(2004) 10 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1940 of 1997

Bhurmal Ramkaran Sharma APPELLANT

Vs

Gulabchand Shankarlal Jain and Others RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

Citation : (2005) 1 ALLMR 838 : (2005) 107 BOMLR 48

Hon'ble Judges : V.C. Daga, J;S.U. Kamdar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.U. Kamdar, J.—Inspite of the fact that the present petition is pending for admission since 1997, learned Counsel for the petitioner once again sought for an adjournment. A perusal of the record indicates that a large number of adjournments were sought in the past for the purpose of carrying out amendments to the petition and/or for some other irrelevant reasons. In view of this position, we are constrained to reject a further application for adjournment in the matter.

2. The present petition is challenging an order dated 4th September, 1996 passed by the Tahsildar under the provisions of the Maharashtra Debt Relief Act, 1975.

A few but, glaring facts of the present case which indicates the ingenuity of the lawyers utilising the provisions which are made for protection of under-privileged class of the citizens are set hereinafter.

3. The provisions of the Maharashtra Debt Relief Act, 1975 (hereinafter referred to as ''the said Act'') was enacted with a view to grant immediate urgent debt relief to that segment of the society which were exploited by the money lenders. These provisions of the said Act are infact meant for the people below poverty line. The Statement of Objects and Reasons of the provisions of the Maharashtra Debt Relief Act, 1975 which are published in Maharashtra Government Gazette,

Part 5 page 816 inter alia read as under:

The problem of urban and rural indebtedness had assumed enormous proportions in recent times. The non-institutional sources of credit, namely unscrupulous money lenders were charging usurious rates of interest, indulging in malpractices and taking undue advantage of the weak position of the economically weaker sections of the people, both in rural and urban areas. It was therefore, necessary to give relief to certain sections of the people from indebtedness. It was necessary to provide for liquidation of certain debts and moratorium on recovery of certain other debts.

2. As it was necessary to take immediate action for the purpose aforesaid and the State Legislature was not in session, the Governor of Maharashtra promulgated the Maharashtra Debt Relief Ordinance, 1975 on the 22nd August, 1975. This Bill is intended to convert the Ordinance into an Act of the State Legislature.

3. Chapter II provides for liquidation of debts of marginal farmers, rural labourers, rural artisans, and workers who were indebted. The expressions marginal farmer, etc. are defined in the definition clause.

4. Chapter III provides for moratorium on execution of decrees against "small farmers" which expression is also defined. A special provision is made in respect of such farmers belonging to Scheduled Castes, Scheduled Tribes, Nomadic Tribe and Vimukta Jatis. It is also provided that recovery of debts after the period of moratorium shall not exceed one hundred fifty per cent of the principal sum. Further, no interest shall accrue on debts of small farmers during this period.

5. Chapter IV provides for exemption from application of the Act in relation to certain debts and other liabilities such as debts of Government, local authorities, banks etc.

6. It is proposed that the Act should remain in force for one year from the 22nd August, 1975 i.e. the date on which the Ordinance was promulgated but power is being taken for extending this period for not more than two years in the aggregate.

4. The preamble of the Act also states that the said provisions are enacted with a view to take immediate action for reliefs for indebtedness to certain farmers, rural artisans, rural labourers and workers in the State of Maharashtra. The provisions of the said Act are restricted to the property market value of which does not exceed Rs. 20.000/-. These provisions of Maharashtra Debt Relief Act, 1975 are sought to be invoked by the present petitioner in the following facts:

5. There was a firm known as "Dedraj Bhurmal". This firm had two partners namely Chiranjilal Bhurmal and Mangilal Ramchandra Biyani. This firm had l/3rd share in the company known as M/s. Bhavarilal & Company Ginning Factory and Oil Mill at Washim. One Pratapmal Raghunath of Washim had dealings with the said factory. However, the said firm was dissolved and the liabilities of the firm

were taken over by Mangilal Biyani, One of the liability of firm which was taken over was for Rs. 11,115,0.0 in favour of Pratapmal Raghunath. On 21st June, 1949 Mangilal executed a promissory note in favour of Pratapmal Raghunath for the sum of Rs. 12,252.7.0 inclusive of interest as outstanding thereon. However, in the year 1949 and 1950, the said Mangilal Biyani took further advances of the sum of Rs. 200/- and Rs, 310/- namely on 29th December, 1949 and 3rd January, 1950 from Pratapmal. A further sum was also taken of Rs. 1,832.11.0 Ultimately, there was a total outstanding in 1950 in favour of Pratapmal Raghunath as due and payable by Mangilal Biyani was sum of Rs. 15.000/-.

