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Court : Rajasthan

Decided On : Jul-19-1968

Reported in : AIR1969Raj123

Judge : D.S. Dave, C.J.,; D.M. Bhandari and; V.P. Tyagi, JJ.

Acts : Rajasthan Relief of Agricultural Indebtedness Act, 1957 - Sections 6(1), 7 and 10

Appeal No. : Civil Writ Petn. No. 397 of 1962

Appellant : Gullaram

Respondent : Govindram and ors.

Advocate for Def. : M.M. Tewari, Adv. for Respondent No. 1

Advocate for Pet/Ap. : R.K. Rastogi, Adv.

Disposition : Petition allowed

Judgement :

D.S. Dave, C.J.

1. This s a debtor's application under Article 226 of the Constitution of India and it seeks to challenge the correctness of the decision of the learned District Judge, Jhunjhunu, dated 8th May, 1962, given in a revision application filed against the

order of the Civil Judge, Neem-ka-thana, dated 25th November, 1961

2. The facts giving (sic) it are as follows:

The non-petitioner No. 1 before this Court, that is, Govindram. had obtained against the petitioner two decrees from the Civil Courts, one dated 29th March, 1957 for Rs. 593/- and the other dated 18th April, 1957 for Rs. 887/-. The Rajasthan Relief of Agricultural Indebtedness Act, 1957 (No. 28 of 1957), which will hereinafter be referred to as the 'Act', came into force from 15th May, 1.958. On 24th February, 1960 the present petitioner Gullaram presented an application under section 6 of the Act in the Court of Civil Judge, Neem-ka-thana which was also a Debt Relief Court according to section 3 of the Act. The said court found that there were two types of transactions between the parties, one relating to the loan of grain and the other concerning the loan in cash. After examining the previous transactions, it came to the conclusion that the petitioner was not liable to pay anything so far as the transaction relating to the grain was concerned, but in the account relating to the loan in cash, it was held that Rs. 102/- only remained payable by him. It, therefore, upheld the claim of respondent No. 1 only to the extent of Rs. 102/- and discharged the the remaining debts. Aggrieved by that order dated 25-11-61, the non-petitioner No. 1 presented a revision application in the Court of District Judge, Jhuniunu, under Section 17 of the Act. The learned Judge was of the view that the Debt Relief Court had no jurisdiction to go behind the decrees of the Civil Court and that it could take into consideration only those payments which were made by the debtor subsequent to the passing of the decrees, if they were not accounted for by the decree-holder. He. therefore, allowed the revision application, set aside the order of the Civil Judge, Neem-ka-thana and remanded the case with direction to proceed under section 11 of the Act in the light of the observations made by him. It is the correctness of this order which is sought to be challenged in the present writ application.

3. When this case came for hearing before a Division Bench of this Court, it was urged by learned counsel for the petitioner that the decision of the learned District Judge to the effect that the Debt Relief Court had no jurisdiction to go behind the decrees and reopen the accounts was manifestly wrong and in support of his

contention he referred to *Karansee v. Sonsingh*, 1963 Raj LW 406. Learned counsel for respondent No. J challenged the correctness of the view taken in the said case and, therefore, the Court referred the present case to a larger Bench.

4. The short question for determination before this. Court is, whether the Debt Relief Court functioning under the Rajasthan Relief of Agricultural Indebtedness Act has jurisdiction to go behind the decree of the Civil Court passed before that Act came into force.

