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Pooranmal Vs. Sushila Devi and anr.

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Court : Madhya Pradesh

Decided On : Oct-17-1977

Reported in : AIR1979MP58; 1979MPLJ58

Judge : J.P. Bajpai, J.

Acts : Madhya Pradesh (Anusuchit Jati Avam Anusuchit Jana Jati) Rini Sahayata Adhiniyam, 1967 - Sections 2(4) and 6

Appeal No. : Civil Revn. No. 664 of 1975

Appellant : Pooranmal

Respondent : Sushila Devi and anr.

Advocate for Def. : R.P. Verma, Adv.

Advocate for Pet/Ap. : M.V. Tamaskar, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

J.P. Bajpai, J.

1. The short point involved in this revision is whether the amount found due towards arrears of rent and damages already adjudicated and ascertained tinder a

decree of the Civil Courts as subsisting on the appointed day i.e. 15-8-1973 would be covered by the term 'debt' as defined in M. P. (Anusuchit Jati Avam Anusuchit Jana Jati) Rini Sahayata Adhiniyam, 1967 (hereinafter called as the Act).

2. The facts in brief are that the applicant-decree-holder instituted a suit for recovery of arrears of rent and mesne pofit at the same rate of Rs. 220/-per month against the defendants-tenants. The suit was decreed on 22-12-1970. A sum of Rs. 5,500/- was decreed towards the arrears of rent and mesne profit at the rate of Rs. 220/- per month were also decreed. It was not disputed that the judgment-debtors are the members of the Scheduled Caste belonging to Beldar community in Shahdol District, which has been notified as Scheduled Caste by the Presidential Order issued under the provisions of the Constitution of India. It was also not disputed that the appointed day, as contemplated by the Act in respect of the debtors belonging to Scheduled Caste, was 15th of Aug., 1973. Under these circumstances, the Court below held that the ascertained amount due under the decree was a liability subsisting on the appointed day and as such was a debt to which the provisions of the Act were applicable and accordingly the Civil Court could not proceed with the execution of the decree. The only point which could be and was pressed in the context of the aforesaid undisputed circumstances was whether the liability under the decree in questionwas a 'debt' as defined in the Act It was not disputed that if it was held that liability towards arrears of rent and ascertained damages under the decree was covered by the term 'debt' as defined in the Act, the orders made by the Courts are liable to be upheld.

3. It would be relevant to reproduce the definition of the term 'debt' as given in the Act :

'Debt' includes -

(i) all liabilities owing to a creditor in cash or kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise,, and subsisting on the appointed date whether due or not due;

(ii) arrears of wages or salary subsisting on the appointed date.

4. From, the bare reading of the definition as quoted above, it is apparent that the definition of the word 'debt' is inclusive and therefore, the term 'debt' apart from what it ordinarily means under the general law may include by fiction such other liabilities also which may actually not be regarded as debt under the law or according to the common meaning as attributed to the term 'debt'. The language used while defining the term 'debt' is specific in saying that the term 'debt' includes all liabilities owing to a creditor in cash or kind payable under a decree or order of & Civil Court or otherwise. By using the words 'all liabilities', it is apparent that the legislature intended to include even such other liability which may not be actually in the nature of loan as commonly understood. According to the scheme of the Act, all liabilities have been first included in the definition of the term 'debt' and thereafter whatever was sought to be excepted was separately exempted by Section 6 of the Act as reproduced below :

'Inapplicability of the Act in certain cases;

The provisions of this Act shall not apply to the claims due in respect of -

(a) any liability in respect of any sum due to any Co-operative Society registered under any law relating to the Co-operative Societies for the time being in force;

(b) Land Revenue or any sum recoverable as an arrear of lend revenue;

(c) tax, toll, rates, cess, fees or any other duty payable to Government or a local authority under any enactment for the time being in force;

(d) such amount as may be found due to an assignee of proprietary rights or a tenant of rent at rates approved by the Government;

