

Darubai Vs. Shankar Narayan Petil

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Court : Mumbai

Decided On : Mar-01-1973

Reported in : AIR1974Bom215; ILR1974Bom929; 1973MhLJ728

Judge : Dharmadhikari, J.

Acts : Bombay Execution of Decrees (Temporary Postponement) Act, 1959 - Sections 3, 3(1) and 8

Appeal No. : Civil Revn. Appln. No. 331 of 1972

Appellant : Darubai

Respondent : Shankar Narayan Petil

Advocate for Def. : M.S. Deshpade, Adv.

Advocate for Pet/Ap. : B.S. Deshpande, Adv.

Judgement :

ORDER

1. This Civil Revision Application has been filed by the original plaintiff against an order dated 30-3-1972 passed by the Joint Civil Judge, Junior Division, Khamgaon, in Regular Civil Suit No. 110 of 1971 allowing the application filed by the defendant for stay of the suit under Section 3 of the Bombay Execution of Decrees (temporary Postponement) Act, 1959, therein after referred to as the Act.

2. The plaintiff filed a suit for recovery of arrears of maintenance amount and for future maintenance and claimed a decree for Rs. 2700/- as arrears of maintenance and future maintenance at the rate of Rs 75/- per month. The defendant filed an application dated 10-2-1972 under Section 3 of the Act for stay of the suit on the grounds stated in the application, According to the defendant, the present suit is a suit for money. The defendant earns his livelihood wholly by agriculture carried on within the limits of the State of Bombay and he ordinarily engages personally in agriculture within those limits, and therefore, he is an agriculturist within the meaning of the aforesaid Act. The field property of para, 2 of the said Act are made applicable to the whole of the Buldana district and the Part II of the said Act is in force in the area. Therefore, the present suit being a suit for money the same is liable to be stayed under clause (b) of sub-section (2) of Section 3 of the said Act. This application was opposed by the plaintiff, who said that the suit is for money, but this is a suit for recovery of arrears of maintenance and for future maintenance by the wife against her husband and for a charge on both counts on the property stated in Schedule II annexed to the plaint, According to the plaintiff, the provisions of Section 3 will not apply to such a suit in view of the provisions of Section 8 of the said Act.

3. After hearing the parties on these rival contentions the learned Judge held that the present suit is liable to be stayed under Section 3 (2) (b) of the Act, this being a suit for money and the defendant being an agriculturist and in view of the fact that part II of the Act has been made applicable to the district of Buldana. Against this order this revision application has been filed.

4. Shri B.S. Deshpande, who appears for the applicant-plaintiff, contended before me that this cannot be termed as a suit for money within the meaning of Section 3 (2) (b) of the Act. He relied upon the definition of the term 'maintenance' in sub-clause (b) of Section 3 (2) of the Hindu Maintenance and Adoption Act According to Shri B.S. Deshpande, the maintenance means in all cases an adequate provision for food, clothing, residence, education and medical attendance and treatment. This has nothing to do with the money as such. The amount which is claimed in the suit is only claimed in lieu of maintenance. Therefore, in substance it is a suit for maintenance and not a suit for money. This being the position, according to

him, as the provisions of Section 3 (2) of the Act are not applicable to such a suit, the order passed by the learned Judge is illegal and without jurisdiction.

5. On the other hand, Shri M.S. Deshpande, who appears for the non applicant - defendant, contended before me that the present suit is a pure and simple suit for money. The plaintiff has claimed a decree for money in the suit. She has claimed an amount of Rs. 2700/- as arrears of maintenance and had further claimed a decree in terms of money for future maintenance at the rate of Rs. 75 per month. This being the position the said suit is governed by the provisions of Section 3 (2) (b) of the Act. He further contended that the intention of the Legislature is quite clear from the provisions of Section 8 of the Act. Section 8 application of the provisions of the Act to certain decrees, including a decree for money, arising out of a claim for maintenance. Therefore, it is clear that a suit for money arising out of a claim for maintenance is also a suit for money as contemplated by Section 3 (2) (b) of the Act and as no exemption has been granted by the Legislature to such a suit, the plaintiff cannot indirectly claim the same privileges and exemption which have in terms been denied to her by the Legislature.

6. For understanding the rival contentions raised before me it is necessary to refer to the relevant provisions of the Bombay Execution of Decrees (temporary Postponement) Act. 1959. Section 3 (2) (b) of the Act reads as under:

'No suit for money and no suit for foreclosure or sale in enforcement of a mortgage, shall be instituted, or proceeded with if instituted, in any Civil Court in that area against an agriculturist so long as this Part remains in force in that area, except in cases where an agriculturist is about to dispose of the whole or any part of his immovable property.'

'8 Nothing contained in this Act. shall-

(a) prevent any decree-holder from accepting any payment under a decree or making any adjustment thereof voluntarily made by the judgment-debtor.

