(1978) 80 BOMLR 371 : (1978) MhLj 169

Bombay High Court

Case No: Special Civil Application No. 537 of 1977

Shivagonda Ravaji Sankpal		APPELLANT
	Vs	
Chandrakant Dnyanu Sutar		RESPONDENT

Date of Decision: Aug. 3, 1977

Acts Referred:
Limitation Act, 1963 â€" Section 27#Transfer of Property Act, 1882 â€" Section 60

Citation: (1978) 80 BOMLR 371 : (1978) MhLj 169

Hon'ble Judges: Deshpande, J

Bench: Single Bench

Judgement

Deshpande, J.
This reference of the Special Civil Application under Clause 36 of the Letters Patent is occasioned because of the

difference of opinion between Deshmukh and Mridul JJ. on the two points indicated therein. The respondent herein is one of the heirs of the

mortgagor owning 2 Annas and 8 Pies share in the two agricultural lands mortgaged by his ancestor with possession under a registered deed dated

July 30, 1897 for a loan of Rs. 5,000 in favour of the ancestor of the petitioner herein. The mortgage deed did not fix any period for repayment

and consequently the right of redemption stood expired in the year 1957 in ordinary course under Article 148 of the Limitation Act of 1908, now

repealed by the Act of 1963, because of non-payment of the debt thereunder resulting in the extinction of the mortgagor"s title in the lands u/s 28

of the repealed Act.

2. After the enforcement of the Maharashtra Debt Relief Act of 1975 (hereinafter referred to as ''the Act'') with effect from August 22, 1975, the

respondent made an application to the Tahsildar, Kagal, on June 16, 1976 for restoration of the lands to him claiming the mortgage debt to have

been discharged by virtue of Section 4 of the Act. This application was preceded by a notice dated June 8, 1976. The petitioner resisted this claim

on the ground, amongst others, that the mortgagor''s title and interest in the lands having been extinguished by 1957 on the expiry of the prescribed

period of limitation for redemption, or possession, and the Act having not revived the same, the respondent''s claim for restoration thereof was

untenable. Neither the debt, so pleaded the petitioner, was outstanding, due or payable to warrant its discharge u/s 4(a) of the Act nor

consequence contemplated u/s 4(e) could be said to have been attracted.

3. The Tahsildar overruled this contention of the petitioner, upheld the claim of the respondent, declared the debt to have been discharged and

directed him to restore the lands to the respondent. The petitioner disputes the validity of this order in this petition.

4. Mr. Justice Deshmukh took the view (1) that time-barred claims were not intended to be deemed ''outstanding'', ''due'' or ''payable'' u/s 4 of the

Act, and (2) the title of the mortgagor in the lands mortgaged having been statutorily extinguished, the restoration thereof is not warranted u/s 4(e)

of the Act. Mr. justice Mridul, on the other hand, emphasised the distinction between the discharge of debts ""payable"" in opening main part of

Section 4 and mere injunctive mandates against their ""recovery"" provided in Clauses (a) to (d) thereof and pinpointed how the statute of limitation

only bars the remedy without extinguishing debt itself which remains payable till it is actually paid or otherwise satisfied or statutorily scaled or

discharged. According to him, in cases of pledges and mortgages, liability of the debtor to pay is integrally interlinked with creditor''s liability to

restore the property pledged or mortgaged, on the discharge of debt, actual or statutory and such coextensive liabilities survive even when

remedies therefore are barred under the Limitation Act. Mr. Justice Mridul further held that extinction of the title of the debtor in the property

conceived u/s 28 of the repealed Act or Section 27 of the present Limitation Act has not the effect of vesting or conferring it on the creditor.

Consistent with these views he held that time barred claims for restoration of pledged or mortgaged property are not excluded from the widely

worded Clause (e) of Section 4 of the Act which directs the release and restoration of such property by the creditor to the debtor, divorcing

deliberately from their conventional moorings and concepts of redemption and restoration attached to the same u/s 60 or other cognate sections of

the Transfer of Property Act and limitations governing such restrictions. Consistent with their views, while Deshmukh J. was inclined to reject the

respondent''s claim, Mridul J. was inclined to uphold the same. Hence reference of the following two questions to third Judge for decision:

(1) Whether the provisions of Section 2(e) read with Sections 4(a) and (e) of the Maharashtra Debt Relief Act apply to the case of a possessory

mortgage, where the debtor has taken no steps to redeem the mortgage within the period of limitation laid down by the Limitation Act.

