JT. FAMILY OF MUKUND DAS RAJA BHAGWAN DASS & SONS ETC.

v.

STATE BANK OF HYDERABAD

September 10, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Hyderabad Jagirdar Settlement Act, 1952, ss. 11 and 25—Suit filed after notified date with respect to post notified date debt—Jurisdiction of Debt Settlement Board.

Section 11 of the Hyderabad Jagirdar Settlement Act, 1952, enables a creditor or a Jagirdar (debtor) to move the Board under the Act for settlement of debts due by the Jagirdar. Such application should be made on or before June 30, 1953, the date notified under the section and if no such application was made the debt stood extinguished. Under s. 25, if a suit or appeal or execution proceeding was *pending* in relation to such debt in any court it had to be transferred to the Board.

The respondent-bank filed a suit in July 1956 against the appellants for recovery of Rs. 40,000/- and odd due in July 1954, on account of a cash and credit account opened by the appellants with the respondent. The suit was decreed. In December 1959, the bank filed an execution petition for executing the decree.

On the question whether the execution petition should be transferred to the Jagirdar Debt Settlement Board under s. 25(1) of the Act.

HELD : There are two conditions for the applicability of s. 25. (a) The expression 'pending' in s. 25(1) must relate to proceedings which were pending on the notified date and could not take in any proceedings which came to be instituted after such date; and (b) The suit and other proceedings must be in respect of a debt with regard to which a Jagirdar or the creditor could make an application to the Board on or before the notified date. Thus, only those debts which were due on or before the notified date from a debtor or in respect of which any proceedings were pending in any court or before the Board could be the subject matter of the settlement by the Board. [142 E-H]

Since both the conditions for the applicability of s. 25 of the Act were not satisfied in the present case the proceedings were not liable to be transferred. [143 B-C]

Babibai Thakuji v. *Fazludin Usmanbai*, I.L.R. [1954] Bom. 535, approved.

Since the liability of the principal debtor and the surety is a joint and several liability, a direction that the bank should proceed first against the principal debtor and only afterwards for any balance which could not be realised, against the surety, could not be granted. [144 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1138 to 1140 of 1966.

A Appeals by special leave from the judgments and decrees dated February 8, 1963 of the Andhra Pradesh High Court in Civil Revision Petition No. 572 of 1960 and C.C.C. Appeals Nos. 63 and 66 of 1969.

M. C. Chagla and *K. R. Chaudhuri,* for the appellants (in B C.As. Nos. 1138 of 1966) and the respondents (in C.As. No. 1140 of 1966).

B. V. Subramanyam and *A. V. Rangam,* for the respondent (in C.A. No. 1138 of 1966) respondent No. 1 (in C.A. No. 1139 of 1966) and the appellant (in C.A. No. 1140 of 1966).

C The Judgment of the Court was delivered by—

Grover, J. These appeals arise out of two different litigations although some of the parties are the same. Civil Appeal No. 1138 of 1966 is directed against the judgment of the Andhra Pradesh High Court dated February 8, 1963 in a revision petiD tion. The other two cross appeals *i.e.* 1139 of 1966 and 1140 of 1966 arise out of the judgment dated February 1, 1963 passed by the same High Court in a suit which had been filed by the State Bank of Hyderabad on the basis of a promissory note dated November 27, 1953 for recovery of Rs. 70,000. We shall dispose of Civil Appeal No. 1138 of 1966 first. The Hyderabad State Bank had filed a suit in July 1956 against the joint family E business known as Mukund Das Raja Bhagwandas & Sons and the four sons of Raja Bhagwan Das who had died, the sons having been impleaded as defendants 2 to 5. There was a sixth defendant also Srikishen Sookhdev Malani. According to the claim of the Bank defendants 2 to 5 were members of a joint undivided family, defendant No. 2 being the Head Karta and Manager. On F February 2, 1951 defendant No. 2 in his above capacity requested the Bank to grant what is called a "clean cash credit" limit of Rs. 1,00,000 against the guarantee of defendant No. 6. Defendant No. 2 was allowed to withdraw a sum of Rs. 99,500 by three cheques from February 8, 1951 to February 12, 1951. After the confirmation of the cash credit limit by the Committee of the G Board of Directors of the Bank on February 22, 1951, defendant No. 2 executed a pronote in favour of defendant No. 6 for the sanctioned limit of Rs. 1,00,000. This pronote was endorsed in favour of the Bank and thereafter the sum of Rs. 99,500 which had been withdrawn pending the sanction of the Committee was debited to the cash credit account opened in the name of defendant No. 1 and credited to the personal account of defendant No. H 2. It was averred that defendant No. 2—Karta, Head and Manager—was drawing monies from time to time in the cash credit account of defendant No. 1. The drawing limit was