(b) apply to a decree for money arising out of claims relating to trust, or for maintenance out for profits in favour of a co-tenant or a co-owner, or for damages

for a tort or for contribution between cotenants of agricultural land :or

(c) apply to a mortgage decree sought to be executed by the sale of the mortgage property in the hands of a sub-sequence transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained.'

From the preamble of the Act it is quite clear that this piece of legislation has been enacted to provide for relief to agriculturists by way of temporary postponement of institution of suits in, and execution of decrees passed by, Civil Courts in areas that are for the time being affected by failure of crops, famine, fire, drought, flood or such other natural calamities. The preamble of this Act is in the following terms:.

'Whereas it is necessary to provide for relief to agriculturists by way of temporary postponement of institution of suit in, and execution of decrees passed by Civil Courts in areas that are for the time being affected by failure of crops, famine, fire , draught, flood or such other natural calamities:

And whereas it is expedient that such relief should be limited within those areas, where on account of such calamities, the State Government either has granted remission or suspension of land revenue and made a declaration of scar-city or of famine conditions, or has ordered remission or suspension of collection of land revenue:

It is hereby enacted in the Tenth Year of the Republic of India as follows.' Section 3 (1) of the Act thereafter makes a provision for stay of proceedings in case of certain decrees and postponement of certain suits. The said section provides that in any area where, on account of any of the calamities referred to in sub-section (3) of Section 1, the State Government has granted remission or suspension of land revenue, and besides made a declaration of scarcity of famine conditions, all proceedings in execution of any decree for money, all proceedings for making final any preliminary decree for foreclosure in enforcement of a mortgage and all proceedings in execution of any final decree for foreclosure or sale in enforcement of mortgagee, passed by any Civil Court in that area on the basis of any liability incurred before the commencement of this Part in that area, in which the judgment-debtor or one of the judgment-debtors is one such commencement an

agriculturist, shall be stayed during the period this Part remains in force in that area. Thereafter comes sub-section (2) of Section 3 which further lays down that-

'(2) In any area to which sub-section (1) applies-

(a) no application for execution of any decree referred to in the sub-section or for making final any preliminary decree for foreclosure referred to in that sub-section, shall be entertained by any Civil Court in that area so long as this Part remains in force in that area:

(b) no suit for money and no suit for foreclosure or sale in enforcement of a mortgage, shall be instituted, or proceeded with if instituted, in any Civil court in that area against an agriculturist so long as this Part remains in force in that area, except in cases where an agriculturist is about to dispose of the whole or any part of his immovable property'.

It is not disputed before me that the area in question is covered by the provisions of Section 3 (1) of the Act. It is also not disputed before me that the defendant-non-applicant is an agriculturist within the meaning of the said term as defined in the said Act. The only contention raised by Shri B.S. Deshpande, the learned counsel for the applicant, is based upon the meaning to be assigned to the words 'suit for money' in sub-clause (b) of Section 3 (2) of the Act. According to Shri B.S. Deshpande, the present suit being a suit for maintenance in no case it can be termed to be a suit for money. He has further contended before me that it could not have been the intention of the Legislature that a suit for maintenance against the husband by the wife should also not be allowed to be instituted or if instituted should not be allowed to proceed, because that will run counter to the legal and moral obligation of the husband to maintain his wife and the right of the wife to ask for maintenance from her husband. The wife cannot be kept in lurch for such period if she is not provided for by her husband.

7. It is not possible for me to accept these contentions of Shri B. S. Deshpande. The term 'suit for money' has not been defined in the Act. Whether a particular suit is a suit for money or not will, therefore, have to be ascertained from the allegations made in the plaint and the relief sought by the plaintiff. In this particular

case the plaintiff. In this particular case the plaintiff has filed the suit for recovery of maintenance the suit for recovery of maintenance amount and for future maintenance and the plaintiff has claimed a decree for Rs. 2700/- as arrears of maintenance and future maintenance at the rate of Rs. 75 per month. Therefore, it is quite clear that the claim made in the suit is a money claim. Though the nature of the claim made be for maintenance, the relief claimed is in terms of money. What should be the meaning assigned to the term 'suit for money' has been dealt with by Allahabad High Court in *Ramajiwan Mal. v. Chand Mal* (Indian Decisions ILR (1888) 10 All 588) At page 600 of the said report it is observed by the Allahabad High Court as under:-

'The suit is, in my opinion a suit for money, within the meaning of this section, because the illustrations which the Legislature has provided to the section show that, no matter what the title may be, no matter whether such title arise ex delicto or ex contract, so long as the relief sought is to recover money, it is a suit for money, and such a plea of set-off may be raised within the meaning of that section.'

