**(1951) 08 BOM CK 0028**

**Bombay High Court**

**Case No:** Civil Revision Application No. 1118 of 1950

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| Miraj State Bank Ltd. | | APPELLANT |
| | Vs | |
| Nabi Bapu and Others | | RESPONDENT |

**Date of Decision:** Aug. 27, 1951

**Acts Referred:**

- Bombay Agricultural Debtors Relief Act, 1947 - Section 15, 17, 19, 19(1), 19(2)

**Citation:** AIR 1952 Bom 363 : (1952) 54 BOMLR 239 : (1952) ILR (Bom) 653

**Hon'ble Judges:** Vyas, J; Gajendragadkar, J

**Bench:** Division Bench

**Advocate:** G.R. Madbhavi, for the Appellant; V.M. Tarkunde, for the Respondent

**Judgement**

Gajendragadkar, J.

(1) This is a revisional application by the plaintiff in which an order passed by the Civil Judge, Senior Division, Sangli, directing the transfer of the suit u/s 19 of the Bombay Agricultural Debtors'' Relief Act (Bom. XXVIII (28) of 1947) is challenged before us. The plaintiff is the Miraj State Bank Limited and in the suit that the plaintiff had filed against the defendants a claim was made for Rs. 7,294-9-0. This suit was filed in the Court of the Civil Judge, Senior Division, Sangli. On September 11, 1950, the defendants applied to the Court u/s 19, Sub-section (1), of the Act, and alleged that they were debtors within the meaning of the Act and that their total debts did not exceed Rs. 15,000. They, therefore, claimed that the suit should be transferred for disposal in accordance with the provisions of the Bombay Agricultural Debtors'' Relief Act. The plaintiff resisted this application on the ground that the claim made by the bank in the present suit was outside the scope of the Bombay Agricultural Debtors'' Relief Act altogether. The learned Judge rejected this contention and he has directed that the suit should be transferred u/s 19, Sub-section (1), of the Act. It is this order which is challenged before us by the plaintiff petitioner.

(2) Mr. Madbhavi for the petitioner has strongly relied upon the provisions of Section 3 of the Bombay Agricultural Debtors'' Relief Act. This section provides that nothing in this Act shall affect the debts and liabilities of a debtor falling under the seven classes in the section. Amongst these classes is the sum due to a merged State bank, and there is no dispute that the plaintiff bank is a merged State Bank. Mr. Madbhavi says that this section in clear terms provides that the dispute between a merged State bank and its debtor is not intended to be affected by the provisions of this Act and in that sense must fall outside the Act altogether.

On this view Mr. Madbhavi''s contention further is that when Section 19, Sub-section (1), of the Act, refers to suits in respect of any debt and directs that such suits should be transferred, it must be deemed to refer to the suits for the recovery of debts other than those mentioned in Section 3 of the Act. If this is the true position, it would have to be held that the learned Judge had no jurisdiction to transfer the suit as requested by the defendants. It is quite true that by asking for a transfer of the suit u/s 19(1) the defendants are virtually seeking to oust the ordinary jurisdiction of the civil Court, and this can be permitted only if the provisions of the Act make it clear beyond doubt that the suit must be transferred to be tried by the special Courts administering the Bombay Agricultural Debtors'' Relief Act.

(3) Now, in dealing with this question, it is necessary to refer to the scheme of the Bombay Agricultural Debtors'' Relief Act and some of the relevant provisions contained in it. The word "debt" is defined by Section 2, Sub-section (4), of the Act as meaning any liability in cash or kind, whether secured or unsecured due from a debtor whether payable under a decree or order of any civil Court or otherwise and includes mortgage money the payment of which is secured by the usufructuary mortgage of immovable property but does not include arrears of wages payable in respect of agricultural or manual labour. Thus, it is obvious that the definition of the word "debt" would include the debt due to the bank. Section 3 to which I have already referred is a saving section and it provides that seven classes of debts enumerated in this section would not be affected by anything contained in this Act.

