ANDHRA PRADESH HIGH COURT

State Bank of Hyderabad

Vs

Joint Family of Mukundas Raja

(P C Reddy, C.J Kumarayya and S Ahmed, JJ.)

08.02.1963

JUDGMENT

(Kumarayya, J.)

1.The questions referred to this Full Bench for opinion are --

1. Whether, on a true construction of Section 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 before the notified date under Section 11 of the Act pending in any civil or revenue Court involving questions set out in that Section?

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

3. If the answer to question No. 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?

The Act mentioned in question No. 1 is the Hyderabad Jagirdars Debt Settlement Act (XII of 1952).

2. The above questions have arisen in a civil revision petition preferred against the order of the Fourth Judge, City Civil Court, directing the execution petition pending before him to be transferred to the Board constituted under Act XII of 1952 for settlement of debts.

3. The facts of the case may be briefly stated. An action for recovery of Rs. 40,869-1-10 was laid by the State Bank of Hyderabad, admittedly a scheduled bank, on 31-7-1956 on the basis of A cash credit account against defendants 1 to 5 as principal debtors, and defendant No. 6 as a guarantor. Defendant No. 1 is a joint family firm carrying on business in the name and style of Mukundas Raja Bhagwandas and Sons and defendants 2 to 5 who constitute the joint family are

brothers, defendant No. 2 being the karta. The cash credit account in question was opened in the month of February, 1951. The dealings were in progress when on 18-3-1952, the Jagirdars Debt Settlement Act came into force. Thereafter, there were further borrowings and payments. The balance was struck on 29-6-1956. A notice dated 5-7-1956 was thereafter issued to the defendants and the suit was brought on 31-7-1956. By that time, the last date fixed for making an application under Section 11 of Act XII of 1952 for settlement of debts of Jagirdar-debtors under the said Act had already expired.

4. The suit was hotly contested. AH the defendants denied the claim of the plaintiff. Defendants 2 to 5 raised a plea that they are Jagirdar debtors within the meaning of Act XII o 1952 and the Civil Court had no jurisdiction to try the suit against them. This plea does not appear to have been seriously pressed and no issue was framed in that behalf. The trial Court eventually decreed the suit against the defendants on 25-7-1959.

5. The decree was then sought to be put into execution by an application (E. P. No. 1976) made on 27-12-1959. The judgment debtors thereUpon applied for a transfer of the execution proceedings to the Jagirdars Debt Settlement Board under Section 35 (1) of the Act on the ground that they are Jagirdar-debtors. Their application was resisted on various grounds: Firstly, that the Board had no jurisdiction, at any rate, to deal with the debts which came into existence after 30-6-1953; secondly, that even otherwise, the plaintiff being a scheduled bank, debts due to it cannot be affected save as provided in Section 30 (5) which provision is attracted only when there is a failure to submit statement after a notice, on receipt of application for settlement of debts, is given by the Board; Thirdly, that the plea of jurisdiction not being pressed in the suit proceedings the defendants are precluded from taking the same in the execution proceedings. A further plea raised in the revision petition is that if on a true construction, Section 25 (1) of the Act is applicable to the debts contracted subsequent to the notified date referred to in Section 11 of the Act, that provision being violative of Articles 14 and 19 (1) (f) of the Indian Constitution is liable to be struck off.

6. When the matter came up before our learned brother Narasimham, J., he found some difficulty and in view of their importance referred the above questions to the Division Bench and they are now before us for opinion. The learned Judge in his order of reference has referred to certain decisions of this Court and also of the Bombay High Court based on the provisions of an enactment in part materia with the Act in question. The matter has been fully argued before us by the learned Counsel appearing on either side and also by the learned Advocate General who has rendered us valuable assistance as amicus curiae for which we are thankful.