(e) any liability arising out of a breach of trust;

(f) any liability due to bank, or any corporation incorporated under any law for the time being in force which provides credit facilities to members of Scheduled Caste or Scheduled Tribes, as the case may be;

(g) any liability of a guardian arising out of misapplication or misappropriation of the property of his ward :

(h) any liability in respect of maintenance whether under decree of Court Or otherwise ;

(i) any money for the recovery of which a suit is barred by limitation,'

5. This clearly indicates that while giving an inclusive definition of the term 'debt' covering 'all liabilities', the legislature was aware of the fact that the definition so given will include even such liabilities which have been specifically excepted by making a provision in Section 6 of the Act.

6. No doubt in the present case, the relationship in its inception was of landlord and tenant under a contract of tenancy and not of creditor and debtor, but ultimately under the contract, rent became due and the same was not paid, it became a debt as it was undoubtedly a sum of money payable by the tenant who became a debtor to the landlord for the said amount. However, if such liability would have been exempted under Section 6 of the Act, which does exempt certain specific liabilities, the position would have been different and the Act would not have been applicable at all. Similarly, when the amount of mesne profit was adjudicated and settled and the same became due under a decree, the decretal liability having been also specifically included became a debt unless specifically exempted. Similar view was taken in the case of Sadashivrao v. Naina, Civil Revn. No. 603 of 1968, D/- 18-4-1969 : 1969 MPLJ (Notes) 42 while dealing with the provisions of this Act. Earlier also, in the case of Chandanlal v. Sambhaji Bhai, 1938 Nag LJ 360 it was held that the definition of the word 'debt' as given in the Debt Reconciliation Act did not exclude the arrears of rent. It would be significant to note that the definition as given in the said Act is in pari materia with the definition in the present Act.

7. A Division Bench of this Court had en occasion to deal with this aspect of the matter in the case of Poonaji v. Moti, Misc. Petn. No. 16 of 1971, D/- 31-10-1973 (at Indore) : 1973 MPLJ (Notes) 130. In this case too it was observed that the definition of the term 'debt' being an inclusive definition, the transaction need not be necessarily a loan or an actual advance of cash. It was held that even if the liability came into existence under an agreement, it became a debt if it was a settled liability. In the said case, the respondent acknowledged his liability to pay

certain sums which were actually found payable on settlement of accounts of the partnership business. The Division Bench observed that after the settlement, the parties obviously stood in relationship of a debtor and creditor and it was wrong to say that merely because the dues arose out of the partnership, the parties were not in fiduciary capacity. It was further observed that if the sum due was an ascertained one payable to the petitioner by the respondent, it would fall within the meaning of the term 'debt' as given in Section 2 of the Act.

8. On behalf of the applicant, reliance was placed on certain observations made by Hon'ble Verma, J. in the case of Balaram v. Roopa Bai, Misc. Appeal No. 125 of 1971, D/- 18-10-1973 (at Indore) : 1973 MPLJ (Notes) 132. On going through the aforesaid decision, it is apparent that the said case is distinguishable on facts and the legal position stated therein is in consonance with the decisions already referred above. In the said case, the question before the Court was about the maintainability of a suit wherein damages for breach of contract were claimed. Hon'ble Verma, J. observed in para 4 of the judgment that where the claim is one of damages, it is not a sum ascertained until the same has been adjudicated by the Court and the liability to pay damages and its quantum depends upon the proof of several factors during the trial and therefore, such a claim does not appear to be included within the definition of the term 'debt' as contained in the Act. In para 5 of the judgment, it has been further observed that the Debt Relief Courts are neither expected nor intended to decide the complicated questions of liability to pay damages and till the liability is ascertained, there is no sum ascertained, which can be termed as 'debt'. Thus in the present case which relates to a decretal liability for anascertained sum due under the decree, there is no scope to contend that the! same is not covered by the inclusive definition of the term 'debt' as given in the Act.

