

Manickam Chettiar Vs. Ramanatha Devar

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Court : Chennai

Decided On : Jul-12-1996

Reported in : 1996(2)CTC373; (1996)IIMLJ398

Judge : AR. Lakshmanan, J.

Acts : [Tamil Nadu Debt Relief Act, 1980](#); Tamil Nadu Indebted Agriculturist (Temporary Relief) Act, 1975 - Sections 3 and 5; Tamil Nadu Indebted Agriculturist (Temporary Relief) (Amendment) Act, 1978 - Sections 33(2); Tamil Nadu Indebted Agriculturist (Temporary Relief) (Amendment) Act, 1979 - Sections 7(1)(2) and 31 to 36

Appeal No. : C.R.P. Nos. 1225 and 1226 of 1991

Appellant : Manickam Chettiar

Respondent : Ramanatha Devar

Advocate for Def. : Krishnaveni, Adv. for ;T.R. Rajagopalan and ;T.R. Rajaraman

Advocate for Pet/Ap. : Srinath, Adv. for ;Prabha Sridevan and ;S.K. Selvaraj

Disposition : Petition allowed

Judgement :

ORDER

AR. Lakshmanan, J.

1. The petitioner in both the civil revision petitions is the degree holder in C.S. No. 380 and 381 of 1973 on the file of the District Munsifs Court, Thiruthuraipoondi. The respondent in both the revisions is the Judgment-debtor in the suits.

2. The short facts are, in both the suits, preliminary decree was passed on 22.11.1974. The petitioners decree-holder filed Execution petitions for realising the decree amount together with interest by sale of the immovable property mentioned in the execution petitioners. According to the petitioner, he bona fide believed that Section 3 of the Tamil Nadu Indebted Agriculturist (Temporary Relief) Act X of 1975 would operate as a bar to his execution petitions and hence he filed two execution petitions on 6.2.90 and 15.2.90 respectively. The time during which Section 3 of Tamil Nadu Act X of 1975 operated as a bar shall be excluded as per Section 5 of the said Act. The Court below held that the Execution Petitions are out of time. It is against the said order, the above revisions have been filed by the decree holder.

3. Learned Counsel for the respondent/judgment-debtor raised an objection stating that the execution petitions have been filed beyond the period of limitation and that the decree-holder is not entitled to exclude four years, four months and 27 days (moratorium period). It is also contended that since the decree amount is being the balance of sale consideration, the same will not come under the purview of the Debt Relief Act.

4. Mr. S. Srinath, learned counsel for the petitioner contended that the petitioner/deGREE-holder believed in good faith that the respondent/Judgment-debtor would be entitled to the benefits of the Debt Relief enactments. It is further stated that the Court below has failed to see that even in the counter affidavit, the respondent does not say that he is not an agriculturist, to whom the debt relief enactments are applicable. To be more specific, the Court below has failed to notice that the respondent does not controvert that he is an agriculturist and that the petitioner bona fide believed that the amount payable to him by the respondent is a debt within the meaning of the Debt Relief Act and hence, should have excluded the time.

5. The following Judgments on the subject were cited by the counsel appearing on either sides:

1. RamaReddiar v. Raja Reddiar (19822 (I) M.L.J. 288, dated 1.9.1981 by P. Venugopal, J).

2. Lakshminarayanan Reddiar v. T.K.S. Balarama Chettiar : AIR1984 Mad370 , dated 17.4.1984 by V.Ratnam, J., as he then was).

3. Sivasubramanian alias Kandaswami v. Mohideen Pichai (99) L.W.198, dated 29.8.1985 by S.A.Kader, J.).

4. Vythilingam Chettiar v. Rangaswamipadayachi : (1988)2MLJ339 dated 9.9.1988 by Sathiadev and Sivasubramanian, JJ).

5. Sri Varalakshmi Finance Syndicate v. Rqjagopal Konar (1990 (2) LW 351, dated 5.10.1990 by T. Somasundaram, J.)

6. Sri Agastheeswareswara Swami Devasthanam v. Rajagopal Konar (1992 (1) LW 71, dated 31.7.1991 by M. Srinivasan, J.)

7. Kangan v. Kannammal (Second Appeal No. 1885 of 1982 dated 19.2.1996 by D.Raju,J).

6. The only point which arises for consideration in these two revisions is; Whether on a combined reading of ordinance I of 1975, replaced by the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act 10 of 1975, the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act 15 of 1976. as amended by Tamil Nadu Debt Relief Laws (Amendment)Act of 1977, the Tamil Nadu Debt Relief Laws (Second Amendment) Act of 1977, the Tamil Nadu Debt Relief Laws (Amendment) Act, 1970 and the Tamil Nadu Debt Relief Act 40 of 1979, the institution of an execution petition is barred from 16.1.1975 to 14.6.79 for a period of 4 years, 4 months and 27 days, and if this period is excluded, the Execution petition instituted, by the petitioner herein are in time?

7. THE POINT;- In all the above cited judgments, the Learned single Judge and also a Division Bench have taken the uniform view that the bar under Section 35

(2) of Tamil Nadu Act 40 of 1979 will not operate and that the decree-holders are entitled to have the decree though under the Tamil Nadu Act 40 of 1979, a particular scheme of scaling down and discharge had been provided that had been totally abrogated, annulled and set at naught by the Tamil Nadu Act 40 of 1979, and that Sections 7(1) and (2) 8 and 31 to 36 of the latter Act show that excepting a case falling within Section 33(2) the earlier proceedings taken under the 1978 Act would all abate and to every debt, the scaling down provisions of the 1979 Act have to be applied.