5. In 1963 Raj LW 406, it was observed by the learned Judges that Section 6 (1) of the Act provides that any debtor, who is an agriculturist, may file an application before the Debt Relief Court having jurisdiction praying for determination of his debts. It was further pointed out that the word 'debt', as defined in section 2 fc), 'includes 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, whether due or not due, but shall not include land revenue or anything recoverable as land revenue other than liabilities payable under a decree of a village panchayat or any money for the recovery of which a suit is barred by limitation.' The learned Judges then proceeded to observe that 'the scope of an application under section 6 (1) for determination of debts having regard to the definition of the term 'debt' must be considered wide enough to include decretal debts as well and the contention of the learned counsel does not appear to be sound for treating the decretal debts immune from such proceedings.' It was held that the term 'debt' referred to in Section 6 (1) was comprehensive enough to include the decretal debt also. It was further observed that 'the Debt Relief Court has jurisdiction to take proceedings as mentioned in Section 10, but it should not question the findings of a civil court where Section 10 does not necessarily authorise such court to go behind them. For instance, in the proceedings of the suit filed by *Karansee*, the question of payment was agitated by him and the civil court found against him that his plea of making payment was not established. The same plea cannot now be allowed to be revived by him in proceedings under the Act and the Debt Relief Court, even when going behind the decree, will have to determine the amount of the principal and shall have to determine also the amount of the interest recoverable under the principles laid down by section 10 of the Act, and should not entertain the plea that

had been rejected by the civil court of making payment and wiping out the suit debts.'

6. Learned counsel for respondent No. 1 has urged before us that although the term 'debt' as defined in Section 2 (c) of the Act includes 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, whether due or not due, there is nothing in the Act to show that the Debt Relief Court should disregard the sanctity of the decree and go behind it. According to learned counsel, the Debt Relief Court has jurisdiction to take into account only those payments, if any, which are made by the debtor subsequent to the passing of the decree if they have not been accounted for.

7. Learned counsel for the petitioner, on the other hand, supports the view taken in 1963 Raj LW 406, referred to above.

8. We have given due consideration to the arguments advanced by learned counsel for both the parties. It is common ground between them that the term 'debt' as defined in Section 2 (c) of the Act, includes the decretal debts also. In order to decide the question whether the Debt Relief Court can go behind the decree of a civil court passed before the Act came into force, it would be proper to go into the scheme of the Act. It may be pointed out that Section 6 (1) provides that any debtor, who is liable for debts individually. or jointly with another person, may file an application before the Debt Relief Court having jurisdiction in the area in which he ordinarily resides or earns his livelihood praying for determination of his debts. It cannot be gainsaid that the term 'debt' appearing in this section would as much include decretal debts as those debts in respect of which no decree has already been passed, because that term appearing in the section must be understood in the sense in which it has been defined.

9. Section 6A then provides for application for recording settlement. We are not concerned with it in the present case.

10. Section 7 lays down that upon the admission of an application under Section 6 or 6A, all creditors shall be joined as parties to the proceedings and the Debt Relief Court shall pass an order fixing the date of hearing. The term 'creditors' in

this section would obviously include decree-holders also.

11. Section 8 then provides for submission of claims by creditors.

12. Section 9 lays down that on the date fixed for hearing of the case, the Debt Relief Court shall require proof of the validity and subsisting character of the debts. The word 'debts' appearing in this section would also mean the debts as defined in Section 2 (c).

13. Then we come to section 10 which deals with the determination of debts and gives a guidance to the Debt Relief Court as to how it should proceed in the matter of determination of debts which remain payable by the debtor-agriculturist to the creditors. It would be proper to reproduce that section in extenso because it is mainly this section which offers the answer to the point raised before us. The subsequent Section 11 only lays down how the Debt Relief Court should prepare the scheme of repayment of debts and transfer of the judgment-debtor's property after the amount due has been determined under Section 10. Section 10 runs as follows:

'Section 10 -- Determination of Debts.

(1) Notwithstanding anything contained in any enactment for the time being in force or in any agreement between the parties or the persons through whom they claim, as to allowing compound interest or treating without an account the profits of mortgaged property to be interest on the mortgage money or specifying the mode of otherwise settling accounts and notwithstanding any written statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation, the Debt Relief Court shall--

(i) reopen all transactions carried on during (fifteen years) immediately preceding the last transaction or the first day of January 1952, whichever is earlier;

(ii) ascertain the amount and date of each loan originally advanced; and

(iii) draw up an account, which in case there are more creditors than one, shall be prepared separately For each of them in the manner laid down thereunder,

namely--

(a) separate accounts of interest and principal shall be taken up to the date of the application filed under section 6 (or under Sub-section (1) of section 6A, as the case may be).

