K.P. Devassay Vs. Anthony

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Court : Kerala

Decided On : Apr-07-1972

Reported in : AIR1973Ker24

Judge : T.C. Raghavan, C.J. and; P. Narayna Pillai, J.

Acts : Kerala Agriculturists' Debt Relief Act, 1970 - Sections 2(4)

Appeal No. : Civil Revn. Petn. No. 313 of 1971

Appellant : K.P. Devassay

Respondent : Anthony

Advocate for Def. : George Vadakkel and; Varghese kaliath, Advs.

Advocate for Pet/Ap. : T.S. Venkateswara Iyer and; P.K. Balasubramonian, Advs.

Disposition : Petition dismissed

Judgement :

Narayana Pillai, J.

1. Revision sought for here is of an order passed in execution in a small cause suit holding that the defendants are not entitled to the benefits of the Kerala Agriculturists' Debt Relief Act, 11 of 1970, for short the Act. The decree was obtained for pumping charges due to plaintiff for bailing out water from certain

paddy fields. Under the contract between the parties, the plaintiff had to make the fields fit for sowing seeds before the 15th of Makarom and in any event not later than the 20th of Makarom. If the work was completed only after the 20th of Makarom, it was open to the defendants either to raise cultivations or not to do so. If they raised cultivations, they had to pay the plaintiff the charges for bailing out water. The fields were made ready for cultivation by the plaintiff only after the 20th of Makarom and the defendants raised cultivations on them. It was then that the suit was filed and decree obtained. The application of the defendants filed in execution for reliefs under the Act was resisted by the plaintiff on the ground that the debt was one exempted from the provisions of the Act by Section 2(4)(e) of it.

2. The material portion of the section reads:

'2. Definitions--..... ....

(4) 'debt' means any liability in cash Or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any Court, or otherwise, but does not include--

(e) any liability in respect of wages or remuneration due as salary or otherwise for services rendered;.....'

The word 'remuneration' as used in the Act has to be given its ordinary natural meaning. The dictionary meaning of that word as 'reward, recompense, pay for service rendered' and there being quid pro quo implied in it were accepted by the Supreme Court in Central Bank of India v. Their Workmen, (1960) 1 SCR 200 = (AIR 1960 SC 12) in considering the question whether 'bonus' was remuneration.

3. Argument of counsel appearing for defendants is that the word 'otherwise' occurring in Section 2(4)(e) of the Act should be read ejusdem generis with 'salary', that is to say, the remuneration should be due as 'salary' or the like for 'services rendered' and that the words 'salary' and ''services rendered' implied a master and servant relationship. The meaning of the word 'salary' as given in the Concise Oxford Dictionary is 'fixed periodical payment made to person doing other

than manual or mechanical work'. The word 'service' as given in the dictionary has different meanings. One meaning no doubt is 'being servant, servant's status, master's or mistress' employ'. But another meaning is 'use, assistance (can I, will it, be of service to you)'. Assistance given by a nurse to a patient, assistance given by a lawyer to Court are all services. Yet there is no master and servant relationship between them. In the absence of any restriction given to the word 'services' in the section, it has to be given its plain and ordinary meaning without any limitation. De-watering of the fields by the plaintiff was service rendered by him to the defendants. But the liability in cash for the services rendered was not a periodical payment. So it was not salary and if the word 'otherwise' has to be read ejusdem generis with the word 'salary' which precedes it, that is to say, if the word 'otherwise' is construed in such a sense as to confine it to the class or genus of 'salary' which it follows, Section 2(4)(e) of the Act may not apply to the instant case as the liability was not in respect of salary or the like for services rendered. But can the rule of ejusdem generis be applied for the interpretation of the word 'otherwise' occurring in Section 2(4)(e)

4. Words of limitation or even extension should not be read into a statute if it can be avoided. Ejusdem generis is a rule of interpretation. According to that rule, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified. As stated in Craies on Statute Law, Seventh Edition, page 181, the modern tendency of the law is 'to attenuate the application of the rule of ejusdem generis'. There must be a distinct genus or category for the application of the rule. Where that is lacking, the rule cannot apply. For a particular unspecified thing being ejusdem generis with specified things, it is necessary that the specified things should possess a common quality, which constitutes them a genus. In terms of arithmetic, several unrelated numbers cannot be fitted into any series other than the whole series of integers. Similarly, given only a single number, there is more than one series into which it can be fitted. Therefore, the mention of a single species does not constitute a genus. In the Privy Council decision in United Towns Electric Co., Ltd. v. Attorney-General for Newfoundland, (1939) 1 All ER 423 Lord Thankerton said:

'In their opinion, there is no room for the application of the principle of ejusdem generis in the absence of any mention of a genus, since the mention of a single species --for example, water rates--does not constitute a genus.....'

In London County Council v. Tann, (1954) I WLR 371, it was held that it was not possible to construe the term 'structure' as ejusdem generis with the term 'building' in the expression 'building or structure' appearing in a statute. There may thus be impossibility in giving ejusdem generis interpretation to a two-word phrase such as 'salary or othewise.'

5. As the word 'otherwise' appearing in Section 2(4)(e) of the Act cannot be read ejusdem generis with 'salary' it has to be given its ordinary meaning. In Skinner & Co. v. Shew & Co., (1893) 1 Ch 413 in dealing with the expression 'or otherwise' occurring in Section 32 of the Patents Designs and Trade Marks Act, the material portion of which read:

'Where any person claiming to be the patentee of any invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings.....'

Bowen, L.J. said:

'What is the explanation of the insertion of the words 'circulars or advertisements'? I think it is rather to enlarge the words 'or otherwise', than to cut them down.'

The words 'or otherwise' have always an enlarging effect. They rather extend or statutorily expand the word which precedes them than are themselves confined by it. In other words, the words 'or otherwise' mean what they say. In the context in which they occur, they include remuneration of any kind whatsoever, other than that due as salary, for services rendered. The use of it in Section 2(4)(e) of the Act shows that what is really contemplated there in the matter of remuneration for services rendered is all kinds of such remuneration whatever be the manner, in which they are due, whether as salary or not.

6. It was for money due as remuneration for services rendered by the plaintiff in pumping out water and making the fields fit for cultivation that the decree was

passed. Section 2(4)(e) applies to the case.

7. Hence this revision petition is dismissed with costs.