9. Shri M. V. Tamaskar, learned counsel for the applicant decree-holder, further contended that while construing the scope of the definition of the term 'debt', even though it is an inclusive definition, the aims and objects of the enactment should be kept in view. He pointed out that in the aims and objects, as published in M. P. Gazette (Extraordinary) dated 5-4-1967 at page 1360, it-is clearly mentioned that the legislation in question was made in order to protect the members of the

Scheduled Castes and Scheduled Tribes from the clutches of the money-lenders who lend money to them on exorbitant rate of interest. It is true that it has been so stated in the aims and objects and the preamble of the Act mentions that the legislation was for relieving the indebtedness of the members of the Scheduled Castes and Scheduled Tribes.

10. But exact correspondence between the preamble and the enactment is not always necessary. The enactment may go beyond or it may fall short of what: has been indicated in the aims and: objects or the preamble. The aims and objects and the preamble can be called in aid, but they are not meant for creating ambiguity when it is not at all in the plain language of the enactment.

11. The true legal position was stated by Lord Morton in Att.-Gen. v. Prince Ernest Augustus (1957) 1 All ER 49 in the following words :

"In fact if the preamble were clear one way and the enacting part were equally clear the other way, there can be no doubt that the latter must pre vail.'

12. A similar question arose for determination in the context of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (in Burrakur Coal Co. Ltd. v. Union of India, AIR 1961 SC 954). The Act contains a preamble which indicates that it was being enacted for securing public control over the coal mining industries and its development by providing for acquisition of unworked land. However, the provisions of Section 4 (1) of the Act empowered the Central Government to issue a notification with reference to its intention of prospecting any land. The argument raised was thatas according to the preamble, the object of the enactment was to provide for acquisition of unworked land, the language used in Section 4 mentioning the words 'any land' should be construed as to mean any unworked land and was not applicable to those lands which were being worked out or had been already worked in the past. The Supreme Court pointed out as below (at p. 957 of AIR) :

'On the plain language of Sub-section (1) of Section 4, the Central Government has been empowered to issue a notification with reference to its intention of prospecting any land in a locality and not only such land as is virgin.'

The Supreme Court thus rejected the contention on the ground that the language of the enacting provision was clear and therefore, not controlled by the preamble. In the present case, also, the language of the operative part of the enactment is specifically plain and there is no ambiguity. Even if it goes beyond the aims and objects, the same cannot be made a ground for curtailing the scope which is clearly indicated by the words used without any ambiguity. As pointed out earlier, the scheme contemplated by the Act first covers all liabilities under a fiduciary relationship and then specifically exempts some as enlisted in Section 6 of the Act. Shri Tamaskar, learned counsel for the applicant pointed out that in a subsequent enactment of similar nature, whereby the legislation provided relief from indebtedness to the weaker section of the society, the legislation exempted the liability towards arrears of rent arriving under a contract of tenancy. The learned counsel referred to M. P, Gramin Rin Vimukti Tatha Rin Stha-gan Adhiniyam, 1975. In my opinion, this circumstance, on the contrary, goes against the contention of the applicant. In this enactment also, the definition of the term 'debt' is identical as given in Section 2 (d). Similarly, in Section 6 of the Act, bar of the application of the Act has been specifically created in respect of the liability for rent due in respect of any property let out to a debtor as stated in Clause (a) of Section 6. In the Act of 1967, which governs the present case, no such exemption has been made by the legislature.

13. The Courts are not expected to fill up the lacuna by inserting something in the enactment which is not there. Unless the legislature exempts certain liabilities, the Courts cannot provide for the same in the garb of interpretation bycalling in aid the preamble or the aims and objects of the enactment even when it is strongly felt that such an exemption should have been made.

14. No other point was pressed.

15. This revision, therefore, fails and is dismissed. The orders made by the Courts below are sustained. In the circumstances of the case, there will be no order as to cost. Parties will bear their own costs of this revision.

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