Section 4 deals with the application which has to be made for the adjustment of debts and Sub-section (3) of this section provides that notwithstanding anything contained in Section 3 an application made under this section shall contain the amounts and particulars of all debts specified in that section due by the debtor. When such an application is made, notices are ordered to be issued to the respective parties and the enquiry into the debt begins. Section 15 of the Act provides for the extinction of the debts in respect of which an application has not been made u/s 4 or the other steps have not been taken as mentioned in Section 15. At the enquiry to be held under this Act, preliminary issues are framed u/s 17, accounts are taken u/s 20, the creditor and debtor respectively are examined u/s 21, and ultimately the amount is determined after adopting the mode of taking accounts as mentioned in Section 22. Section 24 confers upon the Court much wider

powers in deciding the real character of the transaction between the parties under this Act.

Then we come to Section 26. Under this section as soon as an application for the adjustment of a debt is received, the Court is required to give notice to the Collector requiring him to state to the Court within such time as may be fixed the amount of the debt due by the debtor to the Government. Similar notice is required to be given to the six other creditors mentioned in Section 3 of the Act. Sub-section (3) of Section 26 then requires that these creditors should submit a statement to the Court showing the total amount of the debt due by the debtor. Sub-section (4) of this section then goes on to provide that the creditor may, if willing to do so, indicate the amount which he is prepared to remit to the debtor, and the last sub-section of this section provides that the portion of any debt remitted under Sub-section (4), and unless the Court otherwise directs any debt or portion thereof in respect of which no statement is submitted under Sub-section (3), shall be extinguished.

After the accounts are made and the enquiry is completed, an award is passed u/s 32. Under the provisions of this section priority in respect of the debts due by the debtor is statutorily determined and annual installments are fixed by which the whole of his debts are ordered to be repaid. In the list of priorities merged State Banks occur at (ff) in Sub-section (2) of Section 32. When the award is thus passed, Section 38 provides for the execution of the award. The proviso to this section reserves to the Government or a local authority or a co-operative society the right to have recourse to any mode of recovery allowable by any law for the time being in force. As to the other creditors, and amongst them must be mentioned the merged State bank with which we are concerned, the only remedy open to them is to execute the award as laid down by Section 38. These broadly are the important relevant sections.

(4) Now, the scheme of the Bombay Agricultural Debtors'' Relief Act seems to be that whereas the ordinary debts due by the debtor as defined in the Act can be scaled down under the principles laid down by this Act, the debts due to the creditors mentioned in Section 3 cannot thus be scaled down. But that is not to say that these debts have not to be shown or have not to be considered in adjusting the other debts of the debtor. By Section 4 these debts are specifically required to be mentioned and by Section 26 these creditors are specifically required to mention their rights and the amounts due to them. In other words, after the statements of these creditors are brought on the record, the Court in each case has to determine the total liability of the debtor and has to decide the question of scaling down his debts which can be scaled down under the Act by reference to the said total liability in relation to his total capacity to repay the debts.

It would thus be clear that, for the purpose of scaling down the ordinary debts, the consideration of the debts due to the creditors mentioned in Section 3 is absolutely essential. It is quite true that Section 26 deals with these debts separately by

themselves, so that the penal Section 15 which extinguishes the ordinary debts in case proper steps are not taken by the creditors or the debtors as required by the Act would not be applicable in respect of these special debts. But that, in our opinion, does not mean that these special debts are entirely outside the purview of the Act. In fact it is significant that under the last sub-section of Section 26 itself, if no statements are filed by any of these special creditors, the Court would treat such debts as extinguished. Thus in this way even these special debts are expressly dealt with by this section; so that it is not correct to say that these debts are wholly outside the scope of the Act.