7. In order to appreciate the arguments, it is necessary to look at the historical back-ground and the scheme of Act XII of 1952. The Hyderabad Jagirdars Debt Settlement Act of 1952 as its

preamble shows was intended to make provision for the settlement of the debts of the Jagirdars. The impelling necessity or the expediency for such an ameliorative measure can better be appreciated by the then prevailing conditions. It may be remembered that by that time two important Regulations of far-reaching consequence on Jagir tenures had come on the statute hook. Under the first Regulation, to wit, The Hyderabad (Abolition of Jagirs) Regulation passed on 15-8-1949 by the Military Governor in exercise of the authority conferred on him by the Firman of H. E. H. the Nizam, the ancient jagirdari system, a relic of old feudalism which perhaps had out-lived its purpose, found its sudden end. The jagirs were abolished. They were transferred for administration to the Government and were directed to be included in the Diwani. No person could he appointed or recognised as a jagirdar after the commencement of the Regulation whether in succession to a deceased jagirdar or otherwise. The powers, rights and liabilities of the Jagirdars in relation to their jagirs ceased to be esercisable by them. They could no longer recover or receive any customary or other dues or arrears from any tenant or other resident of the Jagir. They were however, declared entitled to a share in the jagir net income which in their hands was inalienable save with the previous sanction of the Government and could be attached nly to the extent of half in execution of the decrees. Under Section 14, these amounts were deemed to be interim maintenance allowances payable until such time as the terms of the commutation of jagirs were determined.This Regulation was soon followed on January 25, 1950, by another Regulation called the Hyderabad Jagirs (Commutation) Regulation, 1359 F. which determined the method of calculating the commutation, providing that the commutation for every jagir should be the sum resulting from the multiplication of the basic annual revenue of the. jagir calculated in accordance with Section 4 by the figure specified in the appropriate entry in the second column of the table annexed to Section 3. This Regulation also contained provisions as to inalienability of these amounts and non-attach ability of the same, in execution proceedings to the extent of more than half. The effect of these two-Regulations was that the Jagirdars had to rest content with the commutation amounts which were assessed on the basic annual revenues after being multiplied by progressively decreasing figures. These amounts bore no favourable proportion to the amounts realised by them previously. The Jagirdars could further set up no claim to their past arrears of the jagir revenues nor could they have remotest concern with the administration of the jagirs. The result was that not only their straitened resources greatly undermined their paying capacity but also their social status and prestige suffered a serious set back. Not that the jagir tenure in their hands was ever hereditary in any sense of the term, for they were Crown grants only for lifetime subject to good behavior and could be resumed at will by the Nizam at any time.On the death of the jagirdar, the grant would automatically revert to the grantor. A fresh grant depended entirely on the pleasure of the sovereign. No one therefore had in theory a vested right in the jagir. But, in practice, the jagir used to he invariably granted to the legal heirs of the previous jagirdar with the result that the

Jagirdars, hissedars and maintenance-holders could ordinarily rest assured of a stable income from the jagirs. As a matter of fact, they used to contract debts and incur liabilities in expectation of such gains being continued with the intention of meeting them from jagir income; but the advent of the Regulations, all of a sudden upset their calculations. Their former resources are no longer available to them as the merger of their tenures immensely affected 'their financial position. The creditors also were now faced with a difficult situation. No doubt, even before, they could not proceed against the jagirs as the jagirs were inalienable nor could they attach the incomes from the jagirs except with the permission of the Inam department and thus they were left with the only, remedy of attaching the personal property or the jagir income after it is realised or invested. But they could nevertheless confidently look to the restores and paying capacity of the Jagirdars which suffered enormously on account of the Regulations.Thus, not only the Jagirdars found that their resources were inadequate to meet their monetary liabilities and adjust themselves to the changed ircumstances but also the creditors were faced with a situation which had reduced to a considerable extent their prospect of recovering the loans fully. The situation was grave for the debtors. The chances of the creditors of recovering their debts were also gloomy. So, then, having regard to the grave situation in which both the debtors and creditors were placed, the Government thought it necessary or expedient to grant such relief as may be just and beneficial in the existing circumstances. With that idea in view, the Jagirdars Debt Settlement Act (XII of 1952) modelled substantially on the basis of the Bombay Agricultural Debtors Relief Act (XXVIII of 1947) was passed.