reduced subsequently to Rs. 50,000. On September 3, 1952 defendant No. 2 as Karta and Manager of joint family business of defendant No. 1 executed a fresh pronote for the reduced limit of Rs. 50,000 in favour of defendant No. 6 which was endorsed by him in favour of the Bank. Defendant No. 6 also executed a fresh letter of guarantee. On December 28, 1953 there was a balance of Rs. 36,201-9-8 in the cash credit account of defendant No. 1 and as collateral security for the same defendant No. 2 executed a fresh pronote in favour of defendant No. 1 the guarantor for Rs. 35,000 which was endorsed in favour of the Bank. Defendant No. 6 further executed a fresh letter of guarantee in favour of the Bank. Defendant No. 2 had confirmed the amount due under the cash credit account in his letter dated July 7, 1954. On account of this cash credit account a sum of Rs. 40,869-1-10 was due from defendants 1 to 5 as principal debtors and defendant No. 6 as guarantor together with interest. Defendant No. 2 filed a written statement taking up various pleas contesting the claim of the Bank but no objection was raised on the basis of the provisions of the Hyderabad Jagirdar Settlement Act 1952 which was published in the Official Gazette on March 18, 1952, hereinafter called the "Act". Defendants 3 to 5 and defendant No. 6 also filed their written statements contesting the claim but no plea was raised on the basis of the provisions of the Act. As many as 10 issues were framed by the learned Fourth Additional Judge, City Civil Court, Hyderabad.

The suit was decreed by the trial court personally against the 2nd and the 6th defendant and against joint family assets of defendants 2 to 5. In view of the fact that the 6th defendant did not raise any serious contest to the claim it was directed that the plaintiff could proceed in the first instance against the joint family assets of defendants 2 to 5 and person of the second defendant and if the entire sum was not realized then it could levy execution against the sixth defendant. Future interest was awarded at the rate of 5½% per annum. No appeal was filed against the aforesaid decree. In December 1959 the Bank filed an execution petition in the court of the Fourth Additional Judge. On March 10, 1960 the learned judge passed an order transferring the execution petition to the Jagirdar Debt Settlement Board under s. 25(1) of the Act. The Bank challenged the order of transfer before the High Court on the revisional side. The learned single judge, who heard the revision petition, referred three questions of law for consideration by a larger bench. The questions referred were as follows :—

> "1. Whether on a true construction of s. 25(1) of the Act, it has application to suits, appeals and applications for execution and proceedings other than revisional in respect of debts not existing on or

A before the notified date under section 11 of the Act, pending in any civil or revenue court involving the questions as set out in that section ?

2. Whether in execution proceedings relating to decrees obtained in suits filed after the notified date, the Court could go behind the decrees passed and
B trace the history of the transactions which resulted in the liability under the decree ?

3. If the answer to question (1) is in the affirmative, whether section 25(1) of the Act has to be struck down as violating Articles 14 and 19(1)(f) of the Constitution ?"

C

The first question was answered by the Full Bench in the negative. The second question has also similarly answered and it was held that the executing court was not competent to reopen the case by tracing the history of the transaction which resulted in the liability
D under the decree. Question No. 3 was not answered. In accordance with the opinion of the Full Bench and on a further consideration of the facts the learned single judge disposed of the revision petition holding that s. 25(1) of the Act was not applicable and the order of transfer was liable to be set aside. The executing
E court was directed to proceed and deal with the execution application in accordance with law.

