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Court : Rajasthan

Decided On : Sep-19-1978

Reported in : 1978WLN(UC)381

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 118

Appellant : Mohanlal

Respondent : Jethmal

Disposition : Application allowed

Judgement :

S.K. Mal Lodha, J.

1. This is a defendant's revision directed against the order of the Civil Judge, Jodhpur dated January 27, 1978 by which he rejected the application dated August 20, 1977 of the defendant made under Section 4 of the Rajasthan Scheduled, Debtors (Liquidation of Indebtedness) Act, 1976 (hereinafter to be referred to as 'the Act').

2 The facts giving rise to this revision may be noticed in brief. The plaintiff non-petitioner instituted a suit on July 20, 1976 against the defendant petitioner for the recovery of Rs. 5166.66 p. alleging that the defendant had borrowed Rs. 5000/-

from him on April 28, 1972, that he agreed to pay interest (a) 1% per mensem on the amount of loan & that he executed a promissory note and a receipt in favour of the plaintiff on the same day. The suit was instituted in the court of Civil Judge, Jodhpur. The defendant admitted to have received Rs. 5000/- as loan from the plaintiff. He also admitted the execution of the promissory note and the receipt. He however pleaded that the plaintiff is a money-lender and since he does not possess a money lending license, he is not entitled to bring the suit and that at any rate, he, is not entitled to get interest. He also pleaded that he has paid Rs. 2300/- to the plaintiff but this amount has not been credited towards the principal. Alternatively, he submitted that he is financially very weak and is unable to pay the whole amount due in lump sum and so in case of decree being passed against him instalments may be fixed. The learned Civil Judge framed five issues including relief on March 18, 1977. Issue No. 2 is to the effect whether the defendant is not a trader the burden of which lay on the defendant. During the pendency of the suit, on August 20, 1977, the defendant moved an application under Sec 4 of the Act and prayed therein that the suit of the plaintiff may be dismissed with costs. Along with the application, he submitted a certificate issued by the Tehsildar, Jodhpur dated April 7, 1977 in which, inter alia, it is mentioned that the defendant is a marginal farmer. This application of the plaintiff was resisted by the defendant. Vide his reply dated September 3, 1977. He denied that the defendant is a Scheduled Debtor but, on the contrary; he asserted that the defendant is a trader and the amount of loan was taken in connection with the business. The learned Civil Judge, vide his order dated January 27, 1978 dismissed the application holding that the petitioner is not an agriculturist as defined under Section 2(b) of the Act. Being aggrieved by this order, the defendant petitioner has come up in revision before this Court.

3. The revision remained part-heard on September 15, 1978 and September 18, 1978. Today (September 19, 1978) learned Counsel for the petitioner has moved an application under Order VI, Rule 17 and Section 151, CPC for permission to amend the written statement by adding paras 14, 15 and 16 after para 13 of the original written statement. A copy of this application was delivered by the learned Counsel for the petitioner to the learned Counsel for the respondent. The contention of the learned Counsel for the defendant petitioner is that if the order, under revision is

allowed to stand, it would occasion failure of justice and will cause irreparable injury to the defendant. He further submitted that the learned Civil Judge while dismissing the application under Section 4 of the Act has exercised his jurisdiction illegally and with material irregularity. It is correct that the order under revision has occasioned failure of justice, for the learned Civil Judge has passed the order in complete disregard of the provisions of Section 6 of the Act which lays down that in any proceedings for the recovery of debt in a civil court, if the debtor produces a certificate issued in his favour under Section 5 of the Act, the civil court shall presume that the debtor is a scheduled debtor and the burden of proving to the contrary shall lie on the creditor. In this case, the defendant debtor has produced the certificate issued by the Tehsildar, Jodhpur under Section 5 of the Act mentioning therein that he is a marginal farmer. Scheduled debtor has been defined in Section 2(j) of the Act as an agricultural labourer, a marginal farmer and a rural artisan. It is, therefore, clear that the defendant is a scheduled debtor and if he is a scheduled debtor, then Section 4 of the Act will be attracted which provides for liquidation of debt of the scheduled debtor. The learned Civil Judge did not draw the presumption as provided under Section 6 of the Act. According to this prescription, the burden to prove that the defendant is not a scheduled debtor shall lie on the plaintiff creditor. In these circumstances, the petitioner is entitled to invoke the revision jurisdiction of this Court.

4. Section 5 of the Act lays down amongst others that the Tehsildar, within the local Units of whose jurisdiction a debtor actually and voluntarily resides, or carries on business or personally works for gain, shall be competent to issue a certificate in the prescribed form and manner certifying amongst others that the debtor is a 'marginal farmer'. The certificate produced by the defendant along with the application under Section 4(2) of the Act substantially complies with Form 2 prescribed in Rule 4 of the Rajasthan Scheduled Debtors (Liquidation of Indebtedness) Rules, 1976. When the certificate in the prescribed form issued by the Tehsildar Jodhpur was produced by the defendant along with the application under Section 4 of the Act, a presumption in his favour arises as envisaged by Section 6 of the Act and the burden to prove to the contrary, therefore, lies on the plaintiff-creditor. The learned Civil Judge adopted a defective procedure in as much as he did not draw the presumption arising under Section 6 of the Act. In this

view of the matter, he has exercised his jurisdiction illegally and, at any rate, with material irregularity. Section 4 has an overriding effect as it contains the non-obstinate clause, and hence it was incumbent on the court below to comply with the provisions of Section 6 of the Act. It is, therefore, for the plaintiff-creditor to prove that the defendant is eat a scheduled debtor.

5. Learned Counsel for the petitioner, at the close of the arguments submitted that he does not want to press the application for amendment of the written statement submitted by him today. As such this application under Order VI, Rule 17 read with Section 151, CPC is dismissed as not pressed.

6. The result is, that I allowed this revision application, set aside the order of the learned Civil Judge, Jodhpur, dated January 27, 1978 and remand the case to him with a direction that the application under Section 4 of the Act should be disposed of in the light of the observations made above in this order. The parties are, however, left to bear their own costs of this revision.

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