

(1984) 02 KAR CK 0018

In the Karnataka High Court

Case No : Civil Revision Petition No's. 3750 of 1981 and 780, 781, 849 and 2879 of 1982

Economic Chit Funds Pvt. Ltd., Mandya and Another
Vs

APPELLANT

P.S. Krishnoji Rao and Others

RESPONDENT

Date of Decision : 16-02-1984

Acts Referred:

Karnataka Debt Relief Act, 1980 — Section 2 (5), 2 (c)

Citation : AIR 1986 Kar 211 : (1985) 58 CompCas 838

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : B.M. Krishna Bhat and Simha and Co., for the Appellant; M. Dasappa, Konanur N. Chandrashekara and G.S. Vishweswara, for the Respondent

Judgement

1. Respondents in C. R. Ps. Nos. 780 and 781 of 1982 are represented by Sri. M. Dasappa, learned Advocate. The remaining respondents are absent.

2. Common question of law arises in these C. R. Ps. and therefore a common order is being passed.

3. The petitioner Chit Fund Corporation obtained decrees against respondent I in these matters towards the recovery of installments regarding a chit. They executed the decrees in the Court of Munsiff, Mandya. The concerned respondents raised a contention that they are debtors under Karnataka Debt Relief Act. The Act that was in force at the time when the contention was raised is the Karnataka Debt Relief Act 1976 (herein after referred to as the Old Act). During the course of the enquiry the Karnataka Debt Relief Act of 1980 came into force. This Act, in the course of the order, will be referred to as the New Act. The petitioners contended that in view of the fact that the decretal amount in each one of the execution cases is not a debt in the sense that no amount had been loaned to the respondents as borrowers and the same was not recoverable as a loan and the concerned respondents were not in law entitled to raise such a contention. The other contention raised is that the, petitioners Corporation falls

within one of the exemptions provided in the Old Act. It may be stated here that this contention can also be legally raised taking shelter under the provisions in Sec. 10 of the New Act.

4. The executing Court repelled these contentions and held that the concerned respondents are entitled to take a plea that they are debtors under the Acts.

5. The first contention is on the basis that S. 10(I) of the New Act clearly covers the case of the petitioners Corporation and therefore the Corporation is exempted from the application of the provisions of the New Act and as such of the Old Act also.

6. Section 10(I) of the New Act reads as follows :

"10. Certain debts and liabilities not to be affected : -

Nothing in this Act shall apply to the following categories of debts and liabilities of a debtor, namely: -

(1) any liability incurred or arising under any of the bye-laws of which have been registered."

7. On facts, it has been nowhere the case of the petitioners that bye-laws have been framed and the same have been registered. Evidently the word registered has been used in relation to any of the provisions relating to registration as found in any statute or law as applicable to this State. In view of this position on facts, Sri. B. M. Krishna Bhat, learned Advocate appearing on behalf of the petitioners in these cases, sought reliance on the decision in Navjeevan Enterprises (Mysore) P. Ltd. (In Liquidation) Vs. T.N. Ramalingaiah and Another, wherein it has been held that the provisions in S. 10(I) of the new Act is available to Chit Fund Companies. In this case it is urged there would be no difference even when the petitioner is a Corporation.

8. It is true that it has been so laid down in the afforested decision. The reasoning is found in para 13, in the said decision. With due respect to the learned Judge, the said reasoning does not appeal to me as the plain reading of the provision is more than sufficient to make the meaning explicit in regard to even the intention of the legislature. The reasoning proceeds on the basis that the legislature has clearly exempted the liability in regard to chit transaction because S. 10(I) of the New Act makes use of the word "any chit". In order to explain the words bye-laws of which have been registered" the reasoning proceeds to state that in this state there is no law regulate the Chit transaction as is seen to exist in other States. The provision in S. 10(I) of the New Act does not make out how the bye-laws have to be registered and where they are to be registered and therefore the words "bye-laws of which have been registered have to be construed as, broadly giving the widest meaning possible to the term bye-laws and therefore, the object of the provision is to grant exemption to the Chit Fund Companies.

9. The above reasoning proceeds on the assumption that for want of any legislation in this State for regulating the Chit transaction, there could not be any registration of bye-laws unless those bye-laws are relating to the memorandum and articles of association of a Company or co-operative society. Such assumption cannot, in my opinion, be made. There might be societies registered under the Societies Act whose bye-laws are also registered and there might be societies carrying on chit transactions registered under the Societies Act and whose bye-laws are also registered, the use of the words "bye-laws of which have been registered cannot be ignore& If the reasoning adverted to in the said decision is accepted the said words would lose all their meaning. It is well settled principle of interpretation of statute " that while interpreting a statute meaning should be attributed that too plain meaning to all the words employed in a particular provision in a statute. A serious attempt has been made in this regard that that principle is given a go by. Therefore, I hold that the plain meaning of the aforementioned provision in S., 10(l) of the New Act does not provide exemption from the applicability of the provisions of the Act to the petitioners-corporation.

