(1952) 02 KL CK 0003

In the High Court Of Kerala

Case No : A.S. No. 660 of 1950

Charles N. Ambrose — APPELLANT

Vs

Meenakshi Ammal Ramal Ammal — RESPONDENT

Date of Decision : 15-02-1952

Acts Referred:

Travancore Debt Relief Act, 1115 — Section 11, 15, 15(1), 15(5), 9

Citation : AIR 1952 Ker 109

Hon'ble Judges : Joseph Vithayathil, J;Gangadhara Menon, J

Bench : Division Bench

Advocate : N.K. Narayana Pillai and A. Nesamani, for the Appellant; T.N. Subramonia Iyer, General and V.V. Subramonia Iyer, for the Respondent

Judgement

1. The first Defendant in O.S. No. 90 of 1111 of the Nagercoil District Court, who is the Petitioner in a Debt Relief Petition, is the Appellant in this case. The suit was on a hypothecation bond executed by the Defendants in favour of the Plaintiff for a sum of Rs. 4,000/-. There was a provision in the hypothecation bond to the effect that arrears of interest should be treated as principal and that interest should be paid on such arrears also. When the suit was pending, the first Defendant filed a petition under Sections 9 and 15(1), Travancore Debt Relief Act. The suit was subsequently decreed. According to the first Defendant the debt payable under the Act was only the principal amount of Rs. 4,000/- and interest amounting to a moiety. As there was dispute in respect of the amount of the debt he prayed for an order of the court fixing the amount. The main objection raised by the Plaintiff to the petition of the first Defendant was that the amount that was to be treated as principal u/s 11 of the Act was not only the original sum lent but also the arrears of interest agreed to be treated as principal under the terms, of the bond.

2. The court below by its order dated 9-7-1116 held that the amount of the debt payable by the debtor on the date of the Act was only Rs. 6,000/- including interest and directed the first Defendant to pay the same according to the

provisions of Section 9(1) of the Act. Section 9(1) relates to the discharge of the debt by payment of 30 per cent, of the debt within 9 years from the date of the Act. In the Debt Relief Petition the first Defendant had not stated that he proposed to pay 80 per cent, of the debt within 9 years u/s 9(1). The petition was filed, as stated above, under Sections 9 and 15(1) of the Act. The averment in the petition was only to the fact that the Petitioner wanted to pay the debt in installments. It is true, that it was stated in the petition that as per proviso (c) to Section 9(1) of the Act the Petitioner was bound to deposit 6 per cent of the debt. But that proviso applies to payment of 75 per cent of the debt within 6 years and 70 per cent within 2 years under Sub-section (2) of Section 9.

3. The Plaintiff appealed from this order in A.S. No. 159 of 1117 of the Travancore High Court and the High Court by its order dated 21-12-1118 reversed the order of the trial Court and held that the amount that was to be treated as principal u/s 11 should include arrears of interest agreed to be treated as principal under the terms of the contract, and remanded the Debt Relief Petition to the lower Court for ascertaining afresh the amount of the Debt payable under the Act. The lower Court was also directed to allow the debtor to pay the debt in installments u/s 9 of the Act and to grant him reasonable time to pay up the installments that had fallen due. Soon after the records were received in the court below, i.e. on 28-1-1120 the Defendant filed a petition to the effect that he had deposited in court the whole amount payable by him under the provisions of the Act and prayed for an order declaring that the debt has been discharged. The debtor''s case was that he had deposited 70 per cent of the debt with interest thereon and that he was entitled to the benefit of Section 9 Sub-Section 2(b). The Plaintiff filed, an objection to this petition in which it was contended that the amount deposited by the first Defendant was not sufficient and that the deposit was not made in time. As for the amount it was agreed that the principal amount payable on 18-11-1111 on the basis of the order of the High Court was, Rs. 52,330/-.

The dispute between the parties related to the rate at which interest should be calculated from the date of suit to the date of the Act. The High Court order provided that stipulated interest would be allowed from the date of suit to the date of the Act. The Plaintiff contended that ''stipulated interest'' meant interest stipulated in the hypothecation deed while the Defendant contended that it meant interest stipulated in the decree. The rate of interest provided in the hypothecation bond was 12 per cent per annum while the interest awarded by the decree from the date of suit was only 6 per cent. The Court below held that the debtor was liable to pay only 8 per cent interest from the date of suit to the'' date of the commencement of the Act.

After filing of the Debt Relief Petition he had deposited Rs. 750 on 20-3-1116, Rs. 1400 on 20-10-1116, Rs. 1100 on 6-4-1117, Rs. 1125 on 27-1-1118, Rs. 2035 Chs. 20 on 20-1-1120, and Rs. 1390 Chs 225 Cash 12 on 27-1-1120. According to the debtor these amounts would make up 70 per cent of the debt and interest thereon payable u/s 9(2)(b) of the Act. It was on this basis that he contended that the whole debt has been discharged. The Court below by its order dated 12-7-1122 held that the amount deposited by the debtor was sufficient to make up 70 per cent of the debt and interest thereon.

