
(1984) 06 KL CK 0026
In the High Court Of Kerala
Case No : C.R.P. No. 719 of 1979

Elavalli Kurisupally Prarthana Sangham

APPELLANT

Vs

Velu Appunni

RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Kerala Debt Relief Act, 1977 — Section 2, 3, 9

Citation : (1984) KLJ 516

Hon'ble Judges : P.C. Balakrishna Menon, J; K. John Mathew, J

Bench : Division Bench

Advocate : Joseph Vithayathil, Joseph Therattil and Joseph Vadakkal, for the Appellant; M.B. Kurup and V.M. Prabhakaran Nair, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Menon, J.—The only question for decision in this Civil Revision Petition referred to a Division Bench is as to whether the liability incurred but not due for payment on the date of commencement of Kerala Act 17 of 1977 is a "debt" within the meaning of the Act. The question arises in proceedings in execution of a decree for money obtained prior to the commencement of the Act. The contention of the judgment-debtor is that he is a "debtor" within the meaning of the Act and the "debt" should be deemed to have been wholly discharged by virtue of the provisions of Section 3 of the Act. The court below has found that the annual income of the judgment-debtor does not exceed Rs. 3000/- and that his debts on the date of the commencement of the Act do not also exceed Rs. 3000/-. The finding of the execution court that the annual income of the judgment-debtor does not exceed Rs. 3000/- is not challenged before us. Learned Counsel for the decree-holder, however, submits that the finding that the judgment-debtor did not have debts exceeding Rs. 3000/- on the date on which the Act came into force is clearly unsustainable on the facts admitted and proved in this case.

2. The decreeholder had examined P.Ws. 1 to 4 to prove Exts. X1 to X4. There is

no dispute that the liability under Exts. X1 to X3 subsisting on the date on which the Act came into force was for Rs. 2400/-, The only other question is as to whether the liability under Ext. X4 will fall within the definition of "debt" under the Act. Ext. X4 dated 3-4-1975 is a receipt issued by the judgment-debtor to P.W. 4 for payment of a sum of Rs. 1000/- as security at a time when he was taken into the service of the judgment-debtor. The evidence of P.W. 4 as well as Ext. X4 receipt show that P.W. 4 was employed for the sale of ayurvedic medicines on commission basis. Section 3 of the Act provides for a statutory-discharge of debts payable by a debtor within the meaning of the Act. Every debt and interest thereon payable by a debtor to a creditor shall be deemed to be wholly discharged, and no civil court shall entertain any suit or other proceeding against a debtor for the recovery of a debt (vide Section 3 of the Act). The expression "debtor" is defined in sub-section (4) of Section 2 to mean any person whose annual income does not exceed Rs. 3000/- and from whom any debt is due. Clause (1) of Sub-section (4) however excludes "any person from whom debt or debts exceeding three thousand rupees (excluding interest) is or are due" from the purview of the definition of the expression "debtor". The expression "debt" is defined in sub-section (3) of Section 2 to mean "any liability in cash or kind, whether secured or unsecured, due from or incurred by a debtor on or before the date of commencement of the Act, whether payable under a contract, or under a decree or order of any court, or otherwise, and subsisting on that date" subject to the exceptions mentioned in sub-section (3). Section 9 enacts that "notwithstanding anything contained in any law for the time being in force, in any suit or other proceeding, the burden of proving that a debtor is not entitled to protection under the provisions of this Act shall be on the creditor." Sec. 9 does not, however, declare that the burden of proof that a person claiming the benefits under" the Act is a "debtor" within the meaning of the Act is on the creditor. The judgment-debtor who claims a statutory discharge of the decree debt cannot succeed unless he proves that he is a "debtor" within the meaning of the Act. Once it" is proved that the judgment-debtor is a "debtor" under the Act, the burden shifts to the creditor to prove u/s 9 that the debtor is not entitled to the benefits of the Act. In other words, the initial burden of proving that he is a "debtor" within the meaning of the Act is on the person who claims the statutory discharge of debt u/s 3 of the Act. In the present case the decreeholder has got Ext. X4 produced by P.W. 4 who has proved the same. Ext. X4 is a security deposit that P.W. 4 had made with the judgment-debtor to be repaid to him at the time of his discharge from service or otherwise to be adjusted towards any liability that may be due from P.W. 4 to the judgment-debtor. The judgment-debtor on whom rests the burden of proof that he is a "debtor" has not produced any evidence to show that the liability under Ext. X4 was not subsisting on the date on which the Act came into force.

P.W. 4 has deposed that he was discharged from the service of the judgment-debtor only in 1978. Apparently the amount paid by P.W. 4 under Ext. X4 was outstanding on 13-1-1977 when the Act came into force. The execution court

has, however, excluded the liability under Ext. X4 in considering the question as to whether the debts of the judgment-debtor exceed Rs. 3000/- on the date on which the Act came into force for the reason that the debt under Ext. X4 will be due for payment only at the time when P.W. 4 is discharged from service. Since P.W. 4 was discharged from service only in 1978, the debt under Ext. X4 according to the execution court was not due and cannot, therefore, be reckoned in considering the total amount of debts of the judgment-debtor on the date of the Act. We are not able to accept the reasoning and conclusion of the execution court. As earlier stated, the burden is on the judgment-debtor to prove that he is a "debtor" within the meaning of the Act. In the present case, if Ext. X4 is also a debt within the meaning of the Act, the total amount of debts of the judgment-debtor exceed Rs. 3000/-. The expression "debt" as defined in the Act need not necessarily be due for payment on the date on which the Act came into force. The definition clearly shows that the debt is a liability either due from or incurred by a debtor. Even though the liability under Ext. X4 is not due for payment, it is, nevertheless, incurred and remained as a debt on the date on which the Act came into force. We, therefore, hold that the total amount of debts under Exts. X1 to X4 of the judgment-debtor exceeded Rs. 3000/- on the date on which Act 17 of 1977 came into force and hence he is not entitled to the benefits of S. 3 of the Act. The decision of the execution court is set aside, and that court is directed to proceed with the execution of the decree in accordance with law. The Civil Revision Petition is allowed with costs.