(b) in the account of principal moneys advanced, there shall be debited to the debtor such moneys as may from time to time have been actually received by him or on his account from each creditor and the price of goods, if any. sold to the debtor by such creditor as part of the transaction.

Provided that there shall not be so debited to the debtor --

(i) any sum in excess of the amount due or accrued due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of an agreement relating to the satisfaction of such decree, or

(ii) any accumulated interest which has been converted into principal in any statement or settlement of accounts or by any contract made in the course of the transaction.

(c) in the account of interest there shall be debited to the debtor simple interest on the balance of the principal moneys for the time being outstanding at the rate stipulated by the parties or if the debt is payable under the decree or order of the civil courts, at the rate provided for in such decree or order or at the rate of six per cent per annum in the case of secured loans and nine per cent per annum in the case of unsecured loans, whichever is the lowest;

(d) all moneys paid by or on account of the debtor to the creditor or on his account and of profits, services or other advantages of every description received by the creditor in the course of the transactions estimated, if necessary, at such money value as the Debt Relief Court in its discretion or with the aid of valuers appointed by it may determine, shall be credited first in the account of interest and, if any such payment or the money equivalent of any such profits, services or other advantages exceed the balance of interest due at the time it is made, the residue thereof shall be credited to the debtor in the account of principal moneys.

(e) if the aggregate of the amounts so credited in the account of interest is equal to the total amount of the principal, no further interest thereon shall be . deemed to be due.

(f) if such aggregate is less than the total amount of the principal, further interest, if due in accordance with the provisions of Clause (c). may be allowed to the maximum limit of the difference between such aggregate and the total amount of the principal,

(g) the Debt Relief Court shall, in the manner laid down in this Sub-section and subject to the provisions of the succeeding sub-section, determine and declare separately the amount outstanding against the debtor as principal and interest,

(2) A Debt Relief Court shall reduce by forty per cent the principal amount of the loans advanced prior to the 1st of January (1945) as found in accordance with the provisions of Sub-section (1) to be due on the date of the application filed under Section 6 (or under Sub-section (1) of Section 6A. as the case may be).

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force. no Debt Relief Court shall award on account of arrears of interest a sum exceeding the total amount of principal found due in accordance with the foregoing provisions of this section,

(4) If a Debt Relief Court finds that nothing is due to the creditor it shall pass an order discharging the debt,

(5) If the aggregate of the amount credited in the account of interest in the manner laid down in Sub-section (1) is less than the total amount of the principal, the difference between the total amount so credited and the total amount of the principal or the balance outstanding in the account of interest, whichever is the less, shall be allowed as interest,

(6) Nothing contained in this Act shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any amount in excess of that which would have been payable by him if this Act had not been passed,

(7) In the case of any transaction carried on between a debtor and a creditor in kind in the form of grain or goods for the purpose of manure or seed or any other purpose, the account of such transaction shall be prepared in terms of the money-equivalent of such grain or goods calculated at the market price thereof prevailing at the time of the transaction.'

14. Before proceeding to examine the provisions of the said section, it may be observed that although the decrees of Civil Courts are sacrosanct and must be respected in the normal course, it is open to the Legislature to enact a law whereby the sanctity of the decree may be disturbed and the decretal amount may be scaled down in order to provide relief to agriculturists over-burdened with debts. In *K. Hutchi Gowder v. Ricobdas Fathamall & Co.*, AIR 1965 SC 577, their Lordships of the Supreme Court had occasion to examine the provisions of the Madras Agriculturists Relief Act No. 4 of 1938. Section 19 of this Act was as follows:

'(1) Where before the commencement of this Act a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist. . . . apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction as the case may be:

xx xx xx(2) The provisions of Sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement.'