8.On a perusal of the various provisions of this enactment, it is manifest that the scheme of the Act is to afford relief to such Jagirdars as have run into huge debts by scaling down their debts commensurate with their paying capacity so that it may be possible for them to liquidate the same in easy instalments. Jagirdars within the meaning of this Act include Guzarayabs and hissedars as defined in Section 2 of the Hyderabad (Abolition of Jagirs) Regulation, 1358 F. and the debt is any liability in cash or kind, whether secured or unsecured due from a jagirdar, whether payable under a decree or order of any Civil Court or otherwise. The provisions of the Act, it may be remembered, do not enure for the benefit of the Jagirdars whose total indebtedness is less than Rs. 5,000/-. Further, it is not all the debts which are liable to be scaled down for Section 3 provides a saving clause for five categories of debts. But that is not to say that these special debts are not to be mentioned in the petition for settlement nor have they to be considered in determining the paying capacity.As a matter of fact, Sub-clause (3) of Section 11 requires that these must necessarily be mentioned in an application for settlement to the Board and the Board in consequence thereof has to give notice to those creditors under Section 30 to submit a statement showing the total amount of the debts due and also any remission to which they may be agreeable, and if they do not respond, drastic sanction of extinction has been provided in case of debts other than those due to the Government, by Sub-clause (5) of Section 30. The purpose of

mentioning such debts in the application and also requiring statement from the special creditors is only to ascertain the total extent of indebtedness of the jagirdar for purposes of jurisdiction and also their paying capacity in order to scale down other debts, for under Section 33 (3), such debts shall have to be deducted in assessing the paying capacity of the debtor. A speedy and effective settlement of debts being its object, the Act provides for a special judicial machinery in the shape of a Board or Boards to ensure that all the creditors of a debtor are brought before one tribunal and his debt is adjusted ultimately in a proceeding which should be a consolidated proceeding. There is provision for appeals and revision.The Board constituted is subject. only to he control of the High Court. It is vested with full plenary powers under Section 6 to decide all questions whether involving matters of law or fact, title or priority or of any nature whatsoever in any case within its cognizance so that complete settlement of debts may be effected. Chapter III lays down the procedure for taking cognizance and settling, the debts. Section 11 is the basic provision for. enabling the suitors, both creditors and debtors to-move the Board for the settlement of their debts-by making an application on or before the notified'., date. The last date notified in the Jarida in this. case is 30-6-1953. The Board takes cognizance; of debts for settlements ordinarily on such applications. But, there are other ways also which are-equated to making an application in this manner: to give jurisdiction to this Board. The two sections which are material in this behalf are Sections 15 and 25. Section 15 deals with cases where -private settlement has been effected and Section 25, relates to transfer of suits pending before Courts. In case of private settlement under Section 15, any. of the parties has to make an application to the Board for recording settlement within 30 days from-the date of such settlement. The Board then after being satisfied that the settlement is in the -interests of the debtor and is voluntary and bona, fide shall make an award in terms of the settlement. If the/ settlement does not cover the debts-due to all his creditors, that application would be treated as an application for settlement of debts under Section n and the Board shall proceed to determine and settle the debts in the manner prescribed. It is significant that unless the settlement is certified in accordance with the procedure laid down in Section 15, it shall not be recognized at all by any Court or Tribunal for any purpose-whatsoever having regard to the mandatory provisions of Section 17. Section 18 makes it clear that-no application, whether under Section 11 or Section 15 shall he entertain able unless the total amount of debts due on the date of the application is not less than Rs. 5,000/- Section 25 relates-to pending suits or appeals or such proceedings in-execution which will be transferred on or without-notice by the Board and under Sub-clause (3) the suits or proceedings thus transferred shall be treated as though there was an application under Section n. These are the various modes in which the Board is seized of the matter for settlement: of debts.

