

Ganeshi Lal Vs. Shiam Lal

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Court : Allahabad

Decided On : Jan-29-1943

Reported in : AIR1943All190

Appellant : Ganeshi Lal

Respondent : Shiam Lal

Judgement :

Collister, J.

1. The following question of law has been referred to us for decision.

Whether a person claiming the benefit of Section 30, Agriculturists' Relief Act, is entitled for the purposes of Section 2(2) (f) of the Act to rely upon the circumstance that he paid no income-tax or that he paid income-tax not exceeding 5 per cent, of his rent for the financial year immediately prior to the suit, or whether/the criterion is whether he was assessed to income-tax for the year in which the loan was advanced or in the year immediately preceding such advance.

2. For an appreciation of the point of law which is involved in this reference it is necessary to state a few facts. The appellant sued for recovery of a sum of Rs. 7644 on foot of a promissory note, which was executed on 15th October 1934 by the defendant-respondent for Rs. 6512 with interest at 10 annas per cent.' per mensem and which was in novation of an earlier promissory note executed by the

respondent on 15th November 1931. The defence set up by the respondent was that he was an agriculturist and was therefore entitled to the benefit of Section 30, U. P. Agriculturists' Relief Act. The Court below ascertained from the income-tax authorities that the respondent paid income-tax from the year 1931 upto the year ending 30th April 1935, but that he had not paid income-tax for any of the succeeding years. The suit was instituted by the appellant on 18th September 1937, at which date the appellant was admittedly not assessed to any income-tax. On behalf of the plaintiff appellant, Mr. Malik pleads that before the respondent can claim the benefit of Section 30 of the Act he must show that the loan advanced to him was a loan to an agriculturist. In other words, he must satisfy the Court that he was an agriculturist within the meaning of the Act on 15th October 1934; it will not suffice for him to show that he was an agriculturist at the date of suit or at any date other than the date on which the loan was advanced. On behalf of the respondent, Mr. Jagdish Sarup contends that the criterion is whether his client was an agriculturist at the date of suit--or perhaps at the date on which the decree was passed. It is a matter of admission that the respondent was an agriculturist within the meaning of the Act on the date of suit. Whether he was or was not an agriculturist on the date of the loan will depend on the amount of income-tax to which he was assessed at that date. It is conceded that the respondent was at all material dates 'a person ... who pays rent for agricultural land not exceeding Rs. 500 per annum' within the meaning of Section 2(2)(f) of the Act. Proviso 2 to this Sub-section--so far as it is necessary to cite it--reads as follows:

Provided also that no person shall be deemed to be an agriculturist if he is assessed to income-tax which ...if he belongs to class (f) above, exceeds 5 per cent, of his rent....

3. It is an established fact that the respondent was not assessed to income-tax for any year subsequent to 1934-35 and, that he was so assessed from 1931 up to the year ending 30th April 1935. The controversy before us is as regards the point of time at which the law requires that the debtor should have been an agriculturist. Mr. Jagdish Sarup for the respondent relies inter alia on the fact that the definition and the proviso are in the present tense; but we do not think that this circumstance

necessarily leads to the conclusion which he asks us to draw. Where a definition is expressed in the present tense and without any qualification the Court has to look at the Act as a whole and more particularly at the context in which the word occurs in order to ascertain the point of time to which the definition is referable. Mr. Jagdish Sarup on behalf of the respondent invokes the decision of Sulaiman C. J. and Bennet J. in *Raj Narain v. Bindaban* : AIR1936 All449 and I may mention that it was largely on account of some uncertainty at the original hearing as to what the learned Judges meant that this reference was made to a Pull Bench. I am now satisfied, however, from a careful examination of that judgment and also of the rule to which the learned Judges refer--which is concerned only with the burden of proof and the method of proof--that all that was decided in that case was the meaning of the words 'is assessed' in proviso 2 to Section 2(2) of the Act; the learned Judges did not decide the point of time to which the assessment is referable in any particular case.