(2) Even if it did apply, is the debtor entitled to the return of the immovable property mortgaged, u/s 4(a) read with Section 4(e) of the said Act in

view of the provisions of Section 28 read with Article 148 of the Indian Limitation Act, 1908 (now Section 27 read with Section 61 of 1963 Act)

Sic The words ""Section 61"" should read Article 145.

5. Mr. Hombalkar, Mr. Kanade and Mr. Bhonsale, the learned advocates appearing for the petitioner and respondents repeated the same

arguments before me and relied on the same authorities and extensively quoted therefrom in support of their respective contentions, relied on by

them before the division Bench. The main contention of Mr. Hombalkar is that the enactment is aimed at protecting the debtors of certain

categories and their meagre resources from legally enforceable debts and restoring to them their properties which they are unable to redeem within

the period of limitation for want of resources in spite of their subsisting title therein. There is nothing in the Act to suggest any legislative intent to

revive time barred debts or claims and restore properties arising therefrom in which debtors'' liability stood extinguished before the appointed day.

Mr. Kanade and Mr. Bhonsale on the other hand contend that extended relief intended, would remain illusory and ineffective instrument of

contemplated social justice unless properties of the debtors are restored to them without regard to the artificial hurdles created by the law of

limitation.

6. Mridul J. upheld the contentions of Mr. Kanade and Mr. Bhonsale on many fold grounds. He has been at pains to emphasise how the words

outstanding"", ""payable"" and ""due"" are not restricted only to the legally enforceable loans and how these also cover unpaid loans, even when

recovery thereof is barred by statute of limitation, and liability so arising subsists till the same is paid or satisfied otherwise. With respect, there

cannot be any quarrel with this general and abstract proposition of law and it is unnecessary to deal with the cases relied on by him in support

thereof. The question, however, is not so much as to what these words generally mean and convey, as to what these connote in the context of this

Act and specially in overall setting of Section 4 of the Act and in the light of the legislative intendment governing this enactment. The legislative

intendment again is always, no doubt, a slippery and elusive concept pursuit of the discovery of which is beset with innumerable hurdles. It is

required to be culled out from the totality of the provisions and the scheme running thereunder. This process admits of neither smooth sailing or

easy and ready answer. One has not only to examine the preamble and the provisions carefully but to find out which evils, the provisions were

ironed out to eradicate, and how the conflicting claims of the beneficiaries and victims thereof were sought to be balanced.

7. The preamble indicates an intention, to extend immediate relief to certain marginal farmers, rural artisans, rural labourers and ""workers"" as

defined in the Act which had necessitated earlier the promulgation of the Maharashtra Debt Relief Ordinance, 1975, on August 22, 1975 and how

thereafter it was found necessary to restrict the relief to the liabilities arising out of loans only when ordinance was replaced by the Act. Section 2

contains definitions, while Section 3 gives retrospective effect to the Act as if it was in existence from the date of the Ordinance. The word ""debt"" is

defined u/s 2(e) to denote liability in cash or kind with or without interest, outstanding on the appointed day, i.e. August 22, 1975, whether secured

or unsecured and due and payable, including the one under a decree, order of the Court or otherwise. The ""debtor"" is defined u/s 2(f) to cover a

marginal farmer, rural artisan, or rural labourer whose total income from all sources did not exceed two thousand and four hundred rupees during

the year immediately before August 1, 1975. A worker whose total income from all sources did not exceed six thousand or four thousand and

eight hundred rupees during the said period depending on his living in an urban or rural area is also included in the definition of "debtor" u/s 2(f) of

the Act, if his loan carries interest and if market value of his immovable property if any, does not exceed rupees twenty thousand. Section 4

declares all debts of such debtor outstanding on the appointed day, i.e. August 22, 1975 as having been discharged and provides for the

consequential benefits thereof to such debtors. Sections 5 to 13 under this chap. III dealing with liquidation of debts, provide for the machinery for

enforcement of the Act and certain incidental effects. Reference to remaining part of the Act is unnecessary as being irrelevant.