9. It is clear therefore that except in case of private settlements which are to be certified under Section 15 and an award should follow, in all) other cases, the jurisdiction of the Board to settle debts entirely depends upon a formal application -under Section n or such other application or

proceeding or transfer of proceeding which the law-says is to be treated as if it were an application-under Section 11. When such an application is before the Board, it shall proceed to settle the-debt. Notices are ordered to be issued to the respective parties under Section 21. The enquiry into debts then begins. Preliminary issues are settled-under Section 24, accounts are taken under Sections 28 and 29; parties are examined under Section 27 and the amount due and the paying capacity of the debtor is determined, the debts are-scaled down and the whole proceedings culminate-in an award under Section 36 which is to be executed and registered under Section 42. The-Act provides for certain safeguards for, creditors as well by making provision against collusion, fraud etc. It is significant to note that failure to make an application under Section 11 or to file a statement under Section 21 entails the drastic sanction of extinction of debt itself under the mandatory provisions, of Section 22. But the debts in Section 3 for which provision of notice is made under Section. 30, is not however within the mis-chief of this provision. These are broadly the relevant important provisions showing the scheme of the Act.

10. We may now proceed to consider the questions referred for our opinion. The first question relates to the construction to be placed on Section 25 (i) of the Act. The question proceeds on the assumption that the debts which are the subject-matter of execution proceeding are the debts which were not in existence on the notified date i.e., 30-6-1953. The correctness of this assumption no doubt has been challenged by Mr. R. V. Ramarao, but since the whole case is not referred to us, that argument should not detain us. The question as framed has to be answered in the light of the language of the section and the scheme of the Act. It may be useful to extract the entire Section 25'together with Section n to which reference has been made in the question posed:

"Section 25 (1). All suits, appeals, applications for execution and proceedings other than revisional in respect of any debt ending 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 debt duo 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 in- cludes 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, application or proceeding, as the case may be to the Board.

3. When any suit, appeal, application or pro-ceeding is transferred to the Board under Sub-section (i) or Sub-section (2), the Board shall proceed as if an application under Section n had been made to it.

4. If the Board to which any suit, appeal, application or proceeding is transferred under Sub-section (i) or Sub-section (2), decides the preliminary issue mentioned in Clause (a) of Sub-section (1) of Section 24 in the negative or that 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 " has been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period provided for an appeal where no appeal is filed.

5. When any suit, appeal, application or proceeding is re-transferred to the Court under Sub-section (4), the said Court shall proceed with the same.

Section 11 (1). Any Jagirdar ordinarily residing in any part of the State of Hyderabad or his creditor may make 'an application to a Board of competent jurisdiction on or before such date, as the Government may notify in the Jarida fur settlement of debta due by the Jagirdar.
(2) Every application under Sub-section (1) shall be in writing in the. prescribed form and shall be signed, verified and presented in the prescribed manner.

(3) Notwithstanding anything contained in Section 3 an application made under this Section shall contain also the amounts and particulars of all debts specified in that section due by the debtor."
As already noticed, Section n is a basic provision enabling the creditors or debtors to move the Board for settlement of debts. That is how the .Board takes cognizance of the matter under the provisions of the Act. The party has to make a formal application (as prescribed) under that section before the notified date, or else, the Board shall not entertain such an application. Of course, as already noticed, the Act recognises other modes as tantamount to making such an application to the Board within time so as to give jurisdiction to it to settle debts in accordance with the procedure laid down in the Act. Section 25 contemplates one such method. According to it, if a suit or appeal or execution proceeding or any proceeding other than revision, in relation to such debt, is pending before any Court, that Court shall transfer the proceeding to the Board and on such transfer, the Board shall proceed as though an application under Section 11 has been made to itAs observed by the Full Bench of this Court in *Triambaklal v. Veeranna*[1], by this provision, the position of the parties in pending legal proceedings has been equated to those who make a direct application under Section 11. But to come thus constructively within the ambit of Section 11 it is how ever necessary that the suit or other proceeding must relate to a debt in respect of which an application under Section 11 could be made to the Board. It is also necessary that it should be before the Court on the notified date, for Section n contemplates an application before the notified' date. O course, if an application has been made to the Board under Section 11

