

Badri Prasad and anr. Vs. Additional District Judge and ors.

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Court : Rajasthan

Decided On : Mar-02-1972

Reported in : 1972WLN180

Judge : V.P. Tyagi, J.

Appeal No. : S.B. Civil Writ Petition No. 393 of 1971

Appellant : Badri Prasad and anr.

Respondent : Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

V.P. Tyagi, J.

1. This writ petition of creditors of Badri Prasad & Kailash Chand raises an important question of law whether an Additional District Judge is competent to exercise the power of revision under Section 17 of the Rajasthan Relief of Agricultural Indebtedness Act, 1957 (hereinafter called the Act).

2. Respondent No. 3 Phadee filed an application under Section 6 of the Act in the Debt Relief Court (Munsiff), Dholpur for the determination of his debt. The Debt Relief Court determined the debt to the extent of Rs. 3,798.75. A revision was filed against the judgment of the Debt Relief Court in the court of Additional District

Judge, Dholpur. The learned Additional District Judge while disposing of the revision application reduced the debt to Rs. 500/-. It is this judgment of the Additional District Judge that has been challenged in the present writ petition, inter alia, on the ground that the learned Additional District Judge had no jurisdiction to entertain and dispose of the revision application under Section 17 of the Act.

3. Respondent No. 3, debtor, has filed a reply to the writ petition & has averred that the District Judge, Bharatpur, by order dated 19th June, 1968, has conferred jurisdiction on the Additional District Judge, Dholpur, to decide the revision applications under Section 17 of the Act. This order is said to have been issued by Shri M.M. Vyas, the learned District Judge, Bharatpur, in the exercise of his powers under Sub-section (3) of Section 10 of the Rajasthan Civil Courts Ordinance, 1950, permitting the Additional District Judge sitting at Dholpur to entertain all suits, appeals and applications arising out of the local limits of the Dholpur Sub-Division as fixed by the Government under notification No. F 19 (27)/Jud-68/I dated 31-5-1968. It is, therefore, contended by the respondent that revision application under Section 17 of the Act could be entertained and disposed up by the Additional District Judge, Dholpur.

4. In order to appreciate the point in controversy, it will be relevant to reproduce Section 17 of the Act whereunder the District Judge exercises the power to entertain and dispose of the revision applications, and it reads as follows:

Section 17-Revision of order of Debt Relief Court.-Any person aggrieved by an order of a Debt Relief Court may, within ninety days of such order, apply to the District Court for revision of the order on any of the following grounds-

(a) that the order is contrary to law

(b) that the court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law

(c) that the instalments fixed under Sub-section (3) of Section 11 are inequitable

but, subject to the orders of the District Court on such application and further subject to the provisions of Section 18 the order of the Debt Relief Court shall be

final.

There is an explanation attached to this section which clarifies as to which court in the District shall be taken to be a 'District Court' for the purpose of Section 17 and it says:

Explanation-For the purpose of this Section (and Sections 18, 18A and 19) the District Court shall be deemed to be the Court of the District Judge within whose civil jurisdiction the Debt Relief Court is situated.

5. Mr. Mehta, appearing on behalf of the petitioners, submits that if the opening portion of Section 17 is read with the explanation attached thereto then it becomes clear that the 'District Court' as mentioned in Section 17 is the court which is prescribed over by the District Judge within whose jurisdiction the Debt Relief Court is situated. He further contends that the Additional District Judge cannot be included in the expression 'the District Judge' which means nothing but the Presiding Officer of a particular court of civil jurisdiction in the District.

6. Under Section 8 of the Rajasthan Civil Courts Ordinance, 1950, the State Government has a power to fix the number of the District Judges to be appointed for the whole of the State of Rajasthan. It is not disputed that the Judicial District of Bharatpur has the jurisdiction over Dholpur sub-district for which the court of the Additional District Judge, Bharatpur, to receive and dispose of the suits, appeals and applications arising out of the local limits of the Dholpur sub-division which if the said court had not been established would have been entertained and disposed of by the District Judge, Bharatpur. The appointment of the Additional Judges is made under Section 10 of the Rajasthan Civil Courts Ordinance. Sub-section (3) of Section 10 lays down that any Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions, he shall exercise the same powers as the District Judge. It is under the provision of the law that the District Judge of Bharatpur had issued the aforementioned order of 19th June, 1968, empowering the Additional District Judge, Dholpur, to entertain and dispose of the suits, appeals and applications which would have otherwise been entertained and disposed of by the District Judge of Bharatpur.

7. Learned Counsel appearing on behalf of the respondent No. 3 argues that the Additional District Judge appointed under Section 10 of the Rajasthan Civil Courts Ordinance enjoys the same powers and functions in the same manner as if he were presiding over a District Court in that area over which he exercises his jurisdiction and, therefore, for the purpose of disposing of a revision application under Section 17 the Court of the Additional District Judge Dholpur, under whose jurisdiction the Debt Relief Court of Dholpur is situate, shall be treated as the District Judge to entertain and dispose of a revision application under Section 17 of the Act.