We are free to confess that it is not very easy to reconcile the different sections of the Act, but, on the whole, we are disposed to take the view that the effect of Section 3 is not that the debts mentioned in this section stand entirely outside the Act, but that the said debts would not be prejudicially or adversely affected by the general provisions contained in this Act. We do not read Section 3 as meaning that nothing in this Act shall apply to the debts mentioned in that section. We would prefer to read this section as meaning that nothing in this Act shall prejudicially or adversely affect the said debts. In that view of the matter, it seems to us that Section 19 does refer to the suit for the recovery of any debt in the larger sense of that term. The word "debt" must be construed in the light of the definition contained in Section 2, Sub-section (4), and if it is so construed, there would be no difficulty in holding that the application made by the defendants for the transfer of the present suit was properly made and it was properly granted by the learned Judge. It would be useful to consider the provisions of Sub-section (2) of Section 19 in this behalf.

As I have already mentioned, in the application made by the debtor, the debtor is bound to have mentioned the amount due to the bank along with the other debts due to the other creditors. In such a case, when the Court would have proceeded to deal with this application, it would have found the name of the bank in the list of the creditors of the applicant and it would have been open to the Court u/s 19, Sub-section (2), to send a notice to the Court, where the suit filed by the bank was pending, to send the record of the said suit to itself. It is quite true that even after the record of such a suit is received by the Court administering the Act, it would not assume the jurisdiction to scale down the debt due to the bank, and in that sense the important, provisions contained in the Act for scaling down the debts would not apply to such a debt. But that is not to say that the Court could not deal with the question as to the amount of debt due by the debtor to the creditor in question. The position may perhaps be different if the debtor is indebted only to one or more special creditors; but with such a case we are not concerned in the present application.

(5) Mr. Madbhavi contends that the special Court has no jurisdiction to deal with the disputes between the debtor and a special class of creditors mentioned in Section 3 of the Bombay Agricultural Debtors'' Relief Act and his argument is that such

disputes must always be decided only by the ordinary civil Court. We find it very difficult to accept this contention. As I have already mentioned, before the award is made, notice would have been issued to the special creditor, as for instance, the bank in the present case, and the amount due to the bank would have to be mentioned in the award and the place of this debt in the list of priorities would have to be indicated by it. It is not disputed that once the award is made and the amount due to the special creditor is mentioned in it, the special creditor would be entitled to execute the award in respect of his amount. Indeed, after the amount is thus mentioned in the award, the only procedure open to the creditor would be to execute the award. The proviso to Section 38 reserves the right for only specified class of creditors to take recourse to the other remedies open to them in law. But the plaintiff bank is not included in this proviso.

Now, in such a case if after the bank mentions the amount due to it from the debtor in reply to the notice issued to the bank u/s 26, the amount thus mentioned by the creditor differs from the amount mentioned by the debtor in his application made u/s 4, or if the debtor disputes this amount otherwise after the statement is filed by the bank, this dispute would have to be settled before the debtor is held liable to pay any debt, and the question is, which Court will have to decide this dispute. Mr. Madbhavi would suggest that in the case of such a dispute the Court must mention the amount indicated by the creditor and proceed on the assumption that this amount is due despite the fact the amount may be disputed by the debtor. It is impossible to accept this contention. If the debtor disputes his liability either partially or wholly, it would be obvious that no award can be passed against him unless the Court holds a judicial enquiry into the dispute and determines the dispute against the debtor. It is only when the Court finds that a certain amount is due by the debtor to a particular creditor that the Court can proceed to mention that amount in the award.

We are not prepared to hold that the effect of the provisions contained in Sub-section (5) of Section 26 is to limit the jurisdiction of the Court to reduce the amount of to extinguish the debt only in two cases mentioned in that sub-section. We think that if a dispute arises as between a debtor and any of his creditors falling in the special classes mentioned in Section 3, that dispute has to be judicially determined before the debt due to such a special creditor can be mentioned in the award. It seems to us that if. such a dispute arises, it is the Court administering the Bombay Agricultural Debtors'' Relief Act which will have to decide this dispute. If the special creditor has not filed any suit in respect of his debt, he will mention his amount in reply to the notice issued u/s 26 and the Court will proceed to deal with the liability in question in case the amount is disputed by the debtor. If the special creditor has filed a suit already, notice may be issued by the special Court u/s 19 (2) when it deals with the application of the debtor, or the debtor can make an application u/s 19 (1) for the transfer of the suit to the special Court. In any case, it seems to us that it is the Court adjusting the ordinary debt of the debtor that must

decide the quantum of the special debts due to the special creditors mentioned in Section 3, and if this be the true position, we see no reason why the learned Judge should not have transferred the present suit u/s 19 (1).