subsequent filing of a suit or initiation of other proceedings in any Court will not affect the situation and such proceedings shall be transferred on the notice given by the Board. That in short seems to be the clear intendment of Section 25. But it is argued that the expression "pending" occurring in Section 25 is of wider amplitude and covers all cases of debt whether incurred before or subsequent to the notified date. It may be seen that this expression is used in both sub-clauses (i) and (2) of Section 25. But whereas Sub-clause (2) makes a specific inference to an-, application under Section u or a statement under Section 21 and the notice in consequence thereof by the Board, Section 25 (i) makes no such mention. The appointed province of these sub-clauses is therefore obvious: while Section 25 (2) is in- I tended for such cases as are to be transferred 'on I the requisition of the Board when an application under Section 11 is made or a statement tinder Section 21 is filed before it, Section 25 (1) covers other cases where no application under Section n has been made to the Board within the notified period, but the cases or proceedings relating to such debt have been 'pending before the ordinary Court, whether Civil or Revenue.

Section 25 (1) in its ultimate analysis is indeed intended to serve a two-fold purpose; Firstly, to protect such debts from the statutory consequence of extinguishment because of failure to make a formal application to the Board before the notified date; secondly, to advance the general scheme of the Act that all the creditors of a debtor whose debts are to be settled or scaled down should be brought before the Board and should be settled in one consolidated proceeding. To attract this provision, therefore, it is essential that the debts should be such as can be dealt with by the Board under the provisions of the Act. Otherwise, the transfer would be of no avail. The requirement of an application under Section 11 to be necessarily made with due details of the debts before the notified date to the Board for taking cognizance of the matter, necessarily implies that debts subsequent to that date are not within the competence, of the Board to be settled or scaled down. Such limitation is consistent with the policy of an emergency measure which has for its object affording relief to the jagirdar-debtors to enable them to tide over the sudden and unexpected situation created by the advent of the Regulations and to Adjust themselves to the changed circumstances. , Such a relief cannot possibly be intended to be made available indefinitely or as a permanent feature lest the quandam jagirdars even in relation to debts contracted subsequently with full knowledge of their straitened resources may enjoy the relief of scaling down to the detriment of their 'Creditors.It must be remembered that in fixing the last date, care has been taken to allow a reasonable period after the abolition of jagirs within which the jagirdar debtors can be normally expected to settle down and adjust themselves to the changed circumstances. The last notified date is therefore an important date which was intended to be final. i That is why Section 10 does not vest in the Board power to entertain belated applications under Section rr by condoning delay. The various provisions of the Act are replete with clear indications that the debts to be determined and scaled down by the Board are only such debts as were existing on the

date of application under Section 11. Apart from Section" 24, Sections 26, 28 and 32 contain pointed reference to the application under Section n. Section 28 in clear terms provides that the amount due to each of the creditors as at the date of the application shall be determined. Section 35 enjoins that after debt is so determined, it shall be scaled down. Section 37 provides for further scaling down of these debts. Section 36 relates to making of an award after the debts are so scaled down. Section 38 says that the debts ' scaled down under Section 35 or further scaled down under Section 37 shall for purposes of the Act, be the amounts due "from the debtor. 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 cognizance 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 Section 25(1).

11. A further limitation placed by Section 11 is that unless the application is made before the notified date, eyen the pre-notification or pre-application debts shall not be brought within the cognizance of the Board for settlement or being scaled down.. On the other hand, under tha clear provisions of Section 22 and subject to the limitations specified therein, such debts should stand extinguished. When failure to make an application under Section 11 is bound to produce such a result which means a valuable and substantial relief for the jagirdar debtors for whose benefit the Act is mainly designed it is difficult to conclude that the effect of such a relief can be nullified by a subsequent suit or proceedings in the civil or revenue Court. If that were the intention of the enactment, there would have been clear or sufficient context for it. But we find none which may lead us to the conclusion that either that the said consequence of extinction is held in abeyance in anticipation of a future suit or other proceeding or that the subsequent institution of suit or the proceeding shall have the effect of reviving the debt which stood extinguished. The only reasonable interpretation of the expression 'pending' in Section 25(1) must therefore be that the case must have been pending on the notified date so that the position of the parties may be equaled to those 'who make a direct application to the Board under Section n and the case be transferred to the Board. It is argued and of course it is so, that on the clear language of Section 25(1) if the case involves questions relating to the status of the debtor and the extent of the total amount of debts, it has to be transferred to the Board. But that is not to say that such a transfer is inevitable even though the Board cannot take cognizance of the case for purposes of settlement of debts within the meaning of the Act. In fact these are the very questions which under Section 24 have to be tried and decided as preliminary issues for exercise of its powers for settlement of debts when the Board on receipt of an application under Section 11 proceeds in the matter. This again shows that the Board has exclusive power to deal with these questions in purported