6. To secure the aforesaid debt, Mangilal executed a mortgage deed in favour of Pratapmal and his brother Kishorilal Kundanmal in respect of immovable property. There is no dispute in so far as the said execution of the mortgage deed is concerned. The mortgage deed inter alia provided that in the event of default in repayment of the amount by any two instalments, the said mortgagor would be entitled to foreclose the said mortgage. In the meantime, the said Mangilal was declared Insolvent under the provisions of Insolvency Act and his properties including mortgaged properties were put up for an auction. In the said auction, the petitioner''s predecessors namely Chiranjilal Bhurmal who was also the erstwhile partners of the said firm purchased the said property. The said auction was confirmed on 22nd August, 1962. The petitioners before this Court are the legal heirs and representatives of the said deceased Chiranjilal Bhurmal.

7. Subsequent to the confirmation of the said auction proceedings were taken out for annulling the auction on the ground that the said property was mortgaged property and without discharging the said mortgage property could not have been put for sale. However, the said proceedings were dismissed and the sale was confirmed subject to the rights of the respondents to initiate the proceedings for recovery of his dues by filing separate proceedings. Accordingly, a suit was filed being Special Civil Suit No. 9 of 1964 before the Civil Court Senior Division, Washim. The said suit was heard and by an order and judgment dated 24th October, 1978 the said suit was dismissed. Being aggrieved by the said dismissal, the respondents herein prepared a first appeal before this Court being First Appeal No. 88 of 1979. The said appeal was heard and in the said appeal Issue Nos. 8a and 8b were referred to the Tahsildar, Washim for its decision under the provisions of the Maharashtra Debt Relief Act, 1975. In respect of other issues, the Hon''ble Court gave its decision.

8. In pursuance of the said judgment of the High Court in First Appeal No. 58 of 1979, the matter was referred to the Tahsildar. The Tahsildar has by an impugned order dated 4th September, 1996 rejected the claim of the petitioner that he is entitled to the benefits of the Maharashtra Debt Relief Act, 1975. The present petition has been filed challenging the said order of the Tahsildar dated 4th September, 1996.

9. Learned Counsel for the petitioner has urged before us that Mangilal Biyani was a ''worker'' under the provisions of Maharashtra Debt Relief Act, 1975 and

thus covered under the provisions of the said Act. According to him, the debt covered under the mortgage in favour of Pratapmal Raghunath stood extinguished by virtue of operation of the provisions of the said Act, It is therefore contended that the petitioner being the auction purchaser of the properties of the said Mangilal Biyani did not have the liability to discharge under the said mortgage deed due to provisions of the said Act since the said liability stood extinguished. It is therefore contended that the said liability cannot be foisted upon the petitioner and the petitioner acquires the title in the said property free from any such liability in favour of respondent Nos. 4 to 9 herein. It is therefore, contended that the property acquired by the petitioner in auction sale is free from any encumbrances of mortgage and the debt covered by the said mortgage deed stood extinguished by virtue of operation of the said Act.

10. On the other hand, learned Counsel for the respondents has strongly urged that the liability provided under the mortgage deed does not extinguish by operation of the said Act. It has been contended that the provisions of the said Act are not applicable for the kind of debt which is covered by a mortgage deed and which has arose in natural course of business transaction. It has been further urged that the debt under a mortgage is in respect of immovable property which runs with the property and therefore the property which is acquired by the petitioner in auction purchase continues to be attached with the said debt and therefore the right of the respondents to recover the said amount from the said property is not affected even if the property is sold in auction.