8. A Division Bench of this Court consisting of Sathiadev and Sibvasubramaniam, JJ., in the decision reported in *Vythilingam Chettiar v. Rangasami Padayachi* : (1988)2MLJ339 , while over-ruling the decisions reported in *Duraiswami Padayachi v. Thangavel Padayachi*, A.I.R.1985 Mad. 286 by S.Natarajan J., as he then was, *Karuppanna Gounder v. Ramaswami* : (1984)2MLJ207 by C.Ramanujam, J and *Lakshmanan Perumal Naicker v. Narayanaswami Naicker* : (1985)2MLJ64 , by S.Mohan, J., as he then was. has, however, approved the decisions in *Rama Reddiar v. Raju Reddiar* : (1982)1MLJ288 by P.Venugopal, J and *Lakshminarayanan Reddiar v. Balarama Chettiar*, : AIR1984 Mad370 by V.Ratnam, J., as he then was. and answered the reference accordingly).

9. However, a contrary view was taken by M. Srinivasan, J., in *Sri Agastheeswarar Devasthanam v. Rajagopal Konar*, 1992 (1) L.W. 71. When an earlier decision of S.A.Kader, J., in *Sivasubramanian alias Kandaswami v. Mohideen Pichai*, 99. L.W., 198 was brought to his notice, the learned Judge has declined to follow the same expressing his doubts and observing that ' I MUST EXPRESS BY RESPECTFULL.....' The learned single Judge who decided *Agastheeswarar Devasthanam v. Rajagopal Konar*, 1992 (1) L.W. 71 could not have over-ruled or act at naught legally the earlier decision in *Sivasubramanian alias Kandaswami v. Mohideen Pichai*, 99. L.W. 198, which was very much binding on him and the course adopted in the latter decision only added confusion as to the correct position on account of contributing another view, diametrically opposite to the one already holding the field. It is no wonder that faced with such a dilemma, D.Raju, J., who decided SA.No. 1885 of 1982 has chosen to follow the earlier decision of S A.Kader, J., in *Sivasubramanian alias Kandaswami v. Mohideen Pichai*, 99, L.W.,

198, as being more sound and acceptable as also for the reason that the earlier decision could not have been also over-ruled by the later decision.

10. There are innumerable number of cases wherein the Apex Court itself has expressed its regret about a later Co-ordinate Bench of the same Court sitting on a judgment over a decision of an earlier Bench and M. Srinivasan, J., himself has referred to all such cases speaking for a Full Bench of this Court in Philip Jeyasingh v. The Joint Registrar of Co-operative Societies, 1992 (1) L.W. 216 and it is beyond comprehension as to how such a course could have been adopted by the learned Judge who decided the case reported in Agastheeswarar Devasthanam v. Rajagopal Konar, 1992 (1) LW 71 to dissent in spite of repeated reiteration by the Supreme Court even as early as Shridhar v. Nagar Palika, : AIR 1990 SC307 . It is well settled principle of judicial discipline that if a single Judge disagrees with a decision of another single Judge, it is proper to refer the matter to a larger Bench for an authoritative pronouncement.

11. In the decision reports in Ayyasami Gounder v. Munuswami Gounder, : [1985]1SCR808 it was held that a single Judge of a High Court not agreeing with earlier decision of single Judge of the same Court should refer the matter to a larger Bench and propriety and decorum do not warrant his taking a contrary view. M.Srinivasan, J., has also referred to the above decision in the Full Bench decision reported in Philip Jeyasingh v. The Joint Registrar of Co-operative Societies, 1992 (1) L.W. 216. '

12. In this light, let me now consider all the decisions which are cited by the counsel on either side in order to clear the confusion as to the correct position of law on the subject.

13. Rama Reddiar v. Raja Reddiar 1982 (I) M.L.J. 288 by P. Venugopal, J. In this case, the plaintiff filed a suit and obtained decree on 16.10.1978 and 5.1.1979 for half of the principal amount and half of the interest due as per Tamil Nadu Act 40 of 1978. Later, the plaintiff filed petitions under Sections 31 to 33 of Tamil Nadu Act 40 of 1979 to amend the decrees, since they became entitled to get the full amount of principal and interest due when Tamil Nadu Act 40 of 1978 was repealed by Tamil Nadu Act 4 of 1979. The trial court dismissed the application to

amend the decree since the plaintiffs realised part of the sum. The trial court also held that the plaintiffs are barred from filing the petitions to amend the decrees by virtue of Section 33(2) of Tamil Nadu Act 49 of 1979, against which revisions were filed in this Court. The learned Judge held as follows:-

' From the scheme of the Act. it is clear that in all those cases where the debt or the decree has not been fully and factually discharged or satisfied, then application for scaling down such debts or decrees can be made under Act 40 of 1979. Such being the scheme of the Act, Section 33(2) has to be interpreted against this background and so interpreted, it would only mean that only in those cases where the decree passed has been executed and full satisfaction recorded, the bar under Section 33(2) will come into play. In the instant case, as the decree obtained by the petitioners has not been executed and full satisfaction recorded, the bar under Section 33(2) will not operate and the petitioners are entitled to have the decree amended as per the provisions contained in Section 16 of the Act. Revisional jurisdiction of this Court has to be exercised as there is failure of the Court below to exercise jurisdiction under Section 16 of the Act 40 of 1979'.