exercise of its jurisdiction which is acquired on satisfaction of the conditions of Section 11, actually or constructively. The intention of the provision obviously is that when there are questions which can be decided by the Board set up under the Act, the ordinary Courts shall not decide those questions but transfer the case so that the Board may exercise powers conferred on it finder the Act. It follows therefore that in order to transfer a pending suit, it is necessary that the Board should be competent to deal with such questions in accordance with the Act. That is possible only when the case otherwise satisfies the requisites referred to above, to wit that it is a pre-notification debt in respect of which the proceed- ing has been pending on the notified date. That test being satisfied, the pending cases involving the said questions shall have to be transferred to the Board for exercise of its powers under the provisions of the Act. But ever then, if the Board on the preliminary issues comes to the decision in the negative, the case is re-transferred and the ordinary Court again seized of the matter has to decide it in accordance with law. That is what is laid down in Sub-clause (5) of Section 25 as well.

12. The result of the above discussion is that under Section 25 all suits, appeals, applications for execution and proceedings other than revisions before the Courts which relate to debts for which applications under Section 11 could be made to the Board and. involve the questions as to the status of the debtor and total extent of his debts are liable to be transferred if they were pending on the date notified under Section 11 which is 30-6-53. But if they were filed after that date, they are liable to be transferred only on notice by the Board by reason of an application under Section 11 or statement under Section 21. All other suits, appeals, applications for execution or other proceedings including cases relating to debts incurred subsequent to the notified date are clearly beyond the purview of Section 25 and are not liable to be transferred to the Board as the Board itself cannot deal with such suits or proceedings because of limitations placed in the Act. This view of ours accords with the view taken by the-Bombay High Court in Patel *Somabhai v. Naran-das Zaverdas*[2], and Babibai Thakuji v. Fazluddin Usmanbhai, . These decisions rest on the interpretation of the relevant provisions of the Bombay Agricultural Debtors Relief Act [Act XXVIII of 1939 and Act XXVIII of 1947) on which the Hyderabad Jagirdars Debt Settlement Act is substantially modelled. In the first mentioned case, even though the last date for filing an application for adjustment or settlement of debts was 31-10-1945, no application was made by that date before the Court under the Act. Long thereafter, on July 24, 1946 a suit was filed in the civil Court. Admittedly it was not open under the Act to the debtor or creditor to file any application then for settlement of debt in the Court under the Act and the last date for such application having expired the debt had suffered the fate of extinction. Act XXVIII of 1947 came into force replacing the previous Act i.e., Act XXVIII of 1939 after the suit was filed. Then an application for transfer to the Court under the Act was made. It was argued by the learned counsel that since the suit was 'pending" within the meaning of Section 19 (corresponding to Section 25(1) of the Hyderabad Jagirdars Debt Settlement Act) the suit ought to be transferred to

the Court under the Act. The learned Chief Justice discountenanced this argument and at p. 233 (of ILR Bom): (at p. 309 of AIR Bom) made the following observations:

