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Court : Rajasthan

Decided On : Jan-23-1985

Reported in : 1985(1)WLN190

Judge : S.K. Mal Lodha and; K. Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeal No. 14 of 1975

Appellant : Ganeshlal

Respondent : Maganraj

Advocate for Pet/Ap. : Mr. Rajendra Mehta

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. By this appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, the appellant, who is judgment-debtor, questions the correctness of the judgment dated April 10, 1975, passed by the learned single Judge of this Court, by which he dismissed the appeal filed by him.

2. Facts leading to this appeal may succinctly be stated: The decree-holder-respondent obtained a decree against the judgment-debtor-appellant on January

28, 1963 for Rs. 11,812/-and odd. That decree was confirmed in appeal by this Court. The decree holder-respondent levied execution for the realisation of the amount and applied for attachment of the houses of the judgment debtor. He filed an objection that as he is an agriculturist, the attached houses are not liable to attachment and sale under Section 60(1)(c), C.P.C. The objection was dismissed by the executing court by its order dated October 21, 1967 holding that he (judgment-debtor-appellant) is not an agriculturist.

3. Himmatmal and Milapchand, who were also the creditors of the judgment-debtor, filed an application under Section 6 of the Rajasthan Relief of Agricultural Indebtedness Act, 1957 (Act No. XXVIII of 1957) (for short 'the Act') before the Additional District Judge (Debt Relief Court), Jalore. The application was admitted and resort was made to Section 7 of the Act for issuance of the notices to all creditors. It may be stated here that in the application that was filed by Himmatmal and another under Section 6 of the Act, the decree-holder-respondent was not made a party and the decretal debt of the judgment-debtor-appellant was not shown in the list of debts. Here, it may be mentioned that during the trial of that application under Section 6 of the Act, the decree-holder-respondent was examined by the creditor Himmat Mal as A.W.I to prove the hand writing of the judgment-debtor on March 26, 1971. He appeared as he was summoned by the creditor Himmatmal as his witness in support of his claim. It is not in dispute that no claim was filed by the decree-holder-respondent before the Debt Relief Court under Section 8 of the Act. It is also not in dispute that no individual notice was given to the decree-holder-respondent under Section 7 of the Act. On December 4, 1973, the judgment-debtor submitted an application before the executing court stating that the decree-holder-respondent has not submitted any statement of claim before the Debt Relief Court within the prescribed time and so his claim should be deemed to have been discharged for all purposes and as such he has got no right to execute the decree, which he has obtained against his (judgment-debtor) and regarding which the execution proceedings were levied and the house of the judgment-debtor were attached. After that, another application was submitted by the judgment debtor on Dec. 18, 1973 that the houses could not be attached and sold in execution of the decree of the decree-holder-respondent. The ground mentioned in that application was that the judgment-debtor-appellant had

already been declared as an agriculturist by the Debt Relief Court, Jalore, vide its order dated July 28, 1970. Both the applications were dealt with together by the Additional District Judge, Sirohi. So far as the application dated December 4, 1973, was concerned, it came to the conclusion that by order dated October 21, 1967, his objection that attached houses were exempt from sale and attachment, has already been dismissed and so on the basis of the order dated July 28, 1970, he cannot claim that he is an agriculturist and the attached houses are exempt from attachment and sale and that the order operates as *res judicata*. So far as second application regarding discharge of the debt of the decree-holder-respondent is concerned, the learned Additional District Judge was of the opinion that the decretal debt of the decree-holder cannot be deemed to have been discharged on account of the non-filing of the claim by him before the Debt Relief Court. In view of the aforesaid findings, both the applications were dismissed by the learned Additional District Judge, Sirohi order dated January 19, 1974. Being dis-satisfied, an appeal was filed. Before the learned Single Judge, on behalf of the judgment-debtor, two contentions were raised:

(1) that the judgment-debtor was declared as an agriculturist by the Debt Relief Court, Jalore in the proceedings initiated by the creditor Himmatmal under Section 6 of the Act against the judgment-debtor & so he is an agriculturist and as such the attached houses are not liable to be sold in execution of the decree against him by the decree-holder;

(2) that under the provisions of Section 8 of the Act, the debt of the decree-holder shall be deemed to have been discharged for the failure and omission of the decree holder to submit his claim.

Both the contentions were repelled by the learned Single Judge and as a consequence of that, the appeal was dismissed. It may be stated that some preliminary objections were raised on behalf of the decree-holder, but the learned Single Judge was of the opinion that as the appeal of the judgment-debtor was going to be dismissed on merits, it is not necessary to examine them. He did not permit the judgment-debtor to raise the objection that the interest of a tenant in an agricultural holding cannot be sold in execution because of Sections 36 and 37 of

the Rajasthan Tenancy Act. The judgment-debtor did not remain satisfied with the judgment of the learned Single Judge dated April 10, 1975 and has filed this special appeal, as aforesaid.