14. Lakshminarayana Reddiar v. T.K.S. Balarama Chettiar : AIR1984 Mad370 by V.Ratnam, J., as he then was. In this case, suits were filed for recovery one half of the principal and of one half of the interest. Though decrees were obtained, they were not satisfied. While so, the plaintiff instituted a fresh suit for recovery of further amounts under the earlier promissory note invoking the provisions of Tamil Nadu Act 40 of 1979 as having removed the disability imposed by Tamil Nadu Act 40 of 1978 against recovery of such amounts. The judgment-debtor pleaded the bar under Order 2, Rule 2 of the Code of Civil Procedure against the present suit and also claimed inter alia the bar of limitation as well. The lower court held that the suits were maintainable, that Order 2, Rule 2, C.P.C. was inapplicable and that the suits were not barred by limitation. On revision to this Court against the said order, V.Ratnam, J., as he then was, in his well considered order held as follows:-

'The statutory discharge or wiping out of one half of the principal and one half of the interest provided for under Section 7(l)(b) of Tamil Nadu Act 40 of 1978 was removed or erased by the provisions of Tamil Nadu Act 40 of 1973. Particularly,

Section 23(1) of Tamil Nadu Act 40 of 1979, made provision for the revival or restoration of the liability deemed to have been discharged under the provisions of Tamil Nadu Act 40 of 1978, as if that Act (Tamil Nadu Act 40 of 1978) was not passed. That would seem that the deemed discharge provided for under Section 7(l)(b) of Tamil Nadu Act 40 of 1979 should be deemed never to have taken place at all. That in turn should revive the right to recover one half of the principal and one half of the interest thereon deemed to have been discharged under Section 7(l)(b) of Tamil Nadu Act 40 of 1978.

That such a revived or restored right could also be enforced by excluding the time between 15.1.1976 and ending with the date of publication of Tamil Nadu Act 40 of 1979 in the Tamil Nadu Government Gazette is clearly established by Section 34(1) of Tamil Nadu Act 40 of 1979. Thus, a consideration of the provisions of Tamil Nadu Acts 40 of 1978 and 40 of 1979 clearly established that the deemed discharge of the liability in respect of one half of the principal and one half of the interest under the provisions of Tamil Nadu Act 40 of 1978, was not preserved under Tamil Nadu Act 40 of 1979, but on the contrary, the discharge of liability under the provisions of Tamil Nadu Act 40 of 1978 was wiped out, as if Tamil Nadu Act 40 of 1978 had not been passed. The right to recover the entire amount due to the creditor was made available to him, subject to the provisions of Sections 7 and 8 of Tamil Nadu Act 40 of 1979 and the right of action was also saved from the bar of limitation. The statutory deemed discharge under Tamil Nadu Act of 1978 having been statutorily undone by the provisions of Tamil Nadu Act 40 of 1979, whatever rights were originally available to the creditor were restored to him protected from the bar of limitation to be.....enforced within the framework of Tamil Nadu Act 40 of 1979'.

Again, in paragraph 9, the learned Judge has observed as follows:-

'Looked at from the point of view of the provisions of Tamil Nadu Acts 40 of 1978 and 40 of 1979, the right to recover one half of the principal and of half of the interest thereon was restored to the respondent by the provisions of Tamil Nadu Act 40 of 1979 and that claim was also preserved intact against the bar of limitation under Section 34 of Tamil Nadu Act 40 of 1979. So that right could be

enforced without in any manner being affected by the provisions of Tamil Nadu Act 40 of 1978. Precisely, that was done by the respondent by instituting the suits in O.S.Nos. 2627 and 2626 of 1981. No exception can, therefore, be taken to the maintainability of the suits by the respondent. The first contention of the learned counsel for the petitioner cannot, therefore, be accepted.'

Thus, the plea raised by the defendants that the suits are barred was not counteracted by the learned Judge and the revisions were dismissed. Before the learned Judge, the decision of P.Venugopal, J., in Rama Reddiar v. Raja Reddiar : (1982)1MLJ288 dated 1.9.1981 was not cited.

15. Sivasubramaniam alias Kandaswami v. Mohideen Pitchal, 99.L.W. 198 by S.A.Kader, J. In this case, the plaintiff filed the suit on a lost promissory note, which was resisted by the defendant but was decreed. Hence, the defendant filed the revision petition in this Court. The main contention advanced by the defendant was, that the suit is barred by time. His contention is, that in view of the several moratorium legislations, the plaintiff was entitled to exclude the period from 16.1.1975 to 13.6.1979, i.e. 4 years, 4 months and 27 days, and when this period is excluded, the suit was well within time. The learned Judge, after tracing the history of the Debt Relief Ordinances and the Acts including the provision contained in Tamil Nadu Acts 40 of 1978 and 40 of 1979, held as follows:-