11. Before we deal with the rival contentions, it is necessary to set out some of the provisions of the Maharashtra Debt Relief Act, 1975 apart from the statement of objects and reasons which are set out hereunder:

The word "debt" and "debtor" are defined under Sections 2(e) and 2[f) of the Act and read as under:

"Debt" means any liability in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest if the loan is taken by a worker, and with or without interest, in any other case) whether secured or unsecured, due from a debtor whether payable under a decree or order of any Court or otherwise.

"Debtor" means a marginal farmer, rural artisan, or rural labourer whose total income from all sources did not exceed two thousand and four hundred rupees during the year immediately before the 1st day of August. 1975 and a worker whose total income from all sources did not exceed, if living in an urban area six thousand rupees during the year immediately before the said date, and if living elsewhere four thousand and eight hundred rupees during that year;

The word "worker" is also defined u/s 2(o) of the said Act and which reads as under:

"worker" means a person who earns his livelihood through any profession, calling or trade and also a person who is working in any factory (including a badli worker therein).

Section 4 provides for liquidation of certain debts. Said Section 4 of the Act reads as under:

Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any such law, and save as otherwise expressly provided in this Act, every debt of worker whose immovable property if any, does not exceed twenty thousand rupees in market value and every debt of any other debtors, outstanding on the appointed day, including the amount of interest if any payable by a debtor shall: be deemed to be wholly discharged; and the consequences as hereinafter set forth shall, with effect from the appointed day, ensue namely ;

(a) no such debt due from a debtor on the appointed day shall be recoverable from him or from or against any moveable or immovable property be liable to be attached and sold or proceeded against in any manner in the execution of any decree or order relating to such debt against him.

(b) no Civil Court shall entertain any suit or proceeding against such debtor for the recovery of any amount of such debt including interest, if any; Provided that, where a suit or proceeding is instituted jointly against such debtor or any other person nothing in this clause shall apply to the maintainability of a suit or proceeding in so far as it relates to such other person;

(c) all suits and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor shall abate:

Provided that nothing in this clause shall apply to the sale of -

(i) any movable property held and concluded before the appointed day;

(ii) any immovable property conformed before such day;

(d) every debtor undergoing detention in a civil prison in execution of any decree for money passed against him by a Civil Court in respect of any such debt shall be released.

(e) every property pledged or mortgaged by such debtor shall stand released in favour of such debtor and the creditor shall be bound to return the same to the debtor forthwith on the debtor making an application in writing in that behalf; and the creditor shall pass a receipt to the debit or of having received the application. If the creditor refuses to pass a receipt then the debtor may get the application endorsed to that effect under the signature and date of any of the officers referred to In Section 6 or by any person authorised by them in this behalf.

Explanation 1 : Nothing in this section shall be construed to entitle any such debtor to thereunder of any part of a debt already repaid by him or recovery from him before the appointed day.

Explanation 2 : For the purposes of this section, the expression "debt of a worker" includes a debt arising out of loans taken from more than one creditor."

The word "loan" is not defined under the provisions of the Maharashtra Debt Relief Act but, the word "norm" is defined under the Bombay Money Lenders Act, 1946. The word "loan" under the provisions of Section 2(a) of the Act. The said definition in section has exclusion to the clause and it provided under Sub-clause (g) and that except for the purposes of Sections 23 and 25, (i) a loan to a trader (ii) a loan to a money-lender would not be included under the word definition and the word "loan" as defined u/s 2(g) of the said Act reads as under:

" "Loan" means an advance at interest whether of money or in kind but, does not include -

(a) ....

(b) ....

(c) ....

(d) ....

(e) ....

(f) ....

(g) "except for the purpose of Sections 23 and 25. (i) a loan to a trader;

(ii) a loan to a money lender who holds a valid licence; or

(iii) a loan, by a landlord to his tenant for financing of crops or seasonal finance, of not more than Rs. 50 per acre of land held by the tenant;

(iv) a loan advanced to an agricultural labourer by his employer;

Explanation.- The expression "tenant" shall have the meaning assigned to it in the Bombay Tenancy and Agricultural Lands Act, 1948 (or any other relevant tenancy, law in force relating to tenancy of agricultural lands) and the expressions "financing of crops" and "seasonal finance" shall have the meanings assigned to them in the Bombay Agricultural Debtors Relief An. 1947;

12. In the light of the aforesaid provisions, we are required to consider the arguments of the learned Counsel for the petitioner that the debt as extended in respect of the said mortgage property stood extinguished in favour of the said Diyani and consequently the benefit of such section must percolate in favour of the petitioner as auction purchaser. The learned Tahsildar in his reasoned order dealt with this argument and has held that the provisions of Section 2(o) namely definition of the word "worker" is not applicable to the petitioner herein. The learned Tahsildar has relied upon the judgment of this Court in the case of M/s.