8. These rival contentions of the parties pose this important question for determination whether the court of the Additional District Judge situate at Dholpur would fall within the expression 'District Court' as used in Section 17 of the Act.

9. The explanation to Section 17 has, however, clarified as to what Court shall be taken to be a 'District Court' for the purposes of Section 17 of the Act. It mentions that the District Court for the purposes of this section shall be that Court in the District which is presided over by the District Judge. Section 18 of the Rajasthan Civil Courts Ordinance lays down that the Court of the District Judge shall be the principal Civil Court of original civil jurisdiction in the area over which his jurisdiction extends. According to Mr. Mehta, the principal civil court of original civil jurisdiction in the Judicial District of Bharatpur is the Court of the District Judge sitting at Bharatpur. while according to Mr. Rastogi, the principal civil court of original civil jurisdiction for the area where the Debt Relief Court is situate, is the Court of the Additional District Judge sitting at Dholpur.

10. The Rajasthan General Clauses Act, 1955, has defined the 'District Court' as well as the 'District Judge'. According to those definitions, 'District Court' means the principal civil Court of original jurisdiction of a district constituted for the purpose, but shall not include the High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction. 'District Judges' has also been defined to mean the Judge of a District Court.

11. These definitions raise another question as to what meaning should be given to the expression 'a district' used therein, and which Court should be taken a

principal court exercising its jurisdiction over that district.

12. A notification No. F. 1(40) Jud/50 dated 2nd June, 1950, was issued by the State Government to create 12 judicial districts in the State including the district of Bharatpur. The notification reads as follows:

In exercise of the powers conferred by Sub-section (1) of Section 7 and Sub-section (1) of Section 8 of the Rajasthan Civil Courts Ordinance, 1950, the Government of Rajasthan is pleased to direct that with effect from the 1st day of July, 1950, there shall be twelve District Judges appointed for the whole of Rajasthan, with the places of headquarters and the territorial limits of jurisdiction, of their courts as indicated in the following table, namely:

Serial No.	Place of headquarters of jurisdiction of Court	Extent of territorial jurisdiction of Court
1.	Bharatpur	Bharatpur and Sawai Madhopur Districts

Note: The expressions 'division' and 'district' in this table refer to the divisions and districts as formed under the Rajasthan Territorial Divisions Ordinance, 1949. By order of His Highness the Raj Pramukh Prabh Dayal Loiwal Secretary to the Government of Rajasthan in the Judicial Department.

According to this notification, a principal court of original jurisdiction for the Judicial District of Bharatpur was created at Bharatpur to exercise its jurisdiction over that District which is composed of two revenue districts of Bharatpur and Sawai Madhopur. It is, therefore, clear that the principal court of original civil jurisdiction for the district of Bharatpur is the court located at Bharatpur and presided over by the District Judge. The expression 'district' as used in the definition of the 'District Court' cannot be understood in any other manner except the district created by the State Govt. under Sections 7(1) and 8(1) of the Rajasthan Civil Courts Ordinance, 1960. District Court, therefore, in this case shall be the court situated at Bharatpur & presided over by the District Judge.

13. It is contended by learned Counsel for respondent that Additional District Judge appointed under the provisions of the Rajasthan Civil Courts Ordinance enjoys the same powers of District Judge and, therefore, for the purposes of Section 17 of the Act any court within the District presided over by an Additional District Judge should be taken to be a District Court. In support of this contention

learned Counsel placed reliance on Ganpat Pralhad and Ors. v. Mahadeo Palkejee Kolhe and Ors. AIR 1949 Nagpur 408, Yeleswarapu Ramachandra Rao v. State of Madras (Now Andhra Pradesh) and Anr. AIR 1962 Andhra Pradesh 58 and Bohra Abdul Hussain v. Pandit Chhagan Lal Chaturvedi and Anr. ILR (1958) 8 Rajasthan 1055.

14. In Ganpat Pralhad and Ors. v. Mahadeo Palkajee Kolhe and Ors. AIR 1949 Nagpur 408 it has been held that the expression 'District Judge' does not only include the District Judge properly so termed but also all the Additional Judges appointed to that Court and the jurisdiction of each of these Judges is co-extensive with that of the District Judges properly so called unless such jurisdiction is specially curtailed by a general or special order. The facts and circumstances of this case, however, were different and the aforesaid observation of the Court cannot, therefore, be taken to be an authority to determine the District Court for the purposes of Section 17 of the Act.

15. In Yeleswarapu Ramachandra Rao v. State of Madras (Now Andhra Pradesh) and Anr. AIR 1962 Andhra Pradesh 58 the learned Judge held that on the clear language of Section 16 of the Telegraph Act, 1885, the intention of the law is that the damages could be determined by the civil court of the rank of the District Judge, and the expression 'District Judge' in Section 16. according to that Court, did not mean that the District Judge is to act in his personal property as an individual but he was to determine the damages as a civil court and in that circumstance the learned Judge held that Sub-sections (3), (4) and (5) of Section 16 of the Act unequivocally pointed to the fact that this determination by a District Judge is a determination by the civil court and, therefore, whatever function the District Judge was intended to perform could also be lawfully delegated to the Additional District Judge who is judge of the same court. This decision has no relevance to the question in issue before this Court.