(6) Now, if one considers the different classes of creditors mentioned in Section 3, one would realise that disputes as to the amounts due to some of these creditors might arise very frequently. Amongst these creditors are the Government entitled to recover revenue or tax, a local authority entitled to recover tax, a co-operative society entitled to recover any specific amount, a person holding a decree for maintenance entitled to recover the amount due for maintenance and a scheduled bank or a merged State bank entitled to recover any sum due to it. It is quite conceivable that the amount which the debtor admits he is liable to pay may not always or in every case be the same as the amount which the creditor claims and whenever a dispute arises between a debtor and a special creditor as mentioned in Section 3, that dispute must inevitably be decided in a judicial way.

If we were to hold that the debts due to the special creditors are entirely outside the scope of the Act, it may lead to several anomalies, if the suit filed by a special creditor is allowed to progress without being transferred u/s 19, it would end in a decree and obviously the creditor would ordinarily be entitled to execute this decree. On the other hand, the amount in respect of which such a decree would be passed would have to be mentioned by the debtor in his application u/s 4 and notice would have to be issued in respect of it u/s 26. Ultimately the amount due in respect of such a debt would find a place in the award and clearly the award in its turn would be executable. In other words, for the same debt we would have a decree and an award, each one of which is executable. There is no provision in the Act for the merger of the decree in the award in that behalf.

If the special creditor has not filed a suit and limitation does not compel him to file a suit pending the proceedings under the special Act when a notice is issued to him u/s 26 and the statement filed by him is disputed by the debtor, unless the special Court is authorised to enquire into the dispute, almost a deadlock would be reached, because, if the special Court cannot deal with the dispute, the proceedings must be held up until the creditor chooses to file a suit and obtains a decree from the ordinary Court. This, in our opinion, could not have been the intention of this Act, Section 51A of the Act may also be considered in this connection. This section provides that except as otherwise provided by this Act and notwithstanding anything contained in any other law, no civil Court shall entertain or proceed with any suit or proceeding in respect of the recovery of any debt made payable under such award.

Now, it has been conceded before us, and rightly, that if the amount due to the special creditor is mentioned in the award u/s 32, it would be recoverable by executing the award, and in respect of such an amount the ordinary civil Court is precluded from entertaining or proceeding with any suit or proceeding in respect of

it. This incidentally supports the view that the debts clue by the debtor who is entitled to the protection of the Act must come within the jurisdiction of the special Court administering the Act; these debts can be broadly classified into two classes: (1) ordinary debts which are affected by the provisions of the Act laying down for a special enquiry, for a special mode of taking accounts and for a special mode of scaling down and adjustment; and (2) debts which can be called special debts as mentioned in Section 3. These are not intended to fall within the mischief of the special provisions contained in the Act except Section 26, and in that sense they are not intended to be adversely affected by those provisions. But even as to these special debts, it is the special Courts that must examine the disputes in respect of them and it is the special Courts that must decide what amounts are due to the creditors concerned.

It must be remembered that determining the amount due to the special creditor is very much different from scaling down the amount thus found, if the special Court were to scale down this amount, it would be acting contrary to the provisions of Section 3. After all, the scheme of the Act is to ascertain the total debts due by the debtor and to scale them down in the light of his total paying capacity. Now, in finding the total debts, obviously the special debts have got to be taken into account. If that is so, before these special debts are taken into account, it is clearly necessary that the special Court, whose function it is to take them into account, must have jurisdiction to decide the exact amount due in that behalf. We, therefore, think that the learned Judge was right in coming to the conclusion that the present suit must be transferred to the Court administering the special Act.

(7) The result is that the application fails and the rule is discharged with costs.

(8) Rule discharged.