(1997) 03 AP CK 0082

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3433 of 1993

G. Abdul Rahiman Khan APPELLANT

Vs

Dharmapuri District Co-operative Sugar Mills RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Citation : (1997) 3 ALT 291 : (1997) 2 APLJ 168

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : V.V.S. Rao, for the Appellant; R.V. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhaskara Rao, J.—The order in E.A. No. 176/1992 in E.P. No. 81/1987 on the file of District Munsif, Dhone, dated 30-7-1993 dismissing the petition on the ground that the revision petitioner herein is not entitled to the benefits of Act 45 of 1987 is assailed in this revision petition.

2. The facts in brief are that the revision petitioner herein suffered a decree for a sum of Rs. 4,741.26 ps. besides costs of Rs. 604/- in O.S. No. 62/1977 on the file of District Munsif, Dharmapuri of Tamil Nadu State and the execution petition has been transferred to the Court of District Munsif, Dhone as the revision petitioner is a permanent resident of this area and he has been owning lands at Dhone. He filed E.A. No. 176/1992 claiming that he is a small farmer and that the debt is discharged by virtue of the provisions of Act 45 of 1987. The petition is resisted by the respondent/decree holder. During the enquiry the revision petitioner examined