16. In Bohra Abdul Hussain v. Pandit Chhagan Lal Chaturvedi and Anr. (9), the question was whether the Commissioner acting under Section 12 of the United State of Rajasthan Buildings (Lease and Control) Ordinance, 1948, was to function as a *persona designata* and whether the Additional Commissioner would also

exercise the power of the Commissioner under the provisions of that Act. This Court, after taking into consideration the language of Sub-section (2) of Section 9 of the Rajasthan Territorial Divisions Ordinance, (No. 22 of 1949) held that the Additional Commissioner while exercising any powers of discharging any duties shall be deemed to be the Commissioner of the area for which he has been appointed and in that view the learned Judges held that for the purpose of Ordinance No. 22 of 1949 the Additional Commissioner had the powers of the Commissioner under Section 9(2) of the Ordinance if so authorised by the Government or the Commissioner. This decision also is of little help to the respondent because the real controversy in this writ petition is whether the Court established at Dholpur and presided over by the Additional District Judge can be said to be a 'District Court' in terms of Section 17 of the Act.

17. The explanation to Section 17 makes it clear that for the purpose of this section the District Court shall be the Court of the District Judge within whose civil jurisdiction the Debt Relief Court is situated. Whether the Additional District Judge of Dholpur can be said to be the District Judge for the court created by the State Government for the judicial District of Bharatpur by issuing the notification of 2nd June, 1950. By this notification the Government have created a District Court at Bharatpur which can exercise its jurisdiction in the revenue Districts of Bharatpur and Sawaimadhopur. For the purpose of the Judicial District of Bharatpur, the principal court of original civil jurisdiction is located by the Government at Bharatpur and it is presided over by the District Judge. To help the District Judge sitting at Bharatpur in discharging his duties as District Court two other judges designated as Additional District Judges were appointed by the Government under the provisions of Section 10 of the Rajasthan Civil Courts Ordinance and for the sake of facility their courts were created at different places, one at Dholpur and the other at Gangapur City. These Additional District Judges have been empowered by the District Judge of Bharatpur to entertain and dispose of suits, appeals and applications arising in the local limits of their jurisdiction. The Additional District Judge sitting at Dholpur could, therefore, entertain suits, appeals and applications arising in the sub-district of Dholpur. This Court, will, therefore, be a court exercising its jurisdiction on a limited portion of the Judicial District of Bharatpur. In these circumstances, it is difficult to say that court sitting at Dholpur and presided

over by the Additional District Judge is the District Court in the terms of the provisions of Section 17 of the Act. Though the Additional District Judge sitting at Dholpur discharges the same functions in respect of the suits, appeals and applications arising in his territorial jurisdiction which the District Judge has to perform, yet he cannot claim to be presiding over a court which exercises jurisdiction for the entire Judicial District of Bharatpur and as such the Additional District Judge cannot be said to be exercising jurisdiction as District Judge for presiding over the principal court of civil jurisdiction located at Bharatpur. The District Judge as appointed under Section 8 of the Civil Courts Ordinance and he is to preside over a court which is constituted under the notification issued by the State Government on 2nd June, 1950, at Bharatpur.

18. In *J.B. Mangharam Co., Gwalior v. K.B. Kher and Ors.* AIR 1956 Madhya Bharat 183, the question had arisen before the Gwalior Bench as to what meaning should be given to the term 'District Judge' appearing in Section 7(3)(b) of the Industrial Disputes Act and whether the Additional District Judge is also included within the expression 'District Judge' as used therein. The learned Judges after taking into consideration the definition of 'the District Judge' in Section 3(17) of the General Clauses Act, 1897, held that the sole presiding Judge of a principal civil court of original jurisdiction in the District can be called a District Judge. Their Lordships observed that it is entirely erroneous to think that because a person has exercised all the powers of a District Judge he has, therefore, attained the competence of a District Judge. It is true that this discussion has taken place while judging the qualifications of a District Judge, but it gives an indication of the minds of the learned Judges that the expression 'District Judge' in all circumstances cannot be taken as synonymous to the term 'Additional District Judge'. There is no doubt that all the Additional District Judges exercise the same powers as the District Judges exercise but by discharging the same powers the Additional District Judge would not become a District Judge for all purposes. The District Judge is that person who presides over the principal court of civil original jurisdiction of the Judicial District created by the Government under notification referred to above, and in the present case, the principal court of civil original jurisdiction is the court located at Bharatpur and not at Dholpur. In these circumstances, the District Judge presiding over the principal civil court of original civil jurisdiction located at

Bharatpur has the jurisdiction to entertain and dispose of revision application under Section 17 of the Act and not Additional District Judge sitting at Dholpur

19. In this view of the matter, the writ petition is allowed and the judgment of the Additional District Judge, Dholpur, dated 23rd of November, 1970 (Ex. P/6) is hereby quashed. Looking to the circumstances of the case, I leave the parties to bear their own costs.

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