

Venkatachalam Chettiar Vs. Adaikappa Chettiar and anr.

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Court : Chennai

Decided On : Apr-05-1979

Reported in : (1979)2MLJ361

Appellant : Venkatachalam Chettiar

Respondent : Adaikappa Chettiar and anr.

Judgement :

V. Sethuraman, J.

1. This civil revision petition has been filed against the order of the learned Subordinate Judge of Devakottai, dated 20th October, 1978 dismissing E. A. No. 170 of 1978 in E. P. No. 17 of 1975. The execution petition was filed for realisation of the costs awarded by this Court in Appeal No. 640 of 1969. The petitioner herein filed the execution application in question for stay under Section 16 of the Tamil Nadu Ordinance V of 1978 which has now been replaced by the Tamil Nadu Act XL of 1978. The learned Subordinate Judge was of the view that the provisions of the Ordinance could be invoked by a person who is entitled to scale down the decree or other benefits conferred under the Act and that, as regards costs, the petitioner was not entitled to claim any relief under the said Ordinance. It is this order which is now challenged by the petitioner in the present civil revision petition.

2 As already mentioned. Ordinance V of 1978 has been now replaced by Tamil Nadu Act XL of 1978. There is no dispute that we are now concerned only with the Act, as it is passed, as the Ordinance has been repealed. This Act has been passed for giving relief to certain classes of indebted persons in the State of Tamil Nadu. The definition of the word, 'debt' in Section 2(2) of the said Act runs as follows:

'debt' means any liability in cash or kind, whether secured or unsecured and whether decreed or not, but does not include rent as defined in Clause (8).

3. It is unnecessary to refer to Clause (8) as the present case is not one for recovery of rent. Under Section 6 of the Act, all debts payable by any debtor on the 14th day of July, 1978 are to be scaled down in accordance with the provisions of Chapter II of the Act. Section 10 provides as follows.

Where a debt payable by any debtor includes any sum decreed as costs by any Court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of Section 7.

Section 15 of the Act dealing with amendment of certain decrees provides that where before the 14th day of July, 1978 a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is a debtor within the meaning of this Act, or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder within six months from the 14th day of July, 1978 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. Section 16 contemplates stay of execution proceedings and it provides that every Court executing a decree passed against a person entitled to the benefits of this Act, shall, on application, stay the proceedings until the Court which passed the decree has passed orders on an application made or to be made under Section 15. These are the material provisions of the Tamil Nadu Act XL of 1978.

4. The learned Counsel for the petitioner contended that the expression 'debt' as defined in Section 2(2) of the Tamil Nadu Act XL of 1978 would cover the liability in respect of costs, also, as it would be a liability which has been decreed. The learned Counsel drew my attention to a judgment of Ramaprasada Rao, J., as he then was, in *Govindasamy v. Balakrishna Reddiar and Ors.* : (1977)2MLJ466 The contention of the learned Counsel was that the provisions of the present Act, namely, Tamil Nadu Act XL of 1978 were in pari materia with those in Tamil Nadu Act XV of 1976 so that the said decision would have to be applied to the present case.

5. In the said case the learned Judge was concerned with the definition of the expression 'debt' as defined in Section 2(c) of the Tamil Nadu Act of XV 1976 which ran as follows: 'debt'

(i) means any sum of money which a person is liable to pay under a contract (express or implied) for consideration received; and

(ii) includes rent in cash or kind which a person is liable to pay or deliver in respect of the lawful use and occupation of agricultural land.

The question before the learned Judge in that case also was whether costs would fall within the definition of the expression 'debt' as defined in that Act. In that case an agriculturist filed an application under Section 4 of the Tamil Nadu Act XV of 1976 to stay the execution of the decree for costs. The learned Judge found that there was a contrast between the expression 'debt' as defined in the Tamil Nadu Act XVI of 1976 and that defined in the Tamil Nadu Act XV of 1976. Having regard to the definition of 'debt' in the Tamil Nadu Act XV of 1976 the learned Judge was of the view that the decree debt was not a debt from payment of which an agriculturist could claim temporary relief under the Tamil Nadu Act XV of 1976. As there was a deliberate departure made by the legislature, the learned Judge was of the view that an agriculturist was bound to pay the decree debt, while a person who came within the meaning of 'an indebted person' under Tamil Nadu Act XVI of 1976 was not expected to respect a decree, but, on the other hand could seek temporary relief in the matter of its satisfaction. The 'debt' contemplated there included any decreed amount including costs. The definition of 'debt' in the Tamil

Nadu Act XV of 1976 being different from that in the Act with which I am now concerned, the interpretation of the expression 'debt' in the Tamil Nadu Act XV of 1976 will not apply to this case. Therefore there is no scope for applying the said decision to the facts of the present case.

6. In the present case Section 10 of the Tamil Nadu Act XL of 1978 clearly excludes from the benefits conferred on a debtor, a decree debt in respect of costs. Any definition provision will have to be considered only in the light of the provisions of the Act. In other words, the definition provision would apply only if the context required its application. If the context required otherwise, then the definition provision would not be in a position to control the rest of the provisions. Having regard to the provisions of Section 10 of the Tamil Nadu Act XL of 1978 in the present case, which specifically excludes from the scope of the relief given to a person sought to be benefited by the Act, a decree in respect of costs, it is not possible to stay the proceedings as contemplated by Section 16. The learned Subordinate Judge was therefore right in his construction of Section 16.

7. The learned Counsel for the petitioner states that he has already filed an application for scaling down the debt before this Court as contemplated by the provisions of the Tamil Nadu Act XL of 1978. His point was that any decision in the present revision petition would have affected the relief that he might claim in the petition filed in this Court. I do not find that there is any scope for the present judgment affecting in any manner the relief that he may claim in any other proceeding. The present revision petition being confined to the execution in respect of costs, which is treated differently under the Act the dismissal of this petition will not affect the disposal of any petition that the petitioner may have filed in order to secure the relief contemplated by the provisions of the Tamil Nadu Act XL of 1978 in respect of the sum other than costs, decreed as against him.

8. The revision petition accordingly falls and is dismissed. There will be no order as to costs.