
(1948) 12 BOM CK 0012

Bombay High Court

Case No: Civil Revision Application No. 293 of 1948

Ramchandra Narayan Kulkarni

APPELLANT

Vs

Jijaba Rangnath Jadhav

RESPONDENT

Date of Decision: Dec. 10, 1948

Acts Referred:

- Bombay Agricultural Debtors Relief Act, 1939 - Section 85, 86
- Bombay General Clauses Act, 1904 - Section 11
- Dekkhan Agriculturists Relief Act, 1879 - Section 10A, 15D

Citation: (1949) 51 BOMLR 605

Hon'ble Judges: M.C. Chagla, C.J

Bench: Single Bench

Final Decision: Dismissed

Judgement

M.C. Chagla, C.J.

This is an application in revision against an order made by the District Judge, Sholapur, holding that a suit u/s 15D read with Section 10A of the Dekkhan Agriculturists' Relief Act, 1879, instituted on January 3, 1945, in the Court of the Civil Judge, Junior Division, Pandharpur, was not maintainable and must be dismissed.

2. The Bombay Agricultural Debtors' Relief Act of 1939 was made applicable to Pandharpur on January 1, 1942. Section 85 of the Bombay Agricultural Debtors' Relief Act, 1939, provides that on the date on which a Board is established, the Dekkhan Agriculturists' Relief Act, 1879, shall cease to have force in such area. u/s 86, however, the Dekkhan Agriculturists' Relief Act is deemed to remain in force in such area for purposes of institution of suits for a period of three years from the date when the Board is established. Therefore it is not disputed that for three years after January 1, 1942, the Dekkhan Agriculturists' Relief Act was in force and an agriculturist could have filed a suit under that Act. It is also not disputed that when the plaintiff filed this suit the three years' period had elapsed and the Dekkhan

Agriculturists" Relief Act had ceased to be in force. But Mr. Hungund on behalf of the applicant contends that he is entitled to resort to Section 11 of the Bombay General Clauses Act, 1904, and if that Act applies, then according to him the suit is within time. Now, the Courts were closed on January 2 and Mr. Hungund's argument is that as the last day on which he could have filed his suit was January 1, 1945, and on that day the Court was closed, he was entitled to file the suit on the next day on which the Courts reopened and that day was January 3, 1945, and he having filed the suit on January 3, 1945, his suit is maintainable. Turning to the Bombay General Clauses Act, Section 11, what it provides is that:

Where, by any Bombay Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

This section only applies to acts or proceedings which are directed or allowed to be done or taken. Mr. Hungund's contention is that he was allowed to file a suit under the Bombay Agricultural Debtors' Relief Act till January 1, 1945, and therefore as on that date the Court was closed, he should be permitted to file a suit on the next day when the Court was opened. The obvious fallacy underlying this argument is that the plaintiff was not allowed to file the suit under the Bombay Agricultural Debtors' Relief Act. His right to file a suit was under the Dekkhan Agriculturists' Relief Act, and in order to invoke the assistance of Section 11, what the plaintiff has got to establish is that some application was directed or allowed to be taken within a prescribed period or on a particular day under the Bombay Agricultural Debtors' Relief Act. Far from allowing any application to be taken, the Bombay Agricultural Debtors' Relief Act directs that the Dekkhan Agriculturists' Relief Act shall cease to be in operation after a prescribed period. The position might have been different if the Bombay Agricultural Debtors' Relief Act had repealed the Dekkhan Agriculturists' Relief Act and after repealing it it had allowed the plaintiff to file a suit within a prescribed period. But that is not what the Legislature has done. The Legislature has not allowed any suits to be filed after the Dekkhan Agriculturists' Relief Act is repealed. It merely fixes a period when the Dekkhan Agriculturists' Relief Act shall stand repealed, and once that Act is repealed, the right of the plaintiff to file a suit under that Act disappears. That right is not saved by the Bombay Agricultural Debtors' Relief Act, nor is any permission given to the plaintiff to file a suit after the Dekkhan Agriculturists' Relief Act has been repealed.

3. Mr. Hungund also attempted to argue that the period of three years mentioned in Section 86 was a period of limitation prescribed for the filing of the suit under the Dekkhan Agriculturists' Relief Act, and therefore I should bring to the assistance of the plaintiff the provisions of Section 4 of the Indian Limitation Act. Without deciding

whether Section 4 of the Limitation Act has any application whatever, I refuse to accept the contention that Section 86 provides any period of limitation for the filing of suits under the Dekkhan Agriculturists' Relief Act. The period of limitation for filing a redemption suit is provided by the Limitation Act itself and Section 86 does not deal with the question of limitation at all. It merely keeps the Dekkhan Agriculturists' Relief Act alive, as it were, for the purposes of institution of suits up to a particular date. When that date is passed, that Act is no longer in force, and whatever rights a litigant may have under that Act disappear. Therefore, in my opinion, the learned Judge below was right in coming to the conclusion that he did.

4. Therefore the revision application fails. Rule is discharged with costs.