> ".....The submission that is made to us and which we are asked to accept is that although the time for making the application for adjustment or settlement of debts had already expired when the salt was filed, still that suit being a pending suit within the meaning of Section 19 should be transferred to the Court set up under the Act. If we were to accede to this contention, & very curious and to my mind a very illogical result would ensue. Indisputably, if, no suit had been filed by the creditor, neither the debtor nor he nor any other creditor could have made an application for adjustment of debts under Section 4. of the Act- If such an application had been made, it would be clearly barred and could not haw been dealt with by the Court set up under the Act. According to Mr. Patel, merely because a-suit is filed, the pendency of that suit gives a higher and a better right to the debtor than would have been enjoyed by him if; no such suit had been filed. That to my mind is an entirely untenable contention and a contention which does not fit in with the general scheme of the Act. Under the Act applications were only permitted upto a. certain date and the Act lays down the consequences of not making those applications and those-consequences are, that the debts become void. It is also the scheme of the Act that where there-are questions which, can be decided by the Courts-set up under the Act, the ordinary civil Courts-should not decide those questions and therefore pending suits should be transferred and the special Courts should be left to decide those questions. But it could not possibly have been intended, and! it is not intended as far as I can see, that suits-should be transferred although the questions raised^ by those suits can, no longer be dealt with or disposed of by the special Courts set up under the-Act. The object of transferring the suit is to-permit some other special Court to try it and dispose of it. But if that other Court cannot deal with the suit because of the limitations laid down-in the Act itself, then it cannot be said that the Legislature intended the suits to be transferred" from the ordinary civil Courts to the special Courts set up under the Act."

Again at p. 234 (of ILR Bom): (at p. 310 of AIR Bom) the learned Chief Justice expressed himself thus:

> ".....Under Section 19(1) only such suits, appeals, applications for execution-and proceedings can be transferred which were pending at the date when an application under Section 4, could be made to the special Court set up under the Act."

A similar point was raised in ILK (1954) Bom 535: (AIR 1954 Born 282) and ChagTa, C. J., who spoke-for the Court expressed himself at p. 541 (of ILR Bom): (at p. 284 of AIR Bom) thus:

"Section 19 (1) has been construed fairly often by this Court and what we have laid down-, is that only those suits are liable to be transferred1 which were pending at the date when an application for adjustment of debts could' have been made-under Section 4 (corresponding to Section 11). In other words, if a suit was filed' after the time to-make an application for adjustment of debts had' expired such a suit would not be liable to transfer."

13. We are then referred to the decisions of this Court wherein it is argued, a different view was taken. The question relating to Section 25(1)" which the Full Bench in ILR (1958) Andh Pra 335 at p. 340: (AIR 1958 Andh Pra 361- at p. 363 was called upon to answer did not cover the point as raised in the instant case. It was a case relating to a debt incurred long before the Act and the proceedings were pending at the time of the advent of the Act and. ever since. The point that fell for consideration was whether the pendency of these proceedings was tantamount to an application under Section 11 so as to protect the debts from statutory extinguishment under the operation of Section 22(1). It was observed:".Section 22(1) should be read in conjunction with Section 25 (3) and construed as referring not only to actual and overt act of filing a petition under Section 11 but to the virtual and constructive act implied in resorting to the civil and revenue Courts for the recovery of the debt." There is nothing in this observation which spells out any inconsistency with the view taken by us.

14. The next case cited is an unreported decision of the Division Bench in Jaikishan (deceased) by legal representative Ramakishan v. Syed Ahmad Yar Khan, (Unreported decision of this Court in C. R. P. No. 234/4 of 1955. D/- 7-4-1959 (Andh Pra)). That case related to two debts: one incurred prior to the notified date and the other subsequent thereto. The question arose whether a suit or appeal which was not pending on the date when the Act came into force was liable to be transferred under Section 25(1). The Division Bench held that the proceeding could nevertheless be transferred as the suit was filed when the Act was admittedly in force. The question in the present form did not arise there for consideration before the learned Judges. Nor did the expression 'pending' occurring in Section 25 came up for interpretation having regard to the language of the provision and scheme of the Act. The judgment does not contain any discussion in this behalf.The next case is *Suraj Karan v. Kazim All Mirza*[3], but that decision does not bear on the question with which we are concerned and therefore need not be gone into for the purpose o this case. Then there is Abdul Karirn Bahu Khan v. Mohamad Ali, Unreported decision in Appeal No. 17/2/1956, D/- 27-7-1961 (Andh Pra) decided by a Division Bench of this Court. That case related to a decree which was obtained as early as on 30-4-1950 and was put into execution on 21-6-1951. The first E.P. was dismissed for default on 31-1-1953. The second E.P. was filed on 25-6-1954. In between this period, the time for making an application to