'Under Section 34, the period commencing on and from 15th January, 1976, and ending with the date of the publication of this Act (13th June, 1979) is excluded in cases where suits or applications for execution would have instituted or made 'but for the fact that the institution of the suit or the making of the application was barred by the provisions of the Tamil Nadu Debt Relief Act 40 of 1978'. As already pointed out, the Tamil Nadu Debt Relief Act 40 of 1978 did not bar the institution of the suit or the making of the application for execution, but only provided for scaling down of certain debts. The Legislature could not have intended to provide for a contingency which did not exist. What the Legislature has really intended is the application of the section to cases covered by the Rules of scaling down provided for in the Tamil Nadu Debt Relief Act 40 of 1978. In respect of all those cases coming within the purview of the scaling down provisions of the Tamil Nadu Debt

Relief Act 40 of 1978, the period from 15th January, 1976, till the date of the publication of Act 40 of 1979 (13th June, 1979) is excluded in computing the period of limitation for filing a suit or making of an application for execution.

A combined reading of Ordinance I of 1975 replaced by the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act 10 of 1975, the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act 15 of 1976 as amended by the Tamil Nadu Debt Relief Law (Amendment) Act of 1977, the Tamil Nadu Debt Relief Laws (Second Amendment) Act of 1977 and the Tamil Nadu Debt Relief Laws (Amendment) Act of 1978 and the Tamil Nadu Debt Relief Act 40 of 1979 is that the institution of a suit for recovery of debt due from an agriculturist is barred from 16th January, 1975 to 14th June, 1979 for a period of 4 years, 4 months and 27 days. If this period is excluded, the suit instituted by the respondents herein is well in time. The plea of limitation put forward by the revision petitioner (defendant) is therefore, unsustainable.'

Before S.A.Kader, J., the decisions of P.Venugopal, J., and V.Ratnam, J., as he then was, were not cited.

16. Vythilingam Chettiar v. Rangaswami Padayachi, 1988 (II) M.L.J. 339 by Sathiadev and Sivasubramaniam, JJ. Before the Division Bench, the decision reported in Duraiswamy Padayachi v. Thangavel Padayachi, : AIR1983 Mad286 by S.Natarajan, J., as he then was; Karuppanna Gownder v. Ramaswami : (1984)2MLJ207 by G.Ramanujam, J.; Lakshmanaperumal Naicker v. Narayanaswami Naicker : (1985)2MLJ64 by S.Mohan, J., as he then was; Rama Reddiar v. Raja Reddiar : (1982)1MLJ288 by P.Venugopal, J.; and Lakshminarayanan Reddiar v. Balarama Chettiar, : AIR1984 Mad370 by V.Ratnam, J., as he then was alone were cited. The judgment of S.A.Kader,J., in Sivasubramanian alias Kandaswami v. Mohideen Pichai, 99 L.W. 198 was not cited. The above case was referred to the Division Bench in view of the conflicting views expressed by some of the learned Judges of this Court, for an authoritative pronouncement by the Division Bench, on the aspect viz., whether a second suit was maintainable after Tamil Nadu Act 40 of 1979 came into force in respect of the remaining half of the principal amount and the interest due thereon. It is useful

to notice the observations of the Division Bench in Paragraphs 13 and 14 of the Judgment, which are as follows: -

'It is surprising to note that R.S.Venkatachari, learned counsel, who is reported to place every conceivable decision on a point whether reputed or not, having argued the case in Lakshminarayana Reddiar v. Balarama Chettiar, : AIR1984 Mad370 , none of the decision which have been rendered earlier has been referred earlier has been referred to in that decision and the solitary decision which had found a place therein is Muthuveerappa Chetty v. Adaikappa Chetty, 39 M.L.J. 312 : I.L.R. 1920 Mad. 845 which dealt with the aspect of annulment.

On the opinion already rendered, the analysis and the reasonings issued in Lakshminarayana Reddiar v. Balarama Chettiar : AIR1984 Mad370 finds approval of this Division Bench, and therefore, in spite of an earlier suit having been filed by availing of the remedy conceived of under Tamil Nadu Act 40 of 1978, if a decree obtained therein had not been satisfied in full on or before 15.7.1978 then such a decree-holder is entitled to file another suit for the balance of the amount which could be recovered under Tamil Nadu Act 40 of 1979.'

17. Sri Varalakshmi Finance Syndicate v. R. govindarajulu, 1990 (II) L.W. 351 by T.Somasundaram, J. Before the learned Judge, the judgment of S.A.Kader, J., alone was cited. In that case, the plaintiff filed a suit for recovery of some amount due on a promissory note executed by the defendant. The defendant resisted the suit contending that the suit is barred by limitation. He also raised other contentions. The trial court dismissed the suit as barred by limitation. On appeal, the first appellate Court confirmed the judgment of the trial court. The plaintiff preferred the second appeal. Before the learned Judge it was contended on behalf of the plaintiff that the defendants own agricultural lands and they are entitled to the benefits of the Tamil Nadu Acts 10 of 1975 and 15 of 1976, etc. and that the plaintiff was prevented from filing the suit for recovery of the amount due under the promissory note during the period Tamil Nadu Acts 10 of 1975 and 15 of 1976 were in force. Learned counsel for defendant contended that the suit was barred by limitation. Agreeing with the view of S.A.Kader, J., the learned Judge held that the moratorium period imposed by the Tamil Nadu Acts 10 of 1975 and 15 of 1976

came to an end on 14.7.1978 and the plaintiff was prevented from filing the suit for a period of 3 years 5 months and 29 days, i.e. from 16.1.1975 to 14.7.1978. The learned Judge has also held that since the suit was instituted by the plaintiff only on 7.2.1981, the same is clearly barred by limitation.