4. We have heard Mr. Rajendra Mehta, learned Counsel for the appellant and we had no advantage of hearing any person on behalf of the respondent though service was effected on him.

5. In the first instance, it was argued by the learned Counsel for the appellant that the executing court, namely, the Additional District Judge, Sirohi, as well as the learned Single Judge committed serious error of law when they held that the decretal debt of the decree-holder outstanding against the judgment-debtor cannot be deemed to have been discharged under Section 8 of the Act. In support of his submission, Mr. Rajendra Mehta, learned Counsel for the appellant has placed strong reliance on *Kesav v. Waman* : AIR1953 Bom340 and 1977 Mah. L.J. 185. It may be stated that the second authority relied on by the learned Counsel was not placed before us. It is not available in the Court's Library, but in Quinquennial Digest, 1976-80, while dealing with Section 14 of the Bombay Agricultural Debtors Relief Act (No. XXVIII of 1947), it is stated as under:

The expression 'all creditors' used in Section 14 in connection with general notice under Section 14(b) is not limited to the class of Creditors referred to in Sub-clause (a), but refers to 'All Creditors' of the debtor even though their names may not be in the application. An award made under the Act is not only award between the debtor and such of the Creditors as are mentioned in Section 4 or upon whom notice has been served under Section 14(a). It is an award between a debtor and all his creditors including mortgagees.

It will not be proper for us to express any opinion one way or the other on the case reported in 1977 Mah. L.J. 185 in the absence of the full report. This has necessitated us to examine the provisions of Sections 6, 7 & 8 of the, Act.

6. Section 6 of the Act provides for application to a Debt Relief Court. Sub-section (2) of Section 6 reads as under:

Such an application praying for the determination of the debts outstanding against a 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.

Sub-section (3) of Section 6 lays down that every application under Sub-section (1) or Sub-section (2) shall be signed and verified in accordance with Order VI, Rule 15 of the first Schedule to the Court of Civil Procedure, 1908 and shall contain the particulars mentioned therein, one of which is a statement of all debts outstanding against him including those referred to in Section 4, as nearly as may be ascertainable and the names and addresses of his creditors. Section 7 provides preliminary procedure in proceedings under Section 6 of the Act. The preliminary procedure that is to be followed Under Section 7 is that all creditors of the applicant including those to whom any liability referred to in Section 4 is due are to be impleaded as parties to the proceedings. All creditors are to be joined as parties to the proceedings. The Debt Relief Court has to (1) fix date of hearing; (2) cause notice of date together with a copy the application to be served on all creditors of the applicant and (3) the copies of such notices and applications are to be affixed on the Court House Rule 7 of the Rajasthan Relief of Agricultural Indebtedness Rules, 1957 prescribes manner of issue of notice under Section 7 and according to it, besides affixing copies of the notice under Section 7 to the court house, the copies of the notices and of the application are required to be sent by registered post to every creditor named by the creditor who has moved the application Under Section 6(2) of the Act, at his expense.

7. Now, the next important section is Section 8, which deals with submission of claims by creditors. We may profitably read Section 8 of the Act, which is as under:

8. Submission of claims by creditors: (1)-On or before the date fixed for the hearing of creditors under Section 7 which shall not be earlier than two months from the date of service of notice or the issue of proclamation under Order V, Rule 20 of the first Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908) every creditor shall submit a statement of his claim signed and verified in the manner prescribed by Order VI, Rule 15 of the first Schedule to the said Code.

Such statement shall be submitted in person by agent, by pleader or by registered post and every claim not so submitted shall be deemed for all purposes and occasions to have been discharged as against such debtor (s).

Provided that, if the Debt Relief Court is satisfied that for good and sufficient cause any creditor was unable to submit his claim, it may extend the time on such conditions as to costs as it may think fit and may review the claim.

(2). On the date on which the case is fixed for hearing, every creditor shall produce the documents in his possession or control on which he bases his claim. He shall also furnish a full and true statement of accounts of all previous transactions between him and his debtor leading to the claim and his account books or copies thereof, if any, in his possession or control. If such documents and statements are not produced at such hearing or at any adjourned hearing fixed for the purpose by the Debt Relief Court, the court may declare any such claim to be discharged for all purposes and all occasions against such debtor or debtors.

