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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.

(*i*) inasmuch as defendant No. 4 had by signing the promissory note for a sum exceeding Rs. 15,000 caused the plaintiff to believe that he was not a debtor for the purposes of the Bombay Agricultural Debtors Relief Act and that no application could be made for adjustment of the debt under s. 4, and

(*ii*) also inasmuch as defendant No. 4 had not filed a statement showing that the plaintiff was his creditor for a sum exceeding Rs. 15,000.

Keshav Ghanashyam Shetye Asgaonkar v. *Waman Rangaji Sakholkar*,[1] distinguished.

FIRST Appeal against the decree passed by P. D. Sawarkar, Esquire, Civil Judge, Senior Division at Ahmednagar.

Suit to recover Rs. 15,728 due under a promissory note, dated July 25, 1947, for Rs. 15,351, executed jointly by the defendants.

The facts material to this report are stated in the Head-note and the portion of the Judgment given below.

V. M. Tarkunde with *B. J. Rele*, for the Appellants.

Dr. P. V. Kane, for the Respondent.

Shah J.—[His Lordship after stating the facts of the case and dealing with points not material to this report, proceeded:] Then it was urged that as the defendant No. 4 was adjudged a debtor under the Bombay Agricultural Debtors Relief Act in an application filed by one of his creditors and an award was made the plaintiff was bound by the award and the liability of the defendant No. 4 under the promissory note was extinguished. The learned Judge has found that one Gangadhar Vyankatesh filed a debt adjustment application against the defendant No. 4 and of that application a general notice under s. 14 of the Bombay Agricultural Debtors Relief Act was issued. In answer to the general notice requiring the creditors to file their statements the plaintiff did not submit a statement of his claim. Thereafter the defendant No. 4 was adjudged a debtor and an award was made. It is conceded that the award did not deal with the debt due to the plaintiff under the promissory note executed by the defendant No. 4. But it is urged that the plaintiff was required by law to file a statement of claim before the Debt Adjustment Court in answer to the general notice, under s. 14, for the debt under the promissory note even if it exceeded Rs. 15,000 and the plaintiff having failed to do so, the debt was extinguished. The learned trial Judge was of the view that the penalty of extinction of debts for failure to submit statements is incurred by only those creditors who are named in the debt adjustment application as creditors and who are served with notice under s. 14 (*a*) and not by other creditors. We are unable to accept that view. Section 15 (*1*) applies in terms to 'every debt' and is not restricted to debts due to creditors who are named in the application for adjustment of debts and are served with notice under s. 14 (*a*). But sub-s. (*1*) of s. 15 is subject to sub-s. (*2*). Whereas sub-s. (*1*) provides that every debt due by a debtor in respect of which a statement is not submitted to the Court by the creditor in

1. (1953) 55 Bom. L. R. 320.

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compliance with s. 14 shall be extinguished, it is provided by sub-s. (2) that :

"Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this act or that no application under s. 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of s. 11."

In our view, the defendant No. 4 had by his act and by his omission as well, intentionally caused the plaintiff to believe that he was not a debtor for the purposes of the Bombay Agricultural Debtors Relief Act, or that no application could lie for adjustment of his debts under s. 4. The defendant No. 4 had executed promissory note for an amount exceeding Rs. 15,000 and where a person's debts exceed Rs. 15,000 in the aggregate he cannot claim the status of a debtor under the Bombay Agricultural Debtors Relief Act. A *bona fide* admission of liability for an amount exceeding Rs. 15,000 is a declaration or an act within the meaning of sub-s. (2) of s. 15 which intentionally caused the plaintiff to believe that the debts due by the defendant No. 4 could not be adjusted under the Bombay Agricultural Debtors Relief Act. Again defendant No. 4 did not file a statement showing that the plaintiff was his creditor for a sum exceeding Rs. 15,000. If the defendant No. 4 had shown in his statement of liabilities the debt due to the plaintiff, he could not have been declared a debtor. If, with a view to obtain the benefit of the Bombay Agricultural Debtors Relief Act, the defendant No. 4, as it must in the circumstances of the court be assumed, deliberately withheld from the Court the information that he had executed a promissory note for Rs. 15,351 in favour of the plaintiff, he cannot, in our judgment, claim that the liability due to the plaintiff is extinguished by virtue of sub-s. (1) of s. 15. In our view, the omission of defendant No. 4 must also be deemed to have intentionally caused the creditor to believe that the defendant No. 4 was not a debtor.

Strong reliance was placed by Mr. Tarkunde in support of his contention upon a case decided by this Court, *Keshav Ghanashyam Shetye Asgaonkar* v. *Waman Rangaji Sakholkar*,[2] in which it was held that:

"The expression 'all creditors' used in s. 14 of the Bombay Agricultural Debtors Relief Act, 1947, is not limited to the class of creditors referred to in sub-cl. (*a*) of the section, but refers to all the creditors of the debtor. Therefore, an award made under the Act is not only an award between the debtor and such of the creditors as are mentioned in the application made under s. 4 of the Act or upon whom notice has been served under s. 14 (*a*) of the Act but is also an award between the debtor and all his creditors, and the latter are bound by it."

