

Noore Khan Vs. Badri Narayan

Noore Khan Vs. Badri Narayan

SooperKanoon Citation : sooperkanoon.com/758558

Court : Rajasthan

Decided On : Nov-07-1978

Reported in : 1978WLN(UC)378

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision No. 573/1974

Appellant : Noore Khan

Respondent : Badri Narayan

Advocate for Pet/Ap. : Mr. J.M. Bhandari

Disposition : Application dismissed

Judgement :

S.K. Mal Lodha, J.

1. This is a revision by debtor-petitioner Noorekhan against the order of the learned Civil Judge, Jodhpur dated May 23, 1974 passed in Civil Misc. Case No. 1 of 1972.

2. The facts leading to this revision may briefly be stated. The non-petitioner-plaintiff instituted a suit for the recovery of Rs. 4,300/- against the petitioner (defendant-debtor) in the Court of Civil judge, Jodhpur on July 29, 1973. This

amount consisted of Rs. 2500/- as principal and Rs. 1800/- as interest. The suit was registered as civil original suit No. 422 of 1963. On July 9, 1964, the petitioner filed a written statement. Issues were framed on February 5, 1964. On April 7, 1964, the learned Judge passed the following order:

The plaintiff concedes to the suspension of proceedings. So stayed up to 30th September 1964. Put upon October 1, 1964.

On October 1, 1964, the case was ordered to be put up for the evidence of the plaintiff on November 12, 1964. It appears that on March 11, 1965, learned Counsel for the plaintiff moved an application under Section 5(2) of the Rajasthan Relief of Agricultural Indebtedness Act, 1957 (for short, the Act). The learned Civil Judge directed the supply of copy of the application and the case was ordered to be put up for reply and arguments on March 29, 1965. On April 12, 1965, the learned Civil Judge recorded that the counsel for the plaintiff has made an application Under Section 6 of the Act which has been admitted and the defendant has admitted himself to be an agriculturist and in these circumstances, he abated the suit.

3. The plaintiff non-petitioner submitted application Under Section 6 of the Act against the petitioner in the Debt Relief Court, Jodhpur (Civil Judge. Jodhpur) on 11-3-65. The Debt Relief Court admitted the application on 12-4-65 & ordered issue of notice to the petitioner. Notices were issued to the petitioner as well as to his other creditors namely the Mehra Coperative Sewa Sahakari Panchayat Samiti, Tehsil Phalodi; Ghoghaji Purohit, Malarwala. Phalodi & Alsidas son of Gordhan Sanwana resident of Phalodi. The creditor Ghoghbar Dass was served as it appears from the order sheet dated November 25, 1966. Alsidas was served on April 17, 1966 as is clear from the acknowledgment on record. The notice of the Mehra Coperative Sewa Sahakarr Panchayat Samiti Ltd, was published in the newspaper Jwala. Noorethan petitioner submitted reply to this application of July 29, 1968. The creditor examined AW. 1 Badrirarain, AW. 2 Bhanwarlal and AW 3 Shaiten Singh in support of his application under Section 6 of the Act on March 27, 1971. The debtor petitioner in this revision did not lead any evidence in rebuttal. The Debt Relief Court heard the arguments on December 17, 1977 and by its order

dated December 20, 1971, held the application of the creditor to be barred by time and on this ground, it further held that the debt was not capable of being determined. The Judge, Debt Relief Court, Jodhpur accordingly disposed of the application.

4. On December 21, 1971, an application was moved on behalf of the creditor that his application under Section 6 of the Act has been dismissed vide Debt Relief Case No. 13 of 1965 and therefore, his suit may be restored under Section 151, CPC. This application was registered by the learned Civil Judge as Civil Misc. Case No 1 of 1972. The debtor contested this application by filing a reply on August 7, 1972 on the ground that the application of the plaintiff creditor was dismissed on the ground that his claim was barred by time and as this was an order on merits the suit cannot be revived. The learned Civil Judge, by his order dated May 23, 1974 accepted the application of the plaintiff creditor and ordered revival of Civil Original Suit No. 422 of 1963. Being dissatisfied with the order of revival, the petitioner (debtor) has come up in revision before me.