Voltas Limited v. Central Stores 1980 Mh. L.J. 559 as well as judgment of this Court in Ramchand Bhojraj Vs. Ex Parte: Ramchand Hoodraj, and has rejected the contentions of the petitioner.

13. In so far as the first argument of the learned Counsel for the petitioner is concerned, we are not impressed with the same. Firstly, the scheme of Money Lenders Act (sic) inter alia implies and indicates that the Act only extinguishes the loan and/or debt in respect of class of persons who are so specified in the definition of debtor and worker. In our view, case of the petitioner would not fall within the meaning "debtor" or "worker" as defined under the Act particularly in setting of the scheme of the Act and object sought to be achieved by the Legislature in enacting the said Act. The contention of the petitioner that he is included in the definition of "worker" is without any merits. Furthermore, while interpreting the definition of "worker" each of the category specified therein has to be considered in the light of the scheme of the Act and the object sought to be achieved. We are not inclined to hold that the word "trade" used therein takes into its sweep the normal trading liabilities of the business man. If the interpretation of the word "worker" is so enlarged then in that event, it will lead to such an absurd result that normal business trading would be disrupted.

14. The present case is also not a case of a loan but, it arises out. of a liability from a business transaction. The petitioner''s predecessor-in-title Mangilal Biyani were the partners and Mangilal Biyani has expressly took over the liabilities of said partnership from which inter alia included the liability of Pratapmal under the said mortgage deed. Thus, it is clear that in the present case, it is the business transaction which has nothing to do with simpliciter the loan transaction as sought to be claimed by the petitioner for the benefits of the Maharashtra Debt Relief Act. The provisions of the Maharashtra Debt Relief Act applies only in cases where the said loan is lent and advanced to the poor segment of the people by money lenders and with a view to avoid their exploitation that the provisions of the said Act have been enacted. It is not possible to extend the benefits of the said Act in such a manner so as to extinguish the business transactions and business liabilities which arise from usual course of business as is in the present case. Apart therefore, the word "loan" excludes any transaction in course of the trade or business by virtue of the definition of the word "loan" u/s 2(a) of the Bombay Money Lenders Act. The said provisions specifically exclude an advance of money in course of business or trade from the definition of the word ''loan''. Thus, it cannot be treated as a loan to take benefits of the said Act. The argument of the learned Counsel for the petitioner that the sub-clause (i) of Section 2(g) has been deleted from a loan to a trader is also included within the meaning of the word ''loan'' to gain the benefits of the said Act has no substance. The aforesaid deletion has been effected by an Amending Act 76 of 1975 and the same has been brought into effect from 27th July, 1976. The transactions in the present case is that of 1949-50. Even an auction sale has also been confirmed on 22nd August, 1962. We do not think that the deletion of cl (i) of Section 2(g) should be read with the retrospective operation. In our view, the determination

of the word ''loan'' included the kind of transaction in the present case at the relevant time. In view thereof, we are of the opinion that the present transaction is not covered by the Maharashtra Debt Relief Act, 1975. Contention of the learned Counsel for the petitioner that the liability of the said Mangilal Biyani stood extinguished because Mangilal Biyani was declared insolvent and therefore the petitioners who are the auction purchasers in respect of the land are also not liable, is also without any merits. We are of the view that once there is mortgage in respect of a particular debt then the said debt is attached to an immovable property and person purchases the said property subsequently acquires right, title and interest therein subject to mortgage liabilities. It is therefore necessary that the petitioner must discharge the liabilities of the said mortgagor in respect of the said property.

15. In view of the aforesaid, we find no merits at all in the present petition and accordingly we dismiss the same. Petition is dismissed. However, there will be no order as to costs.