18. Sri Agastheeswaraswami Devasthanam v. Rajagopal Konar, 1992 (I) L.W. 71 by M. Srinivasan, J. Before the learned Judge, the decision reported in Sivasubramanian alias Kandaswami v. Mohideen Pichai, 99 L.W. 198 alone was cited. The judgment of P.Venugopal, J., V.Ratnam, J., as he then was, T.Somasundaram, J., and the Division Bench judgment of T. Sathiadev and S.Sivasubramanian, JJ., all referred to above, even though rendered earlier in point of time of the Judgment of M.Srinivasan, J., in Sri Agastheeswaraswami Devasthanam v. Rajagopal Konar, 1992 (I) L.W. 71, unfortunately, they were not cited by the counsel appearing on either side. In that case, interpretation of Section 34 of Tamil Nadu Act 40 of 1979 arose for consideration. The defendant executed a promissory note in favour of the plaintiff on 16.8.1964. This suit was filed on 30.11.1979. The defendant raised a plea of limitation. Both the Courts accepted the plea of limitation, and dismissed the suit. The plaintiff contended that the suit was not barred by limitation as the defendant was entitled to the benefits of Moratorium Acts which were in force from 16.1.1975. The suit should have been filed on 8.10.1975 but for the Moratorium Acts. However, Moratorium Ordinances and Acts were in force from 16.1.1975 to 15.7.1978. On 15.7.1978, Tamil Nadu Act 40 of 1978 came into force, which contained provisions for scaling down for debts due as on 14.7.1978. The said Act was repealed by Act 40 of 1979. Section 34 of Tamil Nadu Act 40 of 1979 provides for exclusion of time for limitation and dissolution of stay of proceedings in respect of certain suits and applications. It was contended by the plaintiff/appellant in that case, that the plaintiff is entitled to the benefits of Section 34 of Tamil Nadu Act 40 of 1979 and the suit is, therefore, not barred by limitation. It is also contended that the plaintiff is entitled to exclude the period from 15.1.1976 to 13.6.1979, on which date the Act was published in the Gazette. M.Srinivasan, J., did not accept the contention urged by the learned counsel for the plaintiff/appellant. According to the learned Judge, there is no provision in Tamil Nadu Act 40 of 1978 expressly or specifically barring the filing of any suit. It is only the provisions of Section 7(l)(a) or 7(2)(i) which by necessary

implication barred the filing of the suit as the entire debt was deemed to have been discharged. The attention of the Court was drawn to the judgment of S.A.Kader, J., in Sivasubramanian alias Kandaswami v. Mohideen Pichai, 99 L.W. 198. While considering the decision of S.A.Kader, J., the learned Judge has in paragraphs 11 and 12 observed as follows:-

'My attention is drawn to a judgment in Sivasubramaniam alias Kandasami v. Mohideen Pitchai 99 L.W. 198. In that decision, S.A. Kader, J., considered the debt due on a promissory note dated 18th March, 1974 by an agriculturist. The suit was filed on 8th June, 1981. The moratorium was held to be in force from 16th June, 1975 to 14th June, 1979. The learned Judge held that the plaintiff was entitled to exclude the entire period of four years, four months and 27 days and his suit was in time. He referred to Section 34 of the Tamil Nadu Act 40 of 1978 and observed as follows:

'This Section covers the period covered by the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act 15 of 1976 as amended by the Tamil Nadu Debt Relief Laws (Amendment) Act of 1977, the Tamil Nadu Debt Relief laws (Second Amendment) Act of 1977 and the Tamil Nadu Debt Relief Laws (Amendment) Act 2 of 1978, and the period during which the Tamil Nadu Debt Relief Act 40 of 1978 was in force, that is from 15th January, 1976 to 13th June, 1979, when the Tamil Nadu Debt Relief Act 40 of 1979 came into force. Both the section is not happily worded, as I shall now show.'

Under Section 34, the period commencing on and from 15th January, 1976 and ending with the date of the publication of this Act (13th June, 1979) is excluded in case where suits are applications for executions would have been instituted or made by for the fact that the institution of the suit or the making of the application was barred by the provisions of the Tamil Nadu Debt Relief Act 40 of 1978. As already pointed out, the Tamil Nadu Debt Relief Act 40 of 1978 did not bar the institution of the suit or the making of the application for execution, but only provided for scaling down of certain debts. The Legislature could not have intended to provide for a contingency which did not exist. What the Legislature has really intended is the application of the section to cases covered by the Rules of

scaling down provided for in the Tamil Nadu Debt Relief Act 40 of 1978, the period from 15th January, 1976 till the date of the publication of Act 40 of 1979 (13th June, 1979) is excluded in computing the period of limitation for filing a suit or making of an application for execution.

