633 of 1952.