

BOMBAY HIGH COURT

Vishwanath Mahadev Adhikari

Vs

Krishnaji Ramachandra Bodas

(M Chagla, C.J. Gajendragadkar. J.)

20.06.1949

JUDGMENT

M.C. Chagla, C.J.

1. A very short point arises for determination in these civil revision applications. Certain applications were filed for adjustment of debts under the Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1939), and from the decisions of these applications appeals were preferred as contemplated by that Act. While the appeals were pending, Act XXVIII of 1939 was repealed and Act XXVIII of 1947 was enacted, and the question that we have to consider and decide is whether the appeals should be disposed of according to the provisions of law contained in Act XXVIII of 1947 or according to the provisions of law as contained in Act XXVIII of 1939.

2. Now, the material provision which helps us to decide this question as contained in Act XXVIII of 1947 is Section 56 and in that section there are three provisos to which a reference might be made. The first proviso is: Provided that all proceedings pending before any such Board shall be continued before the Court as if an application under Section 4 of this Act had been made to the Court.

3. The second proviso is : Provided further that all appeals pending before any Court under the repealed Act shall be continued and disposed of as if they were appeals under this Act.

4. And the third proviso is : Provided, also that all appeals against decisions, orders or awards of any Board established under the repealed Act which but for this Act would have lain shall when presented be deemed to be appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly.

Now it cannot be disputed, and Mr. Chitale for the opponent has not disputed, that the first proviso gives retrospective effect to the provisions of Act XXVIII of 1947 as far as pending applications are concerned. Therefore, although an application was filed when the old Act was in

force, by virtue of the passing of the new Act the provisions of the new Act would apply to the application pending under Section 4. It is also difficult to dispute that with regard to the third proviso, in cases where appeals have not been preferred, the proviso lays down that appeals shall be presented as if they were appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly, and therefore this proviso also gives retrospective effect to the provisions of this Act with regard to those appeals which have not yet been preferred because the appeals are to be deemed to have been from decisions passed by a Court under the new Act and therefore a Court under the new Act would necessarily apply the new law as enacted by Act XXVIII of 1947. But, says Mr. Chitale, that as far as the second proviso is concerned, appeals which were pending should be disposed of according to the old law and not according to the new law, and Mr. Chitale's contention is that the legislature has not chosen to give retrospective effect to this particular provision with regard to pending appeals. Mr. Chitale says that the second proviso only deals with the procedural aspect of appeals and not with regard to the substantive law that has got to be applied to appeals which were pending when the new Act was passed. Therefore, according to Mr. Chitale, if the Boards from which the appeals are preferred decide the applications correctly according to the law then obtaining, the appeal Court under the new Act could not interfere with those decisions if those decisions were not in conformity with the new law which came into force by Act XXVIII of 1947. Now, if Mr. Chitale's contention was correct, it is difficult to understand why the second proviso was enacted at all, because it is a well established cano of all procedural Legislation that it applies to all pending proceedings at the date when it comes into force. Therefore, even if this proviso did not find a place in the statute, pending appeals would be governed by the procedure laid down by the new Act at the date when the appeals came to be heard by the Court of appeal, and therefore we cannot accept Mr. Chitale's contention that the only intention of the Legislature in enacting this proviso was to lay down that procedurally the Court of appeal shall dispose of the appeal according to the procedure laid down by Act XXVIII of 1947. Further, in our opinion, the language used in the second proviso is fairly clear and explicit and makes this proviso retrospective in its effect. What the Legislature says is that the appeals shall be continued and disposed of as if they were appeals under this Act, which clearly means that all the provisions of this Act shall apply to the appeals which are pending. The appeal Court is asked to treat the appeals as if the new Act was in force and not the old Act, and in disposing of those appeals the appeal Court has to consider the substantive law as well as the procedural law brought into force by Act XXVIII of 1947. Therefore, in our opinion, the appeal Court set up by Act XXVIII of 1947 must dispose of the appeals pending before it in accordance with the provisions of law laid down in the new Act. The learned Judge below took the contrary view.

5. We would, therefore, set aside the order of the lower Court and send these appeals back to the District Court with instructions that they should be disposed of in accordance with the law

contained in Act XXVIII of 1947. No order as to costs here. Costs before the District Court costs in the appeal.