Similarly this Court has an occasion to deal with this aspect of the matter in *Garischandra v. Vishweshwar* (Letters Patent Appeal No. 13 of 1957, decided on 3-3-1960) short note of which is reported in 1961 Nag LJ 26. This was a Letters Patent Appeal against the judgment of this Court reported in 1957 Nag LJ 617. Similar arguments were advanced before the High Court in the said appeal and the same construction was being sought to be put on Section 3 (1) of the M.P. Temporary Postponement of Execution of Decrees Act. In that case what was being executed was a decree for costs granted in a suit for an injunction. Therefore, an argument was advanced before this Court that the nature of the claim must determine the nature of the decree. The suit being for an injunction the decree must be deemed to be a decree providing for an injunction the decrements be deemed to be a decree providing for an injunction and that the fact that the decree also provides for costs which the plaintiff is entitled to recover from the defendant is money. Repelling this argument it was observed by this Court as under:-

'In order to decide this question, it will be necessary to look into the scheme of the Act. This Act was enacted to provide for the temporary postponement of execution of certain decrees of Civil Courts against agriculturists, and this Act provided for the postponement of execution of certain decrees and not all decree. Section 3 provides that the execution of any decree for money, if it is passed against an agriculturist, has to be stayed in the circumstance mentioned in sub-section (1) of that section, and the expression which calls for interpretation is the expression 'any decree for money'. If one looks at the decree which is put in execution in the present case, it will be clear that the decree-holder wants to execute that part of the decree which entitles him to recover a sum of Rupees 1240/3/0 from the judgment-debtor. The decree under execution is in two parts. The first part deals with the granting of a permanent injunction restraining the defendant from doing certain things. The second part of the decree entitled the decree-holder to recover a certain amount of money from doing certain things. The second part of the decree entitled the decree-holder to recover a certain amount of money from the defendant-judgment-debtor. The latter part of the decree, on a plain reading of the decree, is a decree for money entitling the decree-holder to recover the money from the judgment-debtor. The object of the Act was to prevent or to postpone the execution of certain decrees for payment of money. In order that the property of agriculturists may not be put in jeopardy during certain years of difficulty, this Act was passed. This Act was to apply to certain parts of the State, only in specified circumstances.....

The Act provides for exceptions to the operation of Section 3 even regarding decrees for payment of money. Section 7 is an exception to sub-section (1) of Section 3. If the intention of the Legislature was that even decrees for payment of costs were not to be given the benefit of sub-section (1) of Section 3, the Legislature would have provided for this contingency by exemption the operation of sub-section (1) of Section 3 in respect of decrees for payment of costs, under Section 7. Section 7 provides that certain money decrees in spite of the fact that the judgment-debtors are agriculturists, will be put in execution and the judgment-debtor will not be entitled to the stay of proceedings under sub-section (1) of Section 3. In the instant case, the decree under execution being in two parts and one part being a decree for money, the defendant judgment-debtor is entitled to

the benefit of sub-section (1) of Section 3 of the Act and the proceedings will have to be stayed under those provisions'.

In my opinion these observations will apply to the present Statute also.

8. Thus it is quite clear that the meaning which have to be assigned to the term 'suit for money' will depend upon the claim made in the suit. When the defendant is called upon to say to the plaintiff in the suit is a certain amount of money then in that case it is nothing short but a suit for money.

9. This position is further clear from the provisions of Section 8 of the Act. An exemption has been granted by Section 8 (b) of the Act to a decree for money arising out of claims for maintenance. Therefore, it is quite clear that the Legislature was aware of the fact that a suit for money arising out of a claim for maintenance could be a suit in which a decree for money could be a suit in which a decree for money could be passed. The provisions of Section 8 are in the nature of exemption and will have to be strictly construed. The Legislature has only granted exemption to the decrees for money and not to the suit for money arising out of the claim for maintenance. It is established principle of law that an gathered from the express words used in the Statute. If the express words used in Section 3 and Section 8 of the Act are read together, in my opinion, it is quite clear that the term 'suit for money' will govern the suit in which a claim for money arising out of the claim for maintenance is made.

10. The intention of Legislature in enacting this piece of Legislation is quite clear from the preamble to the Act. The Legislation wanted to provide for a relief to the agriculturist by way of temporary postponement of institution of suits etc. in the areas which are affected by natural calamities, so that he his property may not be put in jeopardy during this period of difficulty. This piece of the legislation has been enacted as a beneficent legislation meant for the protection of agriculturist, in the days of natural calamities. Therefore as observed by the Supreme Court in *Jivabhai Purushottam v. Chhagan Karson*, : [1962]1SCR568 if there is any doubt about the meaning of some provision that doubt should be resolved in favour of the agriculturist for whose benefit the Act is passed.

11. It is also not correct to say, as contended by the counsel for the applicant that the wife will be kept in lurch for such period as she is being denied the very right to claim maintenance. If any person having sufficient means neglects or refused to maintain his wife, she can approach the criminal Court under Section 488 of the Code of Criminal Procedure and claim monthly allowance for her maintenance.

12. In this view of the matter, there is no substance in this revision application and the revision application fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

13. Revision dismissed.

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