While interpreting this section, it was observed by their Lordships that in the case of debts that had ripened into decrees, Section 19 (1) and (2) prescribe a special procedure for reopening the decree though it was only in respect of debts incurred before the parent Act came into force, A decree obtained in a suit to enforce a debt incurred after the Act came into force could not, however, be amended either under Section 19 or 13 of that Act by scaling down the debt. The observations of their Lordships were as follows:

'The legal position may be briefly stated thus. Sections 7, 8, 9 and 13 form a group of sections providing the principles of scaling down of debts incurred by agriculturists under different situations. A debt can be scaled down in an appropriate proceeding taken in respect of the same. But in the case of debts that have ripened into decrees, Section 19(1) and (2) prescribe a special procedure for reopening the decree only in respect of debts incurred before the parent Act. The parent Act does not provide for the reopening of decrees made in respect of debts incurred after it came into force, and for understandable reasons the relief in respect of such decrees is specifically confined only to a concession in the rate of interest.'

15. By referring to these observations, we only mean to point out that it is within the competence of the Legislature to disturb the sanctity of the decrees passed by the Civil Courts if it chooses to give relief to the judgment-debtors in certain special circumstances. We may make it clear that we are not referring to this case to import the scheme of the Madras Agriculturists Relief Act, 1933, if it is not to be found in the Rajasthan Act. If the scheme of Section 10 of the Rajasthan Act does not give jurisdiction to the Debt Relief Court to go behind the decree, such interpretation would not be placed upon its provisions. However, after examining the provisions of Section 10 of the Act closely, we think that although its language is not so clear as that of Section 19 of the Madras Agriculturists Relief Act or Section 22 of the Bombay Agricultural Debtors' Relief Act No. 38 of 1947, it does confer jurisdiction upon the Debt Relief Court to go behind the decrees passed by the civil courts and scale down the debts of the agriculturists according to its provisions. The plain reading of Sub-section (1) of Section 10 would show that it casts a duty on the Debt Relief Court that it should reopen all transactions carried on between the agriculturist-debtor and his creditor during 15 years, immediately preceding the last transaction or the first day of January 1952, whichever is earlier. This power is to be exercised by the Court even if there is any provision to the contrary in any enactment for the time being in force or there is any agreement between the parties, or the persons through whom they claim, as to allowing compound interest. If there has been any earlier agreement between the parties that the profits of the mortgaged property would be treated to be interest on the mortgage-money and no account of such profits would be taken, or if there is any

agreement specifying the mode of settling accounts in some other manner or even if there is any written statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation. It is enjoined upon the Debt Relief Court that it will reopen all transactions between the parties made during the last fifteen years dating back from 1st January 1952 or the last transaction whichever is earlier. It is also enjoined upon it that it should ascertain the amount and date of each loan originally advanced and draw up an account of each creditor both with regard to the principal amount and the interest. Clause fa) of Sub-section (1) requires that separate accounts of interest and principal should be taken up to the date of the application filed under section 6.

16. Clause (b) provides that in the account of principal moneys advanced, the court should debit to the debtor such moneys as may from time to time have been actually received by him or on his account from each creditor and the price of goods if any sold to the debtor by such creditor as part of the transaction. There are two provisos to this clause and the first proviso lays down that the court should not debit to the debtor any sum in excess of the amount due or accrued due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of an agreement relating to the satisfaction of such decree. The second proviso provides that the court should not further debit to the debtor's principal account any accumulated interest which has been converted into principal in any statement or settlement of accounts or by any contract made in the course of the transaction.

17. Just as Clause (b) lays down what items should be debited to the debtor, in the account of the principal, so also Clause (c) lays down as to what should be debited to him in the account of interest. It provides that in the account of interest the court should debit to the debtor only simple interest and not compound interest on the balance of the principal moneys for the time being outstanding, at the rate stipulated by the parties or if the debt is payable under the decree or order of the civil courts, at the rate provided for in such decree or order or at the rate of six per cent per annum in the case of secured loans and nine per cent per annum in the case of unsecured loans, whichever is lowest. It is obvious that Clause (c) enjoins upon the Debt Relief Court to scale down the rate of interest at the rate of six per

cent per annum in the case of secured loans and nine per cent per annum in the case of unsecured loans if the interest is allowed at a higher rate under the decree or order of a civil court. In other words, if the interest allowed by any decree or order of the civil court is not higher than six per cent in the case of secured loans at nine per cent in the case of unsecured loans, the Debt Relief Court would not interfere. Similarly, it would not interfere if the decree or order of the civil court has allowed interest to the creditors at a still lower rate but if it exceeds six per cent per annum in the case of secured loans and nine per cent per annum in the case of unsecured loans, the Debt Relief Court will have to scale down the decretal amount of interest according to this clause. This leaves no doubt about the jurisdiction of the Debt Relief Court to go behind the decree, examine the rate of interest and prepare the account of interest according to this clause.