It is necessary to notice the historical background and the relevant provisions of the Act in order to decide the questions which fall for determination. By the Hyderabad (Abolition of Jagirs) Regulation passed on August 15, 1949 the jagirs were abolished. The jagirdars were declared entitled to a share in the jagir net in-
F come which was inalienable except with the previous senction of the Government. On January 25, 1950, another Regulation called the Hyderabad Jagir (Commutation) Regulation 1359F was enacted. It provided, *inter alia,* for the method of calculating the commutation in respect of jagirs. As pointed out by the High Court the enactment of the Regulation affected the jagirdars in a large measure. Their former resources were not available to them
G to pay their debts. The creditors were also faced with a difficult situation which affected their prospects of recovering the loans fully. It was in this background that the Act was passed. Its provisions were mainly borrowed from the Bombay Agricultural Debtors Relief Act 1947. Debt was defined by s. 2(e) to mean any liability in cash or kind whether secured or unsecured due
H from a jagirdar whether payable under a decree or order of a civil court or otherwise. Section 3 provided exceptions in cases of five categories of debts which were not liable to be scaled down. One of those was the debt due to a scheduled bank.

Chapter II containing ss. 4 to 10 dealt with the constitution and powers of the Board for the settlement of debts. Section 11 provided that any jagirdar or his creditor could make an application to the Board on or before such date as the Government might notify for settlement of debts due by a jagirdar. Under s. 12 notwithstanding the fact that no application had been filed under s. 11 every creditor on being required to do so by any of his debtors had to file a correct statement before the Board of his claims against such a debtor and similarly every debtor on being so required by any of his creditors had to file a correct statement. According to s. 15 if any debtor and any or all of his creditors arrived at a settlement in respect of any debt due by the debtor to the creditor the debtor or any of the creditors could make an application and the Board could proceed to record that settlement in accordance with the procedure prescribed by the section. Under s. 22 all debts in respect of which no application for adjustment or settlement was made in accordance with the provisions of the Act were to stand extinguished. Under s. 24 on the date fixed for a hearing of an application made under s. 11 the Board was to decide as preliminary issues whether a person for the settlement of whose debt an application had been made was a debtor and whether the total amount of debts due from such person on the date of the application exceeded the sum of Rs. 5,000. If the Board found that such a person was not a debtor or that the amount was less than Rs. 5,000 the application was to be dismissed. Section 25 provided for transfer of pending suits, appeals, applications and proceedings to the Board. This section may be reproduced *in extenso* :—

S.25 "(1) All suits, appeals, applications for execution and proceedings other than revisional in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts from him on the date of the application is less than Rs. 5,000 be transferred to the Board.

(2) When an application for adjustment of debts made to a Board under section 11 or a statement submitted to a Board under section 21 includes a debt in respect of which a suit, appeal, application for execution or proceeding other than revisional is pending before a civil or revenue court, the Board shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, appeal, appli-

A cation or proceeding, as the case may be, to the Board.

(3) When any suit, appeal, application or proceeding is transferred to the Board under sub-s. (1) or sub-s. (2), the Board shall proceed as if an B application under section 11 had been made to it.

(4) If the Board, to which any suit, appeal, application or proceeding is transferred under sub-s. (1) or subsection (2), decides the preliminary issues mentioned in clause (a) of sub-section C (1) of section 24 in the negative or mentioned in clause (b) of the said sub-section (1) in the negative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal D where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(5) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (4) the said court shall proceed with the E same."

Section 28 dealt with the mode of taking accounts and s. 35 provided for the scaling down of the debts payable by debtors in accordance with their paying capacity in the manner indicated therein. An award was to be made according to s. 36 and fur- F ther scaling down of debts could be done under s. 37. In terms of s. 11 the Government notified June 30, 1953 as the last day for settlement of debts due by jagirdars. The Full Bench of the High Court quite rightly observed that s. 11 was the basic provision enabling the creditor or the debtor to move the Board under the Act for settlement of debts. The Act also recognised G other modes which would be tantamount to the making of such an application to the Board so as to confer jurisdiction on it to settle debts in accordance with the procedure prescribed by the Act. Section 25 embodied one of these modes. If a suit or appeal or execution proceeding etc. was pending in relation to such debt in any court it had to be transferred to the Board. The H Board would proceed to deal with it as though an application under s. 11 had been made. The suit or other proceedings had to relate to a debt in respect of which an application under s. 11 could have been made to the Board. It was also necessary that

the proceedings should be pending in the court on the date notified. This would follow from the provisions of s. 11. There could be no difficulty about proceedings which were taken in a court subsequent to an application made to the Board under s. 11. That proceeding had necessarily to be transferred on the notice given by the Board. The point which was canvassed before the Full Bench of the High Court was that the expression "pending" occurring in s. 25 was of wider amplitude and covered all cases of debts whether incurred before or subsequent to the notified date. The High Court, after an exhaustive discussion of the various provisions of the Act, came to the conclusion that there were clear indications in them that the debts to be determined and scaled down by the Board were only such debts as were existing on the date of the application provided for by s. 11. This is what was finally observed :

> "Thus the entire scheme of the Act makes it abundantly clear that matters concerned with the debts prior to the date of application alone (which date of course cannot extend beyond the notified date under section 11) are within the cognisance and competence of the Board. It follows that only cases relating to such debts and no other debts are liable to be transferred to it under s. 25(1)."