4. It will be seen that the whole of this amount was not deposited within 2 years from the date of the Act. In order to enable the debtor to get the benefit of Section 9(2)(b) of the Act 70 per cent of the debt together with future interest thereon has to be paid within 2 years from the date of the commencement of the Act. The amount deposited within 2 years of the commencement of the Act would be 70 per cent of Rs. 6,000, which, according to the debtor, was the debt payable by him, and future interest on that 70 per cent. It was after the High Court held by its order dated 21-12-1118 that the debt payable under the Act was more than Rs. 6,000 that the debtor deposited the balance amount. According to the debtor the Court was bound u/s 15(5) of the Act to fix the time within which he should deposit the amount payable by him under the provisions of the, Act and he was, therefore, entitled to make up the deficiency in the deposit even after the expiry of the period of two years from the date of the commencement of the Act. When the subsequent deposits were made the court had not passed any order u/s 15(5) determining the amount of the debt and the time within which payment should be made by the debtor. Section 15, Sub-Section 5, provides that any payment made by the debtor in accordance with the order passed by the court under that Sub-section shall be deemed to be a valid payment for purposes of Section 9. It was however not necessary for the court below, to decide the question whether the payment was made within time as the objection raised by the creditor on this point was not pressed at the time of argument. This is what the court below says in its order dated 12-7-1122:

The records were received in this Court only on 22-11-11120 and the Defendant, immediately, even without waiting for any formal order of this Court, is alleged to have complied with the directions in the order of the High Court. In view of this circumstance some objections regarding limitation and failure to comply with the provisions of the Act raised by the decree-holder in his objection were not pressed at the time of the argument.

The court therefore allowed the petition of the debtor and held that the debt has been discharged by him under the provisions of the Act.

5. The decree holder appealed from that order in A.S. 271 of 1123. It does not appear that the decree-holder contended in appeal that the debtor was not entitled to the benefit of Sub-section (2)(b), Section 9 of the Act by reason of the fact that the payment was not made within two years of the date of the commencement of the Act. The main ground urged in the appeal related to the rate at which interest was to be calculated from the date of suit to the date of the commencement of the Act. The High Court confirmed the decision of the court below on this point and held that the term ''stipulated interest'' in the order in A.S. 157/117 meant interest stipulated in the decree. The High Court did not

however decide the question whether the amount deposited by the debtor was sufficient for enabling him to get the benefit of Section 9(2)(b) as there was dispute between the parties relating to interest payable after the Act. The High Court therefore passed an order to the following effect:

In the result, while we confirm the decision of the lower Court on the question of the amount of the debt, we set it aside and remand the case for further inquiry on the question whether the deposit is sufficient in order to obtain a discharge under the 2 years'' rule and if not what further amount should be deposited in view of the provisions of Section 9 of the Debt Relief Act.

6. After this order the creditor and debtor filed statements of account in the court below. According to the debtor there has been an excess payment of Fs. 3 Ca. 3, while, according to the creditor, the amount deposited will not make up 70 per cent of:the debt and interest thereon payable under this provisions of the Act. The point of difference between the parties related to the method of calculating interest from the date of the commencement of the Act. The creditor also contended that the debtor was not entitled to the benefit of Section 9(2)(b) of the Act.

7. With regard to the first point, according to the creditor, interest should be calculated not on the 70 per cent of the debt as it existed on 1-2-1116 but on the whole debt, and the debtor was bound to pay 70 per cent of the aggregate interest. According to the debtor, interest has to be calculated only on the 70 per cent. If the first method of calculation is adopted it will be seen that the amount deposited by the debtor was not sufficient. Relying on the ruling reported in ''Damodaran Nambiar v. Cherian'' 1946 Trav. L.R. 850 (F.B.) the court below held that interest should be calculated on the whole debt as contended by the creditor. In 1946 Trav. L.R. 850 (F.B.) this question did not arise for consideration and we do not think that that decision is an authority for the position that for payment of debt, u/s 9 of the Debt Relief Act interest should be calculated on the whole debt and not on the 80 per cent, 75 per cent or 70 per cent as the case may be. In that case the decree amount was 7000 fanams. The debtor paid 70 per cent of that amount leaving out of account future interest which accrued due from the date of the decree till the date of the commencement of the Act. In a Division Bench case reported in ''Vallaimma Chempaka Pillai v. Arumugham Neelaka Pillai'' 1943 Trav. L.R. 229 it had been held that the word ''debt'' used in proviso (c) to Sub-section (1) of Section 9 meant the aggregate amount decreed and would not include interest accruing from the date of the decree. Overruling this decision the Full Bench held that the words "debt subsisting at the time of the Act" in proviso (c) to Sub-section (1) meant debt including interest accruing till the date of the commencement of the Act. That was the only point that arose for consideration in that case, and that was the only question that was dealt with by Sankarasubbier J. who wrote the leading judgment. Abraham J. agreed with this view. Krishnaswami Iyer C.J. while agreeing with this view, made some observations relating to the method, of calculating interest from the date of the