8. The main part of Section 4 providing for the discharge of debts, after eliminating the unnecessary verbiage reads as follows:

...every debt of a worker...and every debt of any other debtor, outstanding on the appointed day, including the amount of interest, if any, payable

by a debtor shall be deemed to be wholly discharged;...

9. Now, this discharge is to be effectively operative.

Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any

such law,

but subject to

save as otherwise expressly provided in this Act.

10. The words ""outstanding"", ""payable"" as also the word ""due"" in definition of the ""debt"" in Section 2(e) undoubtedly are of widest import as

emphasised by Mridul J. but must get, necessarily, colour from the other parts of the section that follows and cannot escape the impact and the

restrictions conveyed thereunder as every part of the section must be taken to be the component of a well knit scheme conceived to reflect the

underlying legislative intent of relieving the indebtedness of certain kind of debtors. Nothing turns, to my mind, on the use of the word ""payable

while declaring the discharge of the debts in opening part of Section 4 and the use of the words ""recovery"" while preventing enforcement thereof by

any legal process, as the same are dictated by the situations, the Legislature is called upon to meet. Dictionary meaning of the words by itself is

never decisive without reference to their context and setting which ultimately determines their width or limitations. It is, therefore, necessary to

closely examine the wording of Clauses (a) to (d) first which indicate the consequences that are to ""ensue"" with effect from the appointed day on

the ""debts"" being declared as ""wholly discharged"".

11. Now, the first such consequence under Clause (a) of the deemed discharge of the debts is the immunity, from its recovery from such debtor

and, from enforceability by attachment or sale of his property or in any manner otherwise against him even if decree or order is passed for the

same by any Court. Clause (b) then operates as an injunction against the civil Courts from entertaining any suit or proceeding against such debtors

for the recovery of such debts, including interest thereon, if any. The proviso to Clause (b) also still makes the position clearer indicating that in the

event of debt being jointly due from a debtor and a worker covered by the Act along with any other not covered and protected thereunder, the

statutory injunction conceived under this clause will not be operative against such unprotected debtor. The mandate in Clauses (c) and (d) provide

for abatement of pending suit and proceedings for enforcement of the debts so discharged, and release of the debtor from civil prison if he is so

detained in execution of the decree against him for recovery of such debts.

12. These protective mandates and injunctions enumerated in Clauses (a) to (d) clearly postulate that but for them debts referred to therein against

such debtors were recoverable and processes of law were liable to be invoked for the lawful enforcement thereof. The emphasis on the words

such debts"" and ""such debtors"" in every clause indicate a reference to the debts deemed to have been wholly discharged under the governing main

Clause (a) of Section 4. In fact, Clauses (a) to (d) contain only the ""consequences"" that are expressly intended to ''ensue'' on such discharge of the

debts. In other words, debts intended to have been discharged under the scheme of Section 4 and consequently under the Act are only such debts

which were legally enforceable by recourse to coercive process of law and were not barred either by statute of limitation or otherwise. Time-

barred debts or claims, even against the category of debtors and their creditors sought to be protected under this chapter thus are outside the

purview of Section 4. In fact, no injunctions contemplated under clauses (a) to (d) were necessary for time-barred claims and debts, as no Court

could ever have entertained them and no property of such debtors could have been proceeded against in whatsoever manner for enforcement

thereof by any Court nor any debtor could have been put in prison nor question of his release therefrom could have arisen. Not much can be made

out of the supposed distinction between the implication of the words ""payable"" in the opening part of Section 4 as against ""recoverable"" in the

following clauses and it is not possible to hold that while main Section 4 contemplates discharge of all the debts barred or not barred, as even time-

barred debts continue to remain payable but injunctions were necessary to enforce against the debtor as debts within time could easily have been

enforced through the Courts. Any such inference is not warranted by the phraseology used in the main part of the section and the preceding

sentences which go to enumerate the consequences on the discharge of such debts. Legislative intendment appears to be to cover only legally

enforceable debts from the words used and the setting in which the words ""outstanding"", ""payable"" and ""due"" are used notwithstanding the width of

their connotation, if considered in the abstract in isolation and divorced from the context. Conjunctive operation of the opening part of Section 4

and the clauses thereafter leave little scope to assume that Clauses (a) to (d) are merely added by way of abundant precaution in spite of the time-

barred debts being covered by the main part of the section.