the Board had expired on 30-6-1953. The debt within the meaning of the Act includes the decretal debt. The question therefore arose whether the debt was extinguished for not making an application under Section IT. It was held that no application was necessary either by the debtor or by the creditor when the debts due were in a pending proceeding in a civil Court and that the word 'pending' in Section 25(1) is not co-related with the date on which the enactment came into force. In other words, the snit, appeal, execution petition or other proceeding need not be pending on the date of the coming into force of the Act but that it should be pending before the Court on the date when the question of the debt being a debt under the Act is raised before it. It would appear from the tenor of the judgment that the controversy there centred round the question whether the legislature intended to confine the provisions of Section 25 to cases which are pending on the date of the promulgation of the Act. That indeed is not the question in the instant case. There are no doubt further observations in the judgment bearing on the expression 'pending' used in the Act. It may be noticed that the learned Judges observed that since the decree already obtained was a subsisting debt with respect to which E. Ps. could be filed from time to time provided they are within limitation and if on such petition being filed the judgment-debtor raises the question of the debt being one within the meaning of Section 2(e) of the Act, the matter should be transferred to the Board as it would be a pending E.P. within the meaning of Section 25. They observed also that the.-e may be no suit pending on the date when the Act came into force but it may be pending on the date when a question is raised in relation to the debt; and in this view, they followed the decision of a Division Bench of the erstwhile Hyderabad High Court in Appeal No. 20/1 of 1953-54. We need not express our view in this behalf. Suffice it to say that the question as presented before us did not come up for consideration before the learned Judges. Nor were the decisions of the Bombay High Court to -which reference his been made above were cited or the matter was discussed on that basis or from that point of view before the learned Judges.The next case is *Hanumantha Rao v. Dwarikadas Mukundas*[4], decided by the same Judges. This decision also in fact does not bear upon the question with which we are concerned. It is unnecessary to deal with the other cases, whether decided by a single Judge or Division Bench. So far as we see, the question in the present form did not present itself in any of the cases nor was the view taken by the Bombay High Court which is based upon an enactment which is in pan materia with the Act in question considered in any of the decisions of this Court. Having regard to the view that we have expressed above, on the true construction of Section 25(1), its tenor, purport and the scheme of the Act, question No. 1 must be answered in the negative. We answer it accordingly.

15. That being the case, question No. 3 need not be answered nor the decision in Joint Family Firm of *Jamnalal Ramlal Kimtee v. Kishendas and The State of Hyderabad*[5],) cited in this behalf need be considered.

16. Then there is question No. 2. This question seems to be mainly prompted by the plea ot constructive res judicata taken by the decree-holder. But the question as framed does not cover this aspect of the matter. It is therefore unnecessary to express our opinion in that behalf. We have observed while discussing the points raised under question No. 1 that suits, appeals, applications for execution and other proceedings relating to debts incurred subsequent to the notified date are not liable to be transferred. So also are the suits, appeals or other proceedings filed subsequent to the notified date eyen though they may relate to ebts for which an application under Section n could have been made but was not made and con sequently no notice had been given by the Board for transfer. Such proceedings, therefore, have to be dealt with by the ordinary Courts which will grant relief in accordance with law in respect . of all subsisting debts i.e., debts which have not suffered extinction. It may also be noted that the expression 'debts' in relation to cases where an application under Section 11 of the Jagirdars Debt Settlement Act could be made, include the amounts payable under a decree or order. . A Court executing a decree bas to execute the decree as it is and cannot go behind it unless it is a nullity. It is not competent for it to re-open the case by tracing the history of the transaction which resulted in the liability under the decree.

Question No. 2 is answered accordingly. (After the opinion of the Full Bench was received, Narasim ham, J. delivered the final judgment in accor-dance with the opinion of the Full Bench and allowed the revision by setting aside the order of transfer and directing that execution should proceed in accordance with law.)

Cases Referred.

1ILR (1958) Andh Pra 335 at P- 342 - (AIR 1058 Andh Pra 361 at p. 363)
2ILR (1949) Bom 229: (AIR 1949 Bom 308)
31961-1 Andh WR 357
41962-1 Andh WR 6
5ILR 1955 Hyd 510: ((S) AIR 1955 Hyd 194