Provided that if the Debt Relief Court is satisfied that any creditor is satisfied that any creditor was, for good and sufficient cause, unable to produce such documents, it may on such conditions as to cost as it may think fit extend the date for the purpose and may revive the claim.

Under Section 8(1) of the Act, it has been made incumbent on the creditors to file their statement of claim, which is to be signed and verified in accordance with O. VI, Rule 15, CPC on-or before the date, which is mentioned for the hearing of the creditors under Section 7 of the Act and that is not to be earlier than two months either from the dates of the service or of the issuance of proclamation under Order V. Rule 20, CPC. If the claim is not submitted, then, it is deemed to have been discharged for all purposes. Under Sub-section (2) of Section 8 every creditor is further required to produce the documents in his possession or control, on which he bases his claim and also to furnish a full and true statement of the accounts of the previous dealings or the transaction between him and the debtors and also the account books and copies thereof which are in his possession or control on the date when the case is fixed for hearing. The penal consequences of not doing this have been provided in Section 8(2) of the Act and that is that the Debt Relief Court

may declare the claim of such creditor to be discharged for all purposes. It is thus, clear that if a statement of claim is not filed after the service of notice or after issuance of the proclamation within the time provided therein, then, the claim of such creditor is considered to be discharged against the debtor for all purposes and occasions. In the case on hand, individual notice was not neither issued nor served on the decree-holder obviously for the reason that Himmat Mal, who has filed the application under Section 6(2) of the Act, did not show his name as one of the creditors of the judgment-debtor. Even the judgment-debtor, throughout the proceedings of the application under Section 6 of the Act did not disclose the name of the decree-holder as one of his creditors. It may be mentioned that the amount, which the judgment-debtor owed to the decree-holder was the decretal-debt. It is correct that the decree-holder-respondent had appeared, but it does not mean that his appearance was in pursuance of any notice under Section 8(1) of the Act as to make it necessary for him to have filed claim within the time provided under Section 8(1) of the Act and further that for his failure or omission to do so would attract the penal consequence that his claim should be deemed to be discharged.

8. Keshavs's case (1) cannot be availed of by the learned Counsel for the appellant. In that case Sections 14(b), 15 and 17 of the Bombay Agricultural Debtors Relief Act, 1947 were considered. Learned Chief Justice interpreted the expression 'all creditors' used in Section 14(b) and it was held that it is not confined to these creditors whose names and addresses are given in the application, for, the Legislature has used the general expression 'all creditors' and not specified or limited the class of creditors to the class referred to in sub Clause (a), as it makes it clear that the intention was to give a general notice for giving intimation to all creditors of the debtor. It appears that he was influenced by the fact that the object of the Bombay Act was that all creditors should be adjusted. In support of that, he referred to Section 17 of the Bombay Act, which provides that certain preliminary points stated therein should be decided first and it is only thereafter that the matter can further be proceeded with. There is no provision similar to Section 17 of the Bombay Act in the Act. The affixing of copies of the notice and the application to the Court House cannot be considered to be a notice under Section 7 of the Act to the creditors, who have not been joined parties to the

proceedings or whose names have not been included in the list of creditors. This is further apparent by the use of word 'and' in Section 7, which says that all such creditors shall be served with notice together with a copy of the application and besides the copies of such notice and application have also to be affixed to the court house. The contention of the learned Counsel for the appellant that the affixation of the notice and the application to the court-house will be considered to be a notice to the decree holder-respondent under Section 7, cannot be acceded to, for, it will lead to anomalous consequence and operate as hardship. To illustrate, it may be stated that if the petitioner-creditor under Section 6 of the Act and the judgment-debtor collude, then, the creditors, who are not resident of the State where the Debt Relief Court is situate, and if no individual notice is issued to them, they will be deprived of filing the statement of their claim against the judgment-debtor and for failure to file the claim, the consequence of the discharge of the claim will ensue. This could not have been the intention of the Legislature. Section 8(1) clearly makes a mention that the deeming provisions regarding the discharge of the claim for all purposes will only come into play when the formalities as required by Section 7 of the Act are fulfilled. In view of the language used in Section 14(b) and Section 17 of the Bombay Act, we are of opinion that the principles laid down in Keshav's case (1) cannot be invoked for interpreting the provisions of Sections 7 and 8 of the Act. The Scheme of the Act is quite different Keshav's case(1) is quite different, Keshav's case (1) is, therefore, distinguishable.