10. The second and the last contention is that the decretal amount does not amount to "debt" within the meaning of the word "debt". "Debt" is defined in S. 2(c) of the Old Act and in S. 2(5) of the new Act as follows

"(5) "Debt" means any liability in cash or in kind whether secured or unsecured and whether decreed or not and includes any interest due on such debt."

There is same difference in the two definitions. But that is not of much importance for the point which is being considered now. Sri B. M. Krishna Bhat again relied upon the reasoning found in paras 14 and 15 of the said decision. Perusal of these two paragraphs shows that the principle laid down by a Division Bench of the Kerala High Court in Narayana Prabhu and Others Vs. Janardhana Mallan and Others, disagreeing with the principle laid down by a Division Bench of the Madras High Court has been relied upon. It has been held that the debt does not include the amount due or decreed against a subscriber to a chit

11. The law laid down in the decision in Narayana Prabhu's case is the one laid down by a Division Bench of the very High Court in K.S. Raghavan and Others Vs. Iswara Pattar Gramom Parameswara Sastrigal's son Subbarama Sastrigal and Another, In Narayana. Prabhu's case a reference had been made to the decision of a Full Bench of the High - Court of the erstwhile State of Travancore in Easwara Moorthiya Pillai v. Narayana Vadivu, 16 Trav LT 143. It is in this connection the decision in Varkey Thomas v. Travancore Forward Bank Ltd. 1962 Ker LT 383 and the contra decision of the Madras High Court in Periyatan Katanhipalli Kannan Nambiar Vs. Ullannur Madhathil Subramania Pattar and Others, have been referred. But, a Full Bench of the Kerala High Court has held in the decision in P.K. Achuthan and Another Vs. State Bank of Travancore, Calicut, that the law laid down in the decision in K.S. Raghavan and Others Vs. Iswara Pattar Gramom Parameswara Sastrigal's son Subbarama Sastrigal and Another, is not good law. In P. K Achuthan's case a reference has been made to

the Full Bench decision of the Travancore High Court reported in 15 Trav LR 133 and also to the decision in *Guru Narasimha Aiyer v. Muthuswamy Chidambaram*, 18 Trav LR 56. Further-on in paragraph 11, the decision in *The Commissioner of Income Tax, Kerala v. The Kottayam Co-operative Bank Ltd.*, Kottayam ILR (1974) 1 Ker 602 : (1975 Tax LIZ 175) is relied upon. This decision is rendered by a Division Bench. It has been held that in conducting a chit fund a co-operative society could be said to be providing credit facilities to its members. What was particularly laid down may be excerpted as follows: -

"The dominant motive which prompts most people to join chit fund schemes is to avail themselves of the facility of bidding the kuris when they are in urgent need of finance so that they may receive the chit amount in lump as a loan with the facility of repaying it in monthly instalments. A chit fund does, no doubt, incidentally partake of the nature of saving scheme also. But unless amounts are advanced to the prizing subscribers through a scheme of competitive bidding or by drawing lots there will be no income derived either by way of interest or byway of amounts foregone by the bidders at the auction. Thus the chit fund is primarily intended to operate as a scheme for advancing loans from the common fund to the subscribers, their turn for getting such loans being determined either by auction or by drawing lots."

This Full Bench decision has been relied upon by a Division Bench of the Kerala High Court in the decision is *State Bank of Travancore Vs. May C. George*, dealing with Kerala Agriculturists Debt Relief Act (11 of 1970).

12. The foregoing shows that the reasoning in the afforested decision of this Court is based on the principle laid down by Division Benches of the Kerala High Courts and which have been subsequently dissented from and overruled by a Full Bench of the Kerala High Court. I respectfully agree with the principle laid down by the Full Bench of the Kerala High Court. In that view of the matter, I hold that the petitioners-Corporation is not entitled to claim exemption under the provisions contained in S. 10(I) of the New ACL A similar provision does not find a provision in the Old Act and therefore there is no need to make any reference to the exemption provision contained in S. 8 of the Old Act.

13. In view of the foregoing, these Civil Revision Petitions fail and are dismissed.

14. Revision dismissed.