18. Clause (d) then provides in what manner moneys paid by or on account of the debtor to the creditor would be credited to the account of the debtor. If the creditor has received services or other advantages from the debtor, the court would credit to the debtor's account its equivalent, first in the account of interest and if there is any balance still left, to the account of the principal. According to Clause (e) if the total of the amount credited in the account of interest becomes equal to the total amount of the principal, no further interest would be allowed. If, however, the aggregate of the amounts credited in the account of interest is less than the total amount of principal, further interest may be allowed according to Clause (f), but not to exceed the maximum limit noted therein. Then Clause (g) requires that the Debt Relief Court should, subject to the provisions of the succeeding section, determine and declare separately the amount outstanding against the debtor as principal and interest.

19. Sub-section (2) to which reference has been made in Clause (g), is again significant. It enjoins upon the Debt Relief Court that it should reduce by forty per cent the principal amount of the loans advanced prior to the 1st of January 1945 as found in accordance with the provisions of Sub-section (1). The provisions of this sub-section again show that if the principal amount of the loans advanced relates to a period prior to 1st January 1945, the Debt Relief Court has to reduce by forty per cent the principal amount. It could not have been the intention of the

Legislature that the principal would be scaled down only in those cases where the civil court has not passed a decree and that no relief would be provided to the agriculturist if a decree has already been passed against him with regard to a loan advanced prior to 1st January 1945. Such discrimination would be invidious.

20. Sub-section (3) lays down that the Debt Relief Court should not award on account of arrears of interest a sum exceeding the total amount of principal found due in accordance with the foregoing provisions of section 10 even if there is anything contained to the contrary in this Act or in any other law for the time being in force.

21. Thus, in our opinion, the scheme of section 10 is to provide relief to the agriculturists both in the principal loan and the interest by scaling down the principal amount of the loan and the interest. Even in those cases where a decree or order has been passed by a civil court, the principal and the interest have got to be reduced by the Debt Relief Court while determining the debts under this section. The view therefore taken in 1963 Raj LW 406, referred to above, that the Debt Relief Court has jurisdiction to go behind the decree is not open to challenge in our opinion, though, at the same time, the jurisdiction conferred upon the Debt Relief Court under this section is of a limited nature and it can disturb the decree or order of a civil court only to the extent permitted therein.

22. It now remains to examine the cases which have been cited by learned counsel for the respondent No. 1 in support of his arguments. The earliest case referred to by him is *Sunderlal v. Kau-shiram*, AIR 1939 All 31. In that case, it was held by a learned single Judge, after examining the provisions of Section 33 of the U. P. Agriculturists Relief Act No. 27 of 1934, that a suit for reopening of the accounts of a closed transaction was not permissible under Section 33. It was contended on behalf of the agriculturist that his suit for accounts under Section 33 was maintainable even in case of a bond which already stood satisfied. It was held after referring to Section 33 (2) that a decree which was already satisfied could not form the subject of a suit under section 33. It is clear that this case is of no help to respondent No. 1.

23. Learned counsel has next referred to *Dau Balwantsingh v. Mt. Bindabai*, AIR 1942 Nag 88 and *Rukhmabai Gan-patrao Parkhi v. Shamlal Surajmal Mar-wadi*, AIR 1944 Nag 289. In our opinion, there is no observation in both the cases which can be of any help to him in the present case.

24. The writ application is therefore allowed and the order of the District Judge, Jhunjhunu, dated 8th May, 1962, is set aside. The record of his court be sent back to him with direction to hear and decide the revision application afresh in the light of our observations.

25. In the circumstances of the case, the parties are left to bear their own costs in this Court.

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