5. I have heard Mr. J.M. Bhandari, learned Counsel for the petitioner and Mr. R.L. Purohit, learned Counsel for non-petitioner and have also carefully gone through the record of the case.

6. A perusal of the order sheet dated April 12, 1965 of Civil original Suit No 422 of 1963 shows that the learned Counsel for the plaintiff intimated the court that an application under Section 6 of the Act was made and to it has been admitted and therefore, as the defendant (Petitioner) had admitted himself to be an agriculturist, the suit was abated. Similarly, the order sheet dated April 12, 1965, which was recorded in Debt Relief Case No. 13 of 1965 shows that the application of the applicant (creditor non-petitioner) under the Act was registered and it was admitted. Section 6 of the Act provides for submission of the application to the Debt Relief Court. Sub-section (2) thereof lays down that such an application praying for the determination of the debts outstanding against the debtor may also be filed by his creditor or his surety whether such debtor is liable for such debts individually or jointly with another person. Section 5(1)(i) deals with abatement or stay of suit or insolvency petition. As the application under Section 6 was made by

the creditor and it was admitted by the Debt Relief Court, Civil Suit No. 422 of 1963 was ordered to be abated. Before the Debt Relief Court, the debtor raised a preliminary objection that the claim of the creditor (non-petitioner in this revision) is barred by time and so, the application of the creditor under Section 6 of the Act should be dismissed. The Debt Relief Court, as stated above by its order dated December 22, 1971 found that the application of the creditor was barred by time & therefore, on this ground, determination of the debtor outstanding against the debtor (petitioner) could not be made. The contention of the learned Counsel for the petitioner is that since the application of the creditor was dismissed as barred by time, the learned Civil Judge has exercised jurisdiction not vested in him by law in reviving Civil Original Suit No. 422 of 1963. He elaborated his argument by contending that the Debt Relief Court, Jodhpur, dismissed the claim of the non-petitioner holding that the non-petitioner has not got any valid and subsisting claim against the petitioner and as such, the dismissal of the claim would be considered on merits of the case and in these circumstances, the original suit could not be revived. On the basis of the decision reported in *Pyarelal v. Rani Raman Kumari* 1970 RLW 159, Mr. Purohit contended that when the application under Section 6 was dismissed by the Debt Relief Court on the ground that it was barred by time & hence the debt could not be determined, and therefore, the court could revive the suit which was abated by it. In that case, the following question was referred for answer to the Division Bench of this Court:

Whether the civil Court can revive proceedings abated Under Section 5 and 6 of the Rajasthan Relief of Agricultural Indebtedness Act, 1957.

The answer given by the Division Bench was that the Civil Court can revive the proceedings abated Under Section 5(1)(i) or Section 6(6)(ii) of the Act, if order of admission of the application under Section 6 has been set aside by the Debt Relief Court itself or by any other court competent to set aside that order. It means that the proceedings in the suit can be revived on the rejection of the application. Therefore, when the application of the non-petitioner-creditor under Section 6 of the Act was held to be not maintainable on the ground of being barred by limitation, it would tantamount to the rejection of the application under Section 6 of the Act. The result that would follow from this has been stated as follows in

Pyarelal's case (supra).

As soon as the court rectifies this mistake by rejecting the application, it means to convey to the court that so far as it is concerned, it places no hurdle in the progress of the suit. The court in which the suit is pending, is therefore duty bound to revive the proceedings either suo motu or at the instance of the plaintiff who has filed the suit.

These observations are applicable to this case despite the fact that in Pyarelal's case (supra), the application of the debtor under the Act was rejected. In these circumstances, in my opinion, the learned Civil Judge had jurisdiction to revive the suit after the rejection of the application of creditor under, Section 6 of the Act on the ground that it is barred by time.

7. For the foregoing reasons, I find no force in this revision application and it is accordingly dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com