
(1939) 09 MAD CK 0002
In the Madras High Court

A.R.R.M. Somasundaram Chettiar

APPELLANT

Vs

P.P.A.R.R.M. Peria Karuppan Chettiar and Others

RESPONDENT

Date of Decision : 01-09-1939

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 7

Citation : AIR 1940 Mad 478 : (1940) 51 LW 606

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—Since judgment was pronounced in this appeal, an application has been made on behalf of respondent 4 by his mother

and guardian under Sections 7 and 8, Madras Agriculturists Relief Act, 4 of 1938, for scaling down the debt. The application has been opposed

on the preliminary ground that no application of this description lies after a decree has been made. According to this contention, the only

application that can be made for amendment of a decree is u/s 19 of the Act which applies only to cases where the decree was made before the

commencement of the Act. As there is no other provision in the Act for amendment of decrees, it is contended that the provisions of the CPC

alone can apply. It is however not necessary to deal with these contentions in this particular case for the simple reason that in this case no decree

has been actually drawn up and an application was made to stop the drafting of the decree pending the disposal of this application. In view of the

circumstances of this particular case, namely that the suit originally had been dismissed by the trial Court on the ground of limitation and there was

no decree against this 4th respondent or any of the other defendants, there was no necessity for them to make any application for scaling down the

debt until the judgment was pronounced allowing the plaintiff's claim. It is only after the judgment was pronounced in the appeal that any necessity could arise for making an application for scaling down the debt or to move the Court even orally to consider the question of scaling down the debt under the provisions of Sections 7 and 8 of the Act before a decree was made. It is not reasonable to expect a party to put in an application which might never be necessary and it cannot be said that the omission to make an application before the judgment was pronounced debars the petitioner from making this application as early as possible after the judgment was pronounced and before a decree is actually drawn up. The law as laid down in Sections 7 and 8 of the Act requires debts to be scaled down in a particular manner and if for some reason or other there is no need for any body to apply for scaling down the debt as in this case, till the judgment was pronounced in appeal, it could not be known, that the debt was one which was enforceable in law and it would be going against the spirit of the Act which is undoubtedly to give relief to debtors to dismiss applications for relief which the Legislature meant to give to debtors on such a purely technical ground as the fact that there is no particular provision made in the Act for making applications for scaling down under Sections 7 and 8 of the Act.

2. We are therefore of opinion that the application is one which ought to be admitted and which has to be inquired into. In accordance with the usual practice, the application will be remitted to the Court below for disposal according to law after due inquiry, and the decree in the appeal will be subject to the final order thereon. It has been contended before us that this application which is presented on behalf of respondent 4 by his mother and guardian is not validly presented. This matter also will be decided by the Court below to whom C.M.P. No. 2749 of 1939, namely the application to appoint the mother as guardian ad litem of respondent 4, will be remanded for disposal.