It is not clear from the report as to whether the debt was deemed to be discharged under Section 7(1)(a) or Section 7(2)(i) of the Tamil Nadu Act 40 of 1978. Those facts are not referred to in the report. However, if the learned Judge intended to lay down as an abstract proposition that all debts on which suits were barred, by the moratorium legislations prior to the passing of Tamil Nadu Act 40 of 1978 would come within the purview of Section 34 of the said Act. I must express my respectful dissent. The language of the section is clear. It cannot be presumed or assumed that the legislature provided for a contingency which did not exist. Nor can the Legislature be attributed with ignorance of the provisions of the Act 40 of 1978. As pointed out already, there were two contingencies in which suits were barred by the provisions of Tamil Nadu Act 40 of 1978. They were under Section 7(1)(A) and Section 7(2)(i) of the said Act. It is only to such suits, Section 34 of the Act 40 of 1979 would apply. The Legislature would not have intended to make the section applicable to suits which could have been instituted under Tamil Nadu Act 40 of 1978 and which were not barred by the provisions of the Act. The expression barred cannot be construed to cover even cases which were not barred and in which suit could have been filed for scaled down amounts. If the section is given effect of fully, the only result that will follow is that suits which were completely barred by the provisions of Tamil Nadu Act 40 of 1978 are alone entitled to have the benefit of exclusion of the entire period between 15.1.1976 and 15.6.1979.

19. It is thus seen that M. Srinivasan, J., has taken a contrary view from that of the earlier decision of S.A.Kader, J., and declined to follow the same expressing his respectful dissent.

20. When M. Srinivasan, J.'s judgment was later cited before D.Raju, J., who decided S.A. No. 1885 of 1982, faced with such a dilemma, the learned Judge has chosen to follow the earlier decision of S.A.Kader, J., as being more sound and acceptable and also for the reason that the earlier decision also could not have

been over-ruled by the later decision.

21. S.A.No. 1885 of 1982 by D.Raju, J., before the learned Judge, all the earlier judgment including the Division Bench Judgment were not brought to his notice. Since the 1st respondent/contesting party has not appeared, the learned Judge appointed the Government Pleader Mr. R. Muthukumaraswami and amicus curias to assist the Court in view of certain issues arising on account of the provisions made in Section 32 to 34 of Tamil Nadu Act 40 of 1979. The learned Government Pleader on getting the relevant particulars relating to the legislation in question, made his submissions in assisting the court to decide the issues arising in the appeal. Before D. Raju, J., counsel for the defendant has raised the ground of bar of limitation; The learned Judge has extensively considered all the relevant particulars relating to the legislation in question in paragraphs 8 to 12 of his judgment, which are to following effect:

'Para 8. The fact that the suit promissory note came to be executed on 2.5.1970 and that there was an endorsement of payment on 9.4.1973 and the suit as such came to be filed before the trial court on 29.1.80 are matters which have become final and over which there can be no dispute or controversy, in view of the factual findings of the Court below. The question which looms large for considering is, therefore, as to whether the plaintiff could take advantage to Section 34 of the Tamil Nadu Debt Relief Act 40 of 1979. The fact that if the suit has been filed on 15.7.1978 when the Tamil Nadu Debt Relief Act 40 of 1978 came into force in terms of the provisions contained therein, the suit would have been well within the period of limitation is not in serious controversy. Equally if it is held by this Court also as has been held by the Courts below that the plaintiff is entitled to avail of the benefits of Sections 34 of Act 40 of 1979, the suit presented in this case would be well within the period of limitation, is not also in dispute. The above result flows from the various debt relief legislation Tamil Nadu Acts 10 of 1975, 48 of 1975, President's Act 15 of 1976, President's Act 16 of 1976, President's Act 3 of 1977, Tamil Nadu Act 1 of 1977, Tamil Nadu Act 2 of 1978 and Tamil Nadu Act 40 of 1979. Consequently, the only issue that requires detailed consideration is about the applicability or otherwise of Section 34 of Tamil Nadu Act 40 of 1979 to the case on hand.'

'Para 9. Tamil Nadu Act 40 of 1978 was enacted and by virtue of Section 2, it shall be deemed to have come into force on 15.7.1978. The provisions of the said Act provided for permanent debt relief by way of liquidation or scaling down of debts, as the case may be, to specific classes of weaker sections of society consisted of agriculturists and other indebted persons in the State. It appears that when the provisions of the said Act were sought to be enforced and implemented, writ petitions have been filed in this Court challenging the constitutional validity of the same and in the course of hearing of such cases, certain difficulties have been noticed, necessitating re-examination of the provisions on the constitutional aspects and on such re-examination, the State came to a decision that the permanent debt relief shall be by way of only scaling down of debts. To give effect to the said object, Tamil Nadu Act 40 of 1979 was enacted. So far as the provisions of the said Act are concerned, by virtue of Section 31, Tamil Nadu Act 40 of 1978 came to be repealed. Tamil Nadu Act 40 of 1979 was published in the Tamil Nadu Government Gazette on 13.6.1979 and by virtue of Section 1(3) of the said Act except Sections 32 to 34 shall be deemed to have come into force on 15.7.1978 and Sections 32 to 34 of the Act were directed to come into force on the date of the publication of the said Act, namely, 13.6.1979. The repeal of Tamil Nadu Act 40 of 1978, the fact that the re-enacted Tamil Nadu Act 40 of 1979 came into force with effect from 15.7.1978, as also the date on which the repeal of Tamil Nadu Act 40 of 1978 was itself brought about would all lead to the position as though for all purposes, Tamil Nadu Act 40 of 1978 has never been enacted and that Tamil Nadu Act 40 of 1979, without Sections 32 to 34 which were brought into effect from 13.6.1979, alone were in full force and effect even as on 15.7.1978.'