4. In Section 2(10)(a) of the Act 'loan' is defined as 'an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan...' and according to the opening lines of Section 2, this definition will apply 'unless there is anything repugnant in the subject or context.' Learned counsel for the respondent relies upon the language of Section 2(7) of the Act, which defines a creditor in chap. 6 as 'a person who in the regular course of business, advances a loan as defined in this Act,' and he pleads that, since the expression 'as defined in this Act' does not occur after the word 'loan' in Section 30, therefore the kind of loan to which Section 30 refers is not a loan as defined in the Act; that is to say it is not necessarily a loan advanced to an agriculturist. I am not impressed by this argument. The sub-section merely defines what is meant by a 'creditor' for the purposes of chap. 5 of the Act, and, for this purpose, it was thought necessary to particularise the kind of loan to be advanced by a person in order to constitute him a creditor for the purposes of that chapter; but it was not necessary to add the words 'as defined in this Act' after the word 'loan' in every section in which the Legislature intended that the loan referred to in any such section should be the kind of loan which has been statutorily defined. It will suffice if in any such section there is no repugnancy to the statutory definition. It is pointed out by Mr. Jagdish Sarup that in Section 8 the Legislature has specifically

provided that for the purposes of chap. II no person shall be deemed to be an agriculturist unless he was an agriculturist both at the time of the advance of the loan and also at the date of the suit. Learned Counsel also refers us to Section 24(1), which provides as follows:

No application under Section 11 or Section 12 shall be filed unless

(a) the applicant is an 'agriculturist' on the date of the application, and

(b) the mortgagor was an 'agriculturist' at the time of the mortgage.

5. He points out that in Section 8 and in Section 24(1) (b) the Legislature requires that the status of the debtor must be that of an agriculturist at the date of the loan and, founding upon these provisions, he argues that whenever the Legislature intended that the material date should be a date prior to the institution of the suit, it has specifically said so. I do not think that this argument can prevail. As regards Section 8 -- which occurs in Chap. II and with which we are not concerned--all that the Legislature has done is to make it clear that for the purposes of that chapter the debtor must show that he was an agriculturist both at the date of the advance and also at the date of the suit. As regards Section 24, the word 'loan' does not appear either in Section 11 or in Section 12, to which reference is made; and in any case the utmost that can be said is that for the purposes of Sections 11 and 12 the Legislature has specified the date at which the person concerned must prove that he was an agriculturist.

6. In this reference we are concerned with Section 30(1) of the Act, which provides the rate of interest to be paid upon a loan taken before the Act came into force. There is no repugnancy in that section within the meaning of the opening lines of Section 2 and therefore the word 'loan' occurring therein must have its statutory meaning as defined in Section 2(10)(a). That is to say, if a debtor claims the benefit of Section 30, he must satisfy the Court that the loan in question was a loan to an agriculturist; in other words, he must show that he was an agriculturist within the meaning of the Act at the date when the loan was advanced to him. There is considerable authority for the view that the criterion in such cases is the date of the advance to the debtor: vide *Misri Lal v. Alexander Gardner* : AIR1936

All697 , Misri Lal v. Alexander Gardner : AIR1936 All697 (a decision by the same learned Judges who decided Raj Narain v. Bindaban : AIR1936 All697 already referred to) and Phool Chand v. P. Shyam Behari Misra ('89) 183 I. C. 517. The last-mentioned case is a decision by a Bench of the Chief Court of Oudh. Then there is another decision of our own Court, namely, Chedi Lal v. Bharat Tamoll : AIR1939 All448 . There the learned Judges were dealing with Section 33 of the Act, but at page 244 they say:

It is further to be observed that in Sub-section (3) of Section 33 there is reference to Sections 30(2) and 31(2). Now Sections 30(2) and 31(2) clearly refer to 'loans'. The word 'loan' is used in Section 30 and Section 31 and can mean only 'loan' as defined by Section 2 of the Act.

7. No authority to the contrary has been cited before us and we have no doubt that a correct view upon this point was taken in the cases to which we have referred and that, upon the language of the statute, a debtor who claims the benefit of Section 30 must show that he was an agriculturist at the date of the advance. I would answer the reference by saying that for a person falling under Section 2(2)(f) the criterion is whether he was assessed to income-tax for the year in which the loan was advanced and to what amount he was thus assessed.

Bajpai, J.

8. I agree.

Dar, J.

9. I agree.

10. Our answer to the reference is that in the case of a person falling under Section 2(2)(f), Agriculturists Belief Act, the criterion is whether he was assessed to income-tax for the year in which the loan was advanced, and to what amount he was thus assessed.