In our judgment the High Court came to the correct conclusion that the expression "pending" in s. 25(1) must relate to proceedings which were pending on the notified date and could not take in any proceedings which came to be instituted after such date. The other condition for the applicability of s. 25 was that the suit or other proceedings must be in respect of a debt with regard to which a jagirdar or the creditor could make an application to the Board on or before the date which the Government had notified for settlement of debts due by the jagirdar. A close examination of s. 22 puts the matter beyond controversy. If no application had been made under s. 11 within the period specified therein or for recording a settlement made under s. 15 every debt due by the debtor was to stand extinguished. In a case of the present kind a debt would have stood extinguished if no application had been made under s. 11 within the specified period. Thus the material date would be the one notified by the Government under s. 11 and only those debts which were due on or before that date from a debtor or in respect of which any proceedings were pending in a court or before the Board could be the subject matter of settlement by the Board. It may be mentioned that in *Babibai Thakurji* v. *Fazludin Usmanbai*(1) a similar provision of

(1) I.L.R. [1954] Bom. 535.

A the Bombay Agricultural Debtors' Relief Act on which the provisions of the Act were modelled came up for consideration and it was said with reference to s. 19(1) of that Act that only those suits were liable to be transferred which were pending on the date when an application for adjustment of debts could have been made under s. 4 (which corresponded to s. 11 of the Act). In other
B words, if a suit was filed after the time to make an application for adjustment of debts had expired such a suit was not liable to be transferred. Since both the conditions for the applicability of s. 25 of the Act were not satisfied in the present case the decision of the High Court must be upheld and the appeal (C.A. 1138/66) dismissed. In order to avoid further proceedings which will entail needless expense learned counsel for the parties have agreed that
C the judgment-debtors will pay the decretal amount in four equal annual instalments. The first instalment which will represent ¼th of the decretal amount shall be deposited in the executing court on or before the first January 1971. The subsequent instalments each year shall be similarly deposited on or before first January. In case of failure on the part of the judgment-debtors to make the
D deposit of any one of the instalments in time the entire amount due shall become recoverable at once. As and when the said deposit is made the decree-holder will be entitled to withdraw the same. An order is directed to be made in terms of this settlement between the parties.

E Civil Appeals Nos. 1139 & 1140/66 arise out of the decree in C.C.C.A. Nos. 63 & 66 of 1959 dated February 1, 1963 in O.S. No. 37 of 1958. So far as the appeal against the Bank is concerned there is no merit in it because it has been proved and that finding could not be successfully assailed before us that the debt in question was a post notification debt. In other words it came into existence after June 30, 1953 which was the date noti-
F fied by the Government as the last date for settlement of debts due by jagirdars by an application made under s. 11 of the Act. In view of our decision in the connected appeal (C.A. 1138/66) s. 25(1) of the Act was not applicable to the suit filed for the recovery of such a debt. Civil Appeal No. 1139 of 1966, therefore, has no merit and is hereby dismissed.

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Civil Appeal No. 1140 of 1966 which has been preferred by the Bank involves a very short point. According to the decree of the High Court the plaintiff, namely, the Bank was to proceed and execute the decree against the second defendant in the first instance and was to proceed against the first defendant only after-
H wards for such balance amount which could not be realized from the second defendant. It is not disputed that the liability of the first and the second defendant was joint and several and the decree of the High Court proceeded on the basis of some equitable relief

which was sought for and granted to the first defendant. We are unable to hold and no such principle or statutory provision has been pointed out to us that any such equitable relief could be granted in a suit of the nature filed by the Bank against the two defendants. We would, accordingly, allow this appeal to the extent of deleting clause (2) of the decree and adding in clause (1) the following words :

> Both the defendants shall be jointly and severally liable for the payment of the decretal amount.

In view of the entire circumstances the parties in all the appeals are left to bear their own costs in this Court.

V.P.S.