9. Provisions of Section 10(1) of the Madras Debt Conciliation Act No. XI of 1936) ('the Madras Act' here in after) are some what similar to the provisions of Section 8 of the Act. In Shanmugavelayidham v. Ramanathan AIR 1949 Mad 620, the question arose whether the decree debt was discharge under Section 10, Sub-section (2), Clause (8) of the Madras Act for failure on the part of the debts owed to him in compliance with the provisions of Sub-section (1) of Section 10 of the Madras Act. Section 10(1) of the Madras Act contemplated issue of notice and service thereof calling upon every creditor to submit a statement of debt owed to him by the debtor with a view to effect settlement and that if after the receipt of such notice creditor fails to file the statement as required by Sub-section (i), and Clause (B) of Sub-section (2) the debt shall be deemed for all purposes and all occasions to have been duly discharged. Satyanarayan Rao, J., observed as

under:

The foundation, therefore, for the argument that the debt must be deemed to have been discharged within the meaning of the section is the service of notice contemplated by Section 10(1).

We may mention that in Shanmugavelayudham's case AIR 1949 Mad 620 an argument was raised that the decree-holder had notice of the filing or the petition under the Debt Conciliation Act as there was an application to stay execution of the decree Under Section 25 of the said Act and from that, an inference should be drawn that he had knowledge about the proceedings under the Madras Act. The learned Judge opined that at the most from the notice of the stay application what could be inferred is that notice was merely a notice of proceedings and not a notice calling upon the creditor to file a statement of the debts due to him from the debtor within the meaning of Section 10(1) of the Madras Act.

10. In the case on hand, the decree-holder-respondent, when he appeared as witness on March 26, 1971 in the claim proceedings of the creditor Himmatmal, what at the most can be attributed to him is that he had knowledge of the proceedings under the Act, but in view of the language used in Section 7(1) of the Act, it is difficult to hold that this knowledge should be construed as notice for filing claim under Section 8(1) of the Act. In the absence of the services of the personal notice, on the decree holder-respondent under Section 7(1) of the Act, the failure on his part to submit the statement of claim within the time provided under Section 8(1), does not warrant penal consequence that the claim of the decree-holder should be deemed to have been discharged for all purposes. We respectfully agree with the view taken in Shanmugavelayudham's case AIR 1949 Mad 620. The first contention raised by the learned Counsel for the appellant is devoid of force and it is rejected. We affirm the finding of the learned Single Judge of this point.

11. It was next argued by Mr. Rajendra Mehta, learned Counsel for the appellant that by order dated July 28, 1970, which was passed on the application under Section 6 of the Act filed by Himmatmal, the judgement-debtor has been adjudicated as an agriculturist and, therefore, despite finding recorded against the

judgment-debtor in the order dated October 21, 1967, the attached houses are not liable to be sold in execution of the decree against the judgment-debtor appellant. He urged that the attached houses cannot be sold further, for, the reason that the material point of time for determining an exemption provided under Section 60(1), CPC is the time when the immovable property of Judgment-debtor is sold and in respect of that no enquiry what so ever has been held by the executing court and as such even if the finding recorded by the Debt Relief Court is not held to be binding, still the executing court may be directed to determine whether the judgment-debtor-appellant was agriculturist when the attached houses were sold and the bid was knocked down as the confirmation of the sale has been stayed by this Court. The finding recorded during the proceedings under the Act filed by the creditor Himmatmal does not bind the decree-holder-respondent, for, he was not party to that application and he has no occasion to contest the status of the judgment-debtor as an agriculturist. In addition to this, it needs to be stated that the expression 'agriculturist' has been defined in Section 2(b) of the Act, inter alia, to mean a person, who earns his livelihood wholly or mainly from agriculture. The judgment-debtor has claimed exemption from attachment and sale under Section 60 on the ground that he is an agriculturist. The word 'agriculturist' has not been defined in the Code of Civil Procedure and this has been interpreted to mean that the agriculturist within the meaning of Section 60(1), proviso, is the person whose chief source of livelihood is agriculture. It may be recalled that the judgment-debtor had filed objections under Section 60, CPC after the attachment of houses. Those objections were dismissed by the order dated October 21, 1967 holding that he is not an agriculturist. Therefore, the attached houses were sold and the bid has been knocked down but the sale has not been confirmed because of the order passed by this Court. Learned counsel for the appellant has invited our attention to two expressions used in Section 60(1), proviso. In Section 60(1) it is provided that the properties mentioned there in are liable to attachment and sale in execution of the decree. The proviso appended to Section 60(1) is an exception of Section 60(1). It provides that the properties mentioned in the proviso are not liable to attachment or sale. The two expressions are 'attachment and sale' and 'attachment or sale'. Learned counsel has built the argument that as the word used in the proviso is 'or' and according to him it is disjunctive. It shows that if a person is an agriculturist,