13. Clause (e) of Section 4 then deals with the liability of the creditor to restore the property pledged or mortgaged by his debtor. Can this clause

claim to have wider import so as to create such obligations on the creditor, even when not only his claim to recovery of debt or force-closure but

even the debtors, mortgagors or pledgors'' right to redeem or to recover possession is also time-barred and consequently their title in the property

so pledged or mortgaged is extinguished by virtue of Section 28 of the repealed and corresponding Section 27 of the existing Limitation Act? Mr.

Kanade contends that Clause (e), at any rate, possesses wider connotation and does contemplate such consequence. He relies on the distinction

between the word ""payable"" in the opening part and ''recoverable'' in the clauses enumerating the consequences. He also relied on the non-

obstante clause with which Section 4 opens and on the doctrine of ""once a mortgage always mortgage"" which, according to him, is given effect to

in this Clause (e).

14. I have already indicated, how not much turns on the difference in the phraseology of "payable" and "recoverable". Clause (e) also contains one

more consequence that is intended to ensue on the debt being wholly discharged in terms of the opening main clause of Section 4 itself and forms

as much integral part of the scheme as the earlier Clauses (a) to (d) discussed earlier. Now, it should be difficult to find any good reason or basis to

apply different standard or rule for interpretation of this clause and discover wider implication therein than what could be found in the earlier four

Clauses (a) to (d). If time-barred debts are found to be outside the purview of the main section and Clauses (a) to (d) thereof, time-barred claims

for restoration of the property also consequentially must be found to be outside the scheme of this clause for the same reasons and on the same

grounds.

15. Non-obstante clause is always pressed into service to ensure over-riding effect of the declared mandate that follows the said clause, in the

teeth of any contrary provisions of any enactment or other instruments specified therein. One has, however, to ensure that its scope is not unduly

widened beyond what is strictly required to meet the given situation. In the context, this non-obstante clause seeks only to emphasise that debts

specified therein would stand wholly discharged in disregard of any contrary provision in the laws or instruments specified. The non-obstante

clause governs the discharge of the debts and it stops there with semi-colon, and has no bearing on the consequences enumerated in Clauses (a) to

(d). It only makes ineffective the obligation to pay principal loan or the interest thereon as also the period up to which mortgagee or pledgee could

retain the possession of the properties and enjoy their benefits contractually. It can not claim to have the effect of modifying any provision of

Limitation Act or extend the period of limitation for redemption or restoration of the properties in favour of the debtor nor can it have the effect of

reviving the title of debtors in the property that was already extinguished before the appointed day.

16. The doctrine of ""once a mortgage always a mortgage"" is now modified by the law of Limitation which is otherwise known as statute of repose

enacted to subserve public purpose in ensuring that titles to debts, claims and properties do not remain in suspense for ever. This doctrine therefore

cannot override statute of limitation. Secondly, restoration of property pledged or mortgaged after the expiry of period of thirty years or sixty years

respectively, under Articles 145 and 148 of the repealed Act or some period prescribed for the same under the corresponding Articles of the

existing Act involves the question of revival of the debtors title afresh, which stands extinguished under clear and positive legislative mandate of

Section 28 of the repealed Act and Section 27 of the new Act of 1963. Mere direction to release or restore the property, even assuming that

discharge covers time-barred claims also, without positive amendment or modification of corresponding above provisions of the Limitation Act

cannot be effective to revive barred claims and dead titles. This is a matter when Legislature has to speak unequivocally with clarity and precision

involving as it does the transfer of property to the one whose title therein had stood extinguished long before the appointed day. Such a Legislative

intendment requires to be indicated with louder and clearer voice. One cannot trace even a whisper of it in Section 4 or Clause (e) thereof

anywhere.

