

A.M. Patel and Co. and ors. Vs. Narayan Gopal Basatwar and ors.

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Court : Mumbai

Decided On : Feb-28-1980

Reported in : AIR1980Bom367; 1980MhLJ413

Judge : Madon, J.

Acts : [Maharashtra Debt Relief Act, 1975](#); Maharashtra Debt Relief Act, 1976 - Sections 2, 4(1), 11(1), 19 and 22; Maharashtra Debt Relief (Amendment) Act, 1979 - Sections 60; Maharashtra Debt Relief Ordinance, 1975

Appeal No. : Civil Revn. Appln. Nos. 223 and 224 of 1979

Appellant : A.M. Patel and Co. and ors.

Respondent : Narayan Gopal Basatwar and ors.

Advocate for Def. : S.M. Paranjape and;R.M. Agrawal, Advs.

Advocate for Pet/Ap. : V.B. Rajure and;Bhimrao Naik, Advs.

Judgement :

ORDER

1. A decree was passed by the Court of the Civil Judge, Junior Division, Hingoli, in Regular Civil Suit No. 97 of 1972 in favour of the respondents and against the petitioners on April 20, 1974. The decree was in the sum of Rs. 4381.12 p. which amount included costs and interest. In 1974 the decree-holder, namely, the

respondents, filed an execution application being Darkhast No. 67 of 1974 to recover the amount of the said decree by attachment and sale of the movable properties belonging to the judgment-debtors, namely, the petitioners. It appears that a sum of Rs. 3,100 was paid by the petitioners to the respondents in part satisfaction of the said decree. On January 3, 1976, the [Maharashtra Debt Relief Act, 1975](#), (Maharashtra Act No. III of 1976) was published in the Maharashtra Government Gazette after having received the sanction of the Governor. This Act replaced the Maharashtra Debt Relief Ordinance, 1975 (Maharashtra Ordinance No. VII of 1975) which was promulgated by the Governor of Maharashtra on August 22, 1975. The said Act was, therefore, made operative with retrospective effect from the date of the promulgation of the said Ordinance, namely, August 22, 1975. On July 5, 1976, the petitioners made an application to the Court of the Civil Judge, Junior Division, Hingoli, contending the partners of the first petitioner firm were debtors within the meaning of the said Act and, accordingly, their liability under the said decree was discharged. In the said application, they also prayed for a refund of the sum of Rs. 3,100 paid by them to the respondents towards the said decree. The Execution Court dismissed the said application on August 16, 1976 holding that the liability under the said decree did not constitute a debt inasmuch as it was in respect of business transactions. The petitioners thereupon approached the Authorised Officer appointed under the said Act for a certificate that they were debtors within the meaning of the said Act inasmuch as they were workers whose total income from all sources did not exceed Rs. 4,800 during the year. The certificate as applied for was granted by the Authorised Officer. Armed with this certificate, the petitioners submitted another application to the Execution Court on September 13, 1976 again contending that the decree was discharged by operation of law and claiming to recover the said sum of Rs. 3,100 from the respondents. The Execution Court dismissed this application on the ground that it had already held that the claim under the said decree was not a debt as defined in the said Act.

2. Against the aforesaid two orders of the Execution Court, the petitioners filed separate appeals in the District Court of Parbhani. Both these appeals were dismissed by the District Court on the ground that the amount due under the decree was not a loan but constituted the price of goods sold and delivered on

credit.

3. Clause (e) of Section 2 of the said Act defines the term 'debt' as follows:

' 'debt' means any liability, in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest if the loan is taken by a worker, and with or without interest, in any other case), whether secured or unsecured, due from a debtor whether payable under a decree or order of any court or otherwise.'

Under Sub-section (1) of Section 4, every debt of a worker whose immovable property, if any, does not exceed Rs. 20,000 in market value and every debt of any other debtor outstanding on the appointed day, namely, August 22, 1975, including the amount of interest, if any, payable by a debtor is to be deemed to be wholly discharged. The said section in clause (c) further provides that all suits and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor shall abate. Under Sub-section (1) of Section 11 the jurisdiction of a Civil Court to settle, decide or deal with any question which is by or under Chapter III of the Act required to be settled, decided or dealt with by the Authorised Officer is barred. The material provisions of Section 22 of the Act, which now has been renumbered as Section 60 by the Maharashtra Act No. XVIII of 1979, are as follows:--

'60. Exemptions :-- Without prejudice to the provisions of Section 19, nothing in this Act shall affect the debts and other liabilities of any debtor or small farmer falling under any of the following matters, namely:--

X X X X (g) any claim arising out of contract or transaction not connected with money-lending.'

4. Mr. Rajure, learned Advocate for the petitioners, has submitted that the definition of debt given in clause (e) of Section 2 of the said Act includes all liabilities, whether in cash or kind outstanding on the appointed day, and that the petitioners having been held to be workers by the Authorised Officer were debtors as defined in the said Act and, therefore, the liability under the said decree was

extinguished on August 22, 1975 by reason of the operation of Section 4 and the said execution application made by the respondents also abated on the said date. The above arguments of Mr. Rajure, however, overlooks the fact that the word 'liability' in clause (e) of Section 2 is qualified by the phrase 'being a liability arising out of a loan'. As pointed out by the learned District Judge in the aforesaid two appeals, the liability under the said decree was in respect of price of goods sold and delivered to the petitioners on credit. When a person sells goods to another, the seller is not giving a loan to the buyer nor is the buyer when he pays the price repaying or discharging a loan. Further, under clause (g) of the exemption section, which was earlier numbered Section 22 and is now renumbered as Section 60, the provisions of the Act do not apply to a debt or other liability of a debtor under any claim arising out of a contract or transaction not connected with money-lending. Selling goods on credit is obviously not money-lending.

5. Mr. Rajure next contended that the question whether the decretal liability was a debt or not should have been referred to the Authorised Officer by the Executing Court inasmuch as by reason of the provisions of Sub-section (1) of Section 11 of the said Act, the Civil Court had no jurisdiction to decide this question. In *Gopal Khandu Wani v. Vasta Ramsingh Fasepardhi*, : AIR1979 Bom30 , Vaidya, J., held that there was no provision in Chapter III of the said Act, in which the said Section 11 occurred, which required the Authorised Officer to decide the question under Section 22 (g), which occurs in Chapter VI of the Act. The question before Vaidya, J. had also arisen in execution proceedings and the decree was in respect of a certain transaction of advances of money and the Executing court and the lower Appellate Court had both found that there was nothing to show that it was a transaction in connection with money-lending. I am in respectful agreement with this decision.

6. The result is that both these Civil Revision Applications fail and are dismissed and the rule is discharged with costs.

7. Rule discharged.