then the houses and other buildings are not liable to attachment or sale. The point of time whether that person is an agriculturist or not, contended the learned Counsel, is the time when the property is to be sold. In support of this, he cited *Araz Bibi v. Mubarak Ali* AIR 1938 All 85, wherein, the view taken is that if the judgment-debtor was not an agriculturist at the time of attachment but at the time of sale, if he is an agriculturist, his houses cannot be sold. While considering Section 60(1), CPC, Niamatullah, C.J., in *Araz Bibi's* case AIR 1938 All 85, opined that the judgment-debtor, who was not agriculturist on the date of attachment but became so by change of circumstances subsequently and got the status of an agriculturist at the date of sale, he will be considered to be an agriculturist within the meaning of Section 60, CPC for conferring the exemption from sale of his house in execution of the decree. The learned Chief Justice has construed the word 'or' as disjunctive and, therefore, if a person, who is not an agriculturist at the time of the attachment of the property, but is an agriculturist on the date of sale, the property which has already been attached, is exempt from sale in execution of the decree under Section 60(1), CPC. A contrary view was taken in *Rawati v. Chiranjilal* AIR 1944 Lah 29, wherein the expression 'attachment or sale' in the proviso to Section 60(1) was examined. The properties liable to attachment and sale in execution of decree, have been specified in Section 60(1). The attachment precedes sale. What Section 60(1) lays down is that the properties mentioned therein shall be attached and sold in execution of the decree. Explanation has been appended to the proviso to Section 60, which lays down that the properties specified therein shall neither be liable to attachment nor sale. This shows that the properties covered by the proviso cannot be attached and they cannot be sold. In other words, the word 'or' used in the proviso is conjunctive. To quote from *Rewati's* case AIR 1944 Lah 29.

I might say a few words in that connection. Section 60(1), Civil P.C. gives a list of all the properties of a judgment-debtor that are liable to attachment and sale in execution of a decree passed against him. The proviso to that clause which is in the nature of an exception contains a list of such properties and rights as are not liable to attachment or sale or in other words which are neither liable to attachment nor sale. The expression 'attachment or sale' in this proviso is thus meant to convey what was conveyed in the sub-clause itself by the words 'attachment and

sale'. That is to say the word 'or' in the proviso is also used in a conjunctive and not in a disjunctive sense. This would mean that the property mentioned in the proviso to Section 60(1), Civil PC would neither be liable to attachment nor sale. But in this particular case it will be clear from the facts stated above that the property had been attached and no objection could have been or was taken to the attachment at the time when the property was attached. This was because Act 6 of 1942, had not by then come into being. If the attachment could therefore have been and was legally effected, the objection that the property would not be liable to sale does not appear to be sustainable. What is to happen to the attachment then? According to the contention of learned Counsel for the respondent, the attachment would remain, yet the property could not be sold. I do not think any such result was contemplated. Nor do I know of any case in which a judgment debtor's property in a decree for money could remain under attachment and was not liable to be sold except in exceptional cases where the Civil Court had to send the decree to the Collector for execution. An attachment is a necessary preliminary to sale & must inevitably lead to that result. If an objection could not equally be in my opinion raised against the salability of the property either. The words in Order 21, Rule 58, Civil PC would make my meaning clear. Under that rule the objection is always raised to the attachment and whether the property is or is not going to be sold depends upon the decision whether the property is or is not released from attachment. This would show that if no objection can be validly raised to the attachment and it continues to subsist, the sale would follow as a matter of course.

The word 'or' has to be used in the context as meaning 'and'. The purpose behind the proviso is best served by reading 'or' as 'and'. It could not have been intended otherwise.

12. We are of opinion that the point of time for seeing whether the property should be made available for realisation of the amount in the execution of the decree is when the attachment is effected. The reasons given in Rewati's case AIR 1944 Lah 29 appear to us sound and we prefer to adopt them. We regret that we have not been able to persuade ourselves to agree with the view taken in Araz Bibi's case AIR 1938 All 85. After the attachment of the property, the judgment-debtor-appellant preferred objection under Section 60(1), CPC that he is an agriculturist

and, therefore, the houses are not liable to attachment and, thereafter to be sold in execution of the decree. He was held to be non-agriculturist at the time of attachment as stated above and so the attached houses were not exempt from being sold in execution of the decree. It is not necessary to hold any enquiry regarding the change of the status of the judgment-debtor from non-agriculturist to that of agriculturist as contended by the learned Counsel for the appellant on the date when the houses were sold. The second contention is also rejected.

13. No other point survives for our consideration.

14. The result is that the appeal fails and it is hereby dismissed. As no body has appeared to oppose the appeal, there will be no order as to costs.

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