17. Reliance by Mr. Kanade on the judgment of the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and

Others, is misconceived. It only makes Section 28 of the Limitation Act inapplicable to money claims. Redemption or restoration of pledged or

mortgaged property is not a money claim in that sense or in any sense whatsoever and does not cease to be claim for recovery of property within

the sweep of Section 28, even though mortgage debt is found to have been covered by the expression pecuniary liability under the D.P. (Debt

Adjustment) Act of 1961 by the Supreme Court in Rajkumari Kaushalya Devi Vs. Bawa Pritma Singh and Another, . Mixing considerations

arising under different contexts under different enactments may not be of any help whatsoever.

18. Mridul J. has quoted extensively from certain eminent authorities to indicate that, extinction of debtors'' title cannot have the necessary effect of

the conferring or vesting thereof in the creditor, though a binding authority of a division Bench judgment of this Court in Fakirappa Jotappa v.

Ningappa Shidlingappa (1942) 45 Bom. L.R. 491, does support Mr. Hombalkar''s contention that on such extinction of debtor''s titles the creditor

gets at any rate title thereof by possession. Even such possessory title ripens into absolute title after adverse possession continues for more than

twenty years. To my mind this aspect of the matter is not relevant to the point directly. There is unanimity at any rate as to the extinction of

debtors'' title in the property on the expiry of the prescribed period of limitation for redemption or possession. It is difficult to hold that lost and

extinguished title gets restored merely on the declaration of the discharge of the concerned debt without express legislative mandate to extend the

period of limitation and enlivening the extinct titles. The integral connection between the debt and the property by which it is secured gets snapped

under Articles 145 and 148 read with Section 28 of the repealed Limitation Act, and the corresponding provisions of the new Act. Mere

declaration of discharge of debt, even assuming without admitting that the time-barred debts also are covered by Section 4 of the Act cannot have

the effect of restoring snapped connection without clear provision to that effect.

19. I agree with Mridul J. that the provisions of the Act aimed at relieving the chronic indebtedness of the socially and economically backward

sections of the society must receive liberal interpretation to ensure effective implementation of the legislative intendment. The Legislature is alone the

best judge of the needs of the society, the prevalent evils and measures required to meet the situation. It is also true that in such situations, hardship

is bound to be caused to the few who stand divested of their vested rights. Legislature has, however, to speak its mind more clearly, unequivocally

and loudly, where the scheme involves unsettling of settled rights in disregard of the existing other equally effective and binding enactments, by

amending or modifying such provisions having contrary effects. Leaving such matters to bare inferences will have the effect of substituting the voice

of the Court in place of the voice of the Legislature which alone can do the needful in exercise of its plenary powers within the frame work of the

Constitution. I am unable to trace any such intention to override these provisions of the Limitation Act even impliedly in the bare mandate or

direction to restore and release the properties in which the debtors" title is extinguished long back. In fact, if these bare words are to be interpreted

in disregard of the untouched provisions of the Limitation Act, startling unintended consequences may follow leaving it open to any distant heir of

the deceased debtor to claim back the property pledged or mortgaged hundreds of years ago with additions and alterations and large scale

investments, which may come to his lap almost as a wind-fall having no nexus whatsoever with his present indebtedness and the debts incurred by

the ancestors separated by many generations. This will cause pleasant shock to the beneficiary and rude one to the Legislature itself. It will not

even be fair to attribute any such intent to the Legislature. Not that the Legislature cannot modify the provisions of the Limitation Act where

situations so require to ameliorate the woes of the debtors steeped in poverty for generations. But the question is whether, has the Legislature

consciously done it in the present enactment in utter disregard of the equities involved, in cases where on extinction of the debtors" title the holders;

of the properties bona fide made large scale investments and also in disregard of how such unintended benefits has any nexus with the actual

indebtedness of the debtors, the result invariably being not so much the relief from indebtedness as conferring the unmerited boon without any basis

therefore whatsoever.

20. With respect, I am unable to share the view expressed by Mridul J. but find myself in agreement with Deshmukh J. My answer to the first

question is in the negative and also in the negative to the second question, even under the assumption of the affirmative answer to the first question.

The matter may now be placed before the division Bench for disposal in accordance with law.