Para 10,. Section 34 of Tamil Nadu Act 40 of 1979 reads as hereunder:

'Exclusion of time for limitation and dissolution of stay proceedings in respect of certain suits and applications (1) where, on or after the 15th day of January, 1976, but before the date of the Publication of this Act in the Tamil Nadu Government Gazette, any suit for the recovery of any amount towards any liability arising out of the debt due from a debtor would have been instituted or any application for the execution of a decree passed in any such suit would have been made but for the fact that the institution of the suit or the making of the application was barred by

the provisions of the Tamil Nadu Debt Relief Act, 1978 (Tamil Nadu Act XL of 1978) in computing the period of limitation or limit of time prescribed for such suit or application the 'period commencing on and from the 15th day of January , 1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette, shall be excluded.

Where any proceedings in any of the suits or applications of the nature mentioned in sub section (1) were stayed by any of the provisions of the Tamil Nadu Debt Relief Act; 1978 (Tamil Nadu Act XL of 1978), the stay effected in respect of such proceedings shall stand dissolved and such suit or application shall be proceeded with under this Act from the stage which had been reached when further proceedings in such suit or application were stayed.'

'It is while construing sub-section (1) of Section 34, the decision in Sivasubramaniam's case, 99 L.W. 198 and Sri Agastheeswaraswami Devasthanam case, 1992 (I) L.W. 71 came to be rendered expressing virtually two divergent views. As against the view taken by the learned Judge who decided the Sivasubramaniam's case, 99 LW 198, Srinivasan,J., was of the view that except in respect of cases where the debt deemed to be discharged under Section 7(1)(a) or Section 7(2)(i) of Tamil Nadu Act 40 of 1978, it could not be said that the suits in other contingencies were barred by the provisions of Tamil Nadu Act 40 of 1978. According to the learned Judge, the expression 'barred' used in sub section (1) of Section 34 of Tamil Nadu Act 40 of 1979, cannot be construed to cover even cases which were not barred and suits could have been filed for scaled down amounts and that is how the learned Judge has held that the only result that follows is that the suits which were barred completely by the provision of Tamil Nadu Act 40 of 1979, are alone entitled to have the benefit of exclusion of the entire period between 15.1.1976 and 13.6.1979.'

'Para 11. I have carefully considered the submissions of the learned counsel for the appellant and the learned Government Pleader and also the two decisions referred to above placed before me in this connection. The fact that the creditors could not have filed suits for the entire debt amount due and after coming into force of Act 40 of 1978 but prior to its repeal, if any creditor wanted to file suit, it

;could have been filed only for the scaled down amount in cases or contingencies not covered by Section 7(l)(a) or 7(2)(i) of Act 40 of 1978, cannot be disputed. The consequence of enacting provisions to permit only suits for recovery of any debt not for the entire amount that may become due and realisable otherwise under the terms and conditions of the lending or borrowal, but only for a reduced sum after complying with the provisions enacted for scaling down the debt, would, in my view, constitute a bar for the purpose of Section 34 as a total embargo placed from recovering the debt as a consequence of the discharge given under the statutory provisions themselves to a debt. The expression 'barred' is a word in general used to characterise the effect of statute of limitations and it at times used to signify a legal destruction for ever or taking away for a time of the right. Any hindrance or obstruction by a barrier created by a statute preventing recovery in law even a portion of the claim or denying part of case of action, would come under the expression 'barred' since it operates as a bar, though not in the sense of total destruction of discharge of the claim but at least for effecting a partial discharge and making it beyond the reach of the owner of the right. As far as the provisions of the Act under consideration are concerned, as noticed earlier, the impediment created or distinction of the claim by various debt relief legislations prevented the recovery of the debts till the coming into force of Tamil Nadu Act 40 of 1979 which purported to give permanent as well as total relief in respect of certain specified categories of debts and a permanent, but partial relief in respect of other categories or classes of debts. In so far as there is no indication under the provisions of Tamil Nadu Act 40 of 1979 and particularly in Section 34 to confine the benefit of extended period of limitation only to the class of category of debts in respect of which total relief has been given under Tamil Nadu Act 40 of 1978, there is no justification to restrict or confine the operation and application of the provisions contained in Section 34 of Tamil Nadu Act 40 of 1979 only to the class and category of debts in respect of which a permanent and total bar or statutory discharge was contemplated and given under the provisions of Tamil Nadu Act 40 of 1978.'

'Para 12. That apart, the various debt relief legislations enacted from time to time have brought about disability and stalemate in the recovery of debts by moving Courts till the coming into force of Tamil Nadu Act 40 of 1978 on 15.7.1978.