commencement of the Act. The learned Chief Justice observed that the words "80 per cent of the amount of any debt together with future interest that may accrue thereon" in Section 9 do not mean 80 per cent of the debt plus interest on the 80 per cent. According to him, those words mean 80 per cent of the amount of the debt as on the date of the Act plus 80 per cent of the future interest on the whole amount found due on the date of the Act. This observation is only an obiter dictum in view of the fact that the question did not arise for consideration in the case.

8. This point directly arose for consideration in a Division Bench case reported in ''Ninan v. Mariam'' 1947 Trav.LR 476. The Judges who decided that case were Mr. Justice Sankarasubbier and Mr. Justice Krishna Pillai. It was held in that case that future interest should be calculated from the date of the Act not on the whole debt but on the 80 per cent or 75 per cent or 70 per cent as the case may be. It is useful to quote the following passage from the judgment:

The word ''thereon'' can have reference only to the quantum of the debt referred to previously, namely 80 per cent 75 per cent or 70 per cent as the case may be and not the whole debt. The debt which is dealt with by the clause is one percentage part of it and the expression thereon if grammatically construed can have reference only to that quantity of the debt dealt with by the clause. Hence the future interest contemplated in the three classes must be the interest that might accrue on the quantity represented by the 80 per cent 75 per cent or 70 per cent respectively.

We have no hesitation in agreeing with the view taken by the learned Judges in this case relating to the interpretation of Section 9 of the Act in preference to the observation of Krishnaswami Iyer C.J. in 1946 Trav. L.R. 850 (F.B.). It is true that the decision in 1946 Trav. L.R. 850 (F.B.) was not referred to in 1946 Trav. L.R. 476. But as the question did not arise for consideration in the earlier case and was not considered by two of the learned Judges who took part in the decision, we do not think that this is a sufficient reason for our not giving due weight to the decision in the later case. We do not also think that the wording of Section 9 indicates that the legislature mean that interest should be calculated on that portion of the debt which the debtor was not liable to pay under the provisions of the Act. We therefore hold that the method of calculation of future interest adopted by the debtor is correct. It is admitted that if this method of calculation is adopted the amount deposited by the debtor will be sufficient to make up 70 per cent of the debt and future interest thereon payable by the debtor u/s 9(2)(b).

9. With regard to the second point, the court below has held that since the debtor did not pay 70 per cent of the debt and future interest thereon within 2 years from, the date of the commencement of the Act he is not entitled to the benefit of Section 9 Sub-Section 2(b) but only to that of Section 9, Sub-section (1). The reason given is that first order of the court dated 9-7-1116 directed the debtor to pay the debt u/s 9, Sub-section (1) namely 80 per cent within 9 years.

But this order was set aside by the High Court and the High Court permitted the debtor to pay the debt in installments u/s 9 without restricting his right to Sub-section (1) of that section. Moreover, when the court below passed the order dated 12-7-1122 after the remand by the High Court the creditor seems to have given up this part of his case as can be seen from the order of the court. The contention does not appear to have been raised in the appellate court also. The 2nd remand by the High Court was only for an enquiry into the question whether the deposit made by the debtor was sufficient for obtaining a discharge of the debt under the 2 years'' rule. The parties are bound by the terms of this remand order and the court below has clearly gone wrong in not complying with the direction in that order. It may also be observed that even if the debtor originally proposed to pay 80 per cent of the debt within 9 years u/s 9 Sub-section (1) there is nothing to prevent him from discharging the debt by paying 70 per cent, within two years under Sub-Section 2(b) as is clear from Sub-Section 4 of Section 9 which reads thus:

Nothing contained in this section shall be deemed to prevent a debtor from claiming the benefits of this section by making payment of any or all the installments before the due date.

In the circumstances the court below has gone wrong in holding that the debtor can discharge the debt only by payment under Sub-section (1) of Section 9, namely, 80 per cent within 9 years. We have found that the deposit made by the debtor is sufficient for obtaining a discharge of the debt under the 2 years'' rule. He is therefore entitled to the benefit of Sub-Section 2(b) of Section 9 and the whole debt must be deemed to have been discharged under the provisions of the Act. The order of the Court below is therefore set aside and this appeal is allowed with, costs.