2. (1952) 55 Bom. L. R. 320.

In that case in a suit to recover a debt due to a creditor who was not personally served with notice of the debt adjustment application it was held that the debt was extinguished by virtue of s. 15 (*1*), the creditor not having submitted a statement of his claim to the Debt Adjustment Court. Evidently after the statutory extinction of the debt due to him the creditor in *Keshav Ghanashyam's* case was not interested in the award made by the Debt Adjustment Court, and *ex hypothesi,* a civil suit could not lie to enforce the debt. We are, however, unable to extend that principle to cases where the debtor has by his declaration act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of the Act. By virtue of s. 15 (*2*) the debt due to such a creditor is not extinguished, and in our judgment the award has not that effect. An award is in its very nature of the nature of a judgment which binds all creditors of the debtor whether they are served or not served with notice under s. 14. But the penalty which is prescribed by s. 15 (*1*) does not penalise those creditors who were misled by any declaration, act or omission of the debtor. If the debt is not extinguished, a suit to recover it will in the absence of any provision to the contrary lie. We are not referred to any provision which enacts that a debt due by a debtor which is saved from extinction by virtue of sub-s. (*2*) of s. 15 must still be regarded as extinguished when an award is made under the Act. In *Keshav Ghanashyam's* case, it does not appear to have been contended that the debt due to the creditor who had not filed a statement of his claim was not extinguished because of some declaration, act or omission of the debtor. The Court in that case was not invited to consider whether the case of the creditor fell within the terms of s. 15 (*2*). The only argument advanced before the Court was, that the decision of the Debt Adjustment Court adjudging the defendant a 'debtor' was not binding upon the creditor in a suit filed by him in the Civil Court to recover the debt. Having regard to the scheme of the Act, the Court negatived that argument and confirmed the judgment of the trial Court holding that the debt due to the creditor was extinguished. We are unable to hold, relying upon that case, that a debt due to the creditor is extinguished when an award is made under the Bombay Agricultural Debtors Relief Act, even when the debtor has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he was not a 'debtor' or that in respect of his debt no application may lie under s. 4. In our view, the principle of *Keshav Ghanashyam's* case has no application where the debt due to a creditor is saved by s. 15 (*2*). We, therefore, agree, though for different reasons, with the decision of the learned trial Judge that the debt due to the plaintiff by the defendant No. 4 was not extinguished. We are in this case not called upon to consider the effect of this decision upon

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the award made under the Bombay Agricultural Debtors Relief Act adjusting the debts due by the defendant No. 4 to two other creditors.

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

Suit remanded.

G. N. V.

APPELLATE CIVIL

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

1956 *June 19*

PANAMBUR VISHNUMURTI NARAYAN UPADHYAYA, (PETITIONER) *v.* C. P. FERNANDES AND ANOTHER, (RESPONDENTS).*

The Bombay Shops and Establishments Act, 1948 (Bom. Act LXXIX of 1948)—S. 14 (4) Schedule II—item 8—Section 63—Whether "limit of hours of work" has the same meaning in s. 14 and s. 63—Whether claim for overtime wages under s. 63 tenable when s. 14 does not apply ?

Where s. 14 of the Bombay Shops and Establishments Act, 1948 applies an employer is prohibited from requiring any employee to work more than 48 hours a week even on payment of overtime wages because such requirement would be illegal. But where the prohibition is removed, there is an obligation to pay overtime wages under s. 63. The question of overtime wages arises only when there is no prohibition against requiring a worker to work overtime.

The limit of hours of work for the purpose of s. 14 is entirely different from the limit of work laid down by the Legislature for the purpose of s. 63. While the limit laid down in s. 14 is in order to prohibit the employer from requiring the employee to work beyond the limit, the limit of work laid down for the purpose of s. 63 is only for the purpose of computing overtime wages.

Facts material to this report are fully set out in the Judgment.

Application under art. 227 of the Constitution of India praying that the decision of the Authority under the Payment of Wages Act, Bombay Area, be set aside.

D. S. Nargolkar for the Petitioner.

No appearance for the Opponents.

Chagla C. J.—The petitioner is the General Secretary of the Hotel Mazdoor Sabha, and one of the members of this Union applied to the Payment of Wages Authority for payment of overtime wages against the second opponent in respect of certain wage periods, and the case of this employee was that he had worked more than 48 hours every week and therefore had become entitled to receive wages at one and a half times the rate for such overtime every week, and in the application it was clearly stated that the claim was made under s. 63 of the Bombay Shops and Establishments Act, 1948. This claim of the employee was rejected by the Authority and in the

*Special Civil Application No. 2724 of 1955.