Inasmuch as the provisions of Tamil Nadu Act 40 of 1979 were enacted more as a legislation for replacing or substituting by repealing the earlier Act of 1978 with a new scheme only for scaling down of debts in the manner provided under Tamil Nadu Act 40 of 1979, the Legislature seemed to have felt the need for introducing Sections 32 to 34 to cover the various contingencies that may arise on account of repeal of Tamil Nadu Act 40 of 1978 and enforcement and implementation of the provisions of Act 40 of 1979, On a careful reading of Sections 32 to 34, I am of the view that they devised and provided a scheme not only to grant certain relief by way of scaling down, but also confer an extended period of limitation in favour of the creditors, as package deal and erase the effects or remove the obstacles created under Act 40 of 1978 even partially once and for all, and introduce only one pattern of relief. If the extended period of limitation envisaged under Section 34 is to be construed so as to make it available only to those cases of claims covered or cases debts in respect of which not only a permanent but a total bar has been created under Tamil Nadu Act 40 of 1978 on account of the total discharge envisaged on certain class or categories of debts only, there was no necessity for providing under Section 34 for exclusion of time from 15.1.1976 since the period on and from 15.1.1976 was well covered by at least two Presidential enactments for a period of one year at any rate. In my view, the Legislature could not be considered to have intended to create a nebulous or doubtful state of affairs by using the word 'barred' intending the said expression to apply and to cover only cases of a permanent and total bar on account of such statutory discharge of the debt. The date with reference to which repeal of Act 40 of 1978 has been made and its replacement by the provisions of Tamil Nadu Act 40 of 1979 excluding Sections 32 to 34 with retrospective effect from the publication of the coming into force of Tamil Nadu Act 40 of 1978 and the prospective application given to Sections 32 to 34, in my view, were intended to ensure availability of the continued benefit of exclusion of time for limitation in cases of all debts irrespective of whether the discharge given under Tamil Nadu Act 40 of 1978 is total or partial. The provisions contained in Section 32 for abatement of the pending proceedings under the repealed Act and destruction of any right accrued or acquired under the repealed under sub-section (3) of Section 32 and denial of the right to pursuer such rights accrued and liability incurred under the repealed Act directly to come

under the provisions contained in Section 33 providing for removal of doubts, would make it clear and in my view, reinforce and support the provision of total exclusion of limitation, except in cases of class or category of debts, which are outside the purview of Tamil Nadu Act 40 of 1978.'

22. Consequently, I am of the view that the views expressed by P.Venugopal, J., in *Rama Reddiar v. Raja Reddiar* : (1982)1MLJ288 ; S.A.Kader, J., *Sivasubramanian alias Kandaswami v. Mohideen Pichai*, 99 L.W 198; V.Ratnam, J., as he then was in *Lakshmi Narayana Reddiar v. Balarama Chettiar*, : AIR1984 Mad370 T. Somasundaram, J, in *Sri Varalakshmi Finance Syndicate v. R.govindarajulu*, 1990 (II) L.W. 351 and D.Raju, J., in S.A.No. 1885 of 1982 appeals to me to be a more acceptable ;one than the one taken by M. Srinivasan, J, in .*Sri Agastheeswaraswami Devasthanam v. Rajagopal Konar*, 1992 (I) L.W. 71. This apart, the judgment of M.Srinivasan, J., in *Sri Agastheeswaraswami Devasthanam v. Rajagopal Konar*, 1992 (I) L.W.71, does not lay down the correct proposition of law in view of the Division Bench Judgment of T.Sathiadev and S.Sivasubramaniam, JJ., in *Vythilingama Chettiar v. Rangaswami Padayachi*, 1988 (II) M.L.J. 339, confirming the judgment of V.Ratnam, J., as he then was in *Lakshmi Narayana Reddiar v. Balarama Chettiar*, : AIR1984 Mad370 and P.Venugopal , J in *Rama Reddiar v. Raja Reddiar*, 1982 (I) M.L.J. 288. As rightly pointed out by D.Raju, J., the law of limitation does not destroy the right but only deny the remedy to enforce through Courts beyond the period of limitation prescribed for vindicating the rights of parties. Having regard to the said position underlying the law of limitation, wherever there are rooms for doubts, the benefit of the same should be given to the holder of rights and the construction otherwise would bring about a more drastic situation than that was really intended by the statute.

23. In the instant case, the plaintiff has clearly averred in the execution Petitions that he was under the bonafide belief that the respondent was entitled to the benefits of the various debt relief legislations including Tamil Nadu Act 40 of 1978 and therefore, the plaintiff/petitioner did not come to Court at the earliest point of time. There is no reason for me to disregard the bona fide claim of the plaintiff for his not coming to Court at the earliest point of time. I am, therefore, of the view

that the execution petitions filed by the plaintiff/decreed holder are not barred by limitation.

24. It is also not out of place to mention that CRP Nos. 2664 of 1990 and 508 of 1991 filed by the very same plaintiff/petitioner herein against the order of the District Munsif, Nagapattinam, in two execution petitions in O.S.Nos.380 and 381 of 1973 were allowed by this court by order dated 1.9.1995. The plaintiff filed those two civil revision petitions in this Court since his two execution petitions were rejected by the court below on the ground that the columns in the petitions were kept blank and there was no representation. This Court set aside the orders of the Court below and allowed the civil revision petitions.;

25. For the fore-going reasons, both the civil revision petitions are allowed and the impugned orders are set aside. However, there will be no order as to costs.

26. I place on record my appreciation for the useful help and assistance rendered by Mr. S. Srinath and Mrs. Krishnaveni in collecting all the earlier decisions and placing them before this Court. Had all the earlier decisions on the point been brought to the notice of this Court, the confusion that has arisen could have been avoided.