

(1957) 01 BOM CK 0025

Bombay High Court

Case No: Civil Revision Application No. 1058 of 1956

Shantaram Ganpat and Others

APPELLANT

Vs

Lalji Vithal

RESPONDENT

Date of Decision: Jan. 17, 1957

Acts Referred:

- Bombay Agricultural Debtors Relief Act, 1947 - Section 47, 47(1A)

Citation: AIR 1957 Bom 162 : (1957) 59 BOMLR 382 : (1957) ILR (Bom) 614

Hon'ble Judges: Vyas, J; Dixit, J

Bench: Division Bench

Advocate: K.J. Abhyankar, for the Appellant; G.R. Madhavi, for the Respondent

Judgement

Dixit, J.

This revisional application raises an interesting question u/s 47 (1-A) of the Bombay Agricultural Debtors Relief Act, 1947. The question arises in this way.

2. The opponent to this application obtained against one Ganpat an award in the Court of the Civil Judge. Junior Division, Dapoli. The award provides that the debtor was to pay a sum of Rs. 10,904-3-0 by installments. The first installment was of a sum of Rs. 2000/- to be paid on 25th November 1950. The second installment was of a sum of Rs. 1000 to be paid on 31st May 1951 and the balance with interest was to be paid in two annual installments, the first of which was to be paid on 31st May 1952 and the other on 31st May 1953. Ganpat paid from time to time sums aggregating to Rs. 5250/- towards the amount declared by the award, and as Ganpat failed to pay the installments in time, the opponent filed a darkhast (No. 11 of 1955) to recover the amount due by sale of the property of the debtor. It is not clear from the record as to when Ganpat died. But it appears that his heirs and legal representatives, who are the present applicants, filed an application u/s 47(1A) praying for a Modification of the terms of the award in relation to the installments directed to be paid under the award. That application which was Miscellaneous

Application No 4 of 1955 was heard by the Civil Judge, Junior Division. Dapoli, who dismissed it on 9-2-1956, holding that the application by the heirs was not maintainable u/s 47(1A) of the Act. It is the correctness of this order which is challenged by Mr. Abhyankar appearing on behalf of the heirs of the original debtor.

3. Now, Section 47, by Sub-section (1A), provides:

"If at any time after the, expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of installments fixed under the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the installment as it may think fit, provided that the total annual installments in which the balance of the debts shall be paid in such installments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent."

It is apparent that by Sub-section (1A) of Section 47 the Court is given power to modify the terms of an award and to reduce the amount of the installment subject to the condition that the total annual installments in which the balance is to be paid in such installments shall not exceed twenty. There can, therefore, be no doubt that a debtor against whom an award has been made can ask for & modification of the terms of the award by a subsequent application. It is also clear that where the Court is not in a position, to make such an order, the Court may make an order adjudicating the debtor an insolvent. The concluding part of the section viz., "or the Court may make an order adjudicating the debtor an insolvent" makes it clear that what the Court has to do is to make an order adjudicating the debtor an insolvent and this is obvious. If a debtor is not able to discharge his personal debts, it is the debtor alone who can be declared to be an insolvent. Mr. Abhyankar concedes that unless the debts of the heirs are personal, the heirs cannot be declared to be insolvents, and so far as the heirs of a debtor are concerned, their liability is limited to the payment of the debts of the debtor from the property which has come into their hands. If, therefore, for the personal debts" of a debtor his heirs cannot be declared to be insolvents, it is obvious that the intention of the legislature in enacting Sub-section (1A) of Section 47 was that the application must be one which was to be made only by the debtor, and not by his heirs. Under Hindu Law, the liability of an heir of a debtor is limited to the discharge of the debt from the estate of the debtor and it may well be that the legislature intended that the application for a modification of the terms of the award should only be made by the debtor, and not by his heirs. This conclusion receives support from the concluding part of the Sub-section which I have quoted above. In view of this conclusion, it seems to us that the view taken by the Court below viz., that this application made by the heirs of the debtor was not maintainable is correct and must be maintained.

4. Consequently, this application must fail and the rule will be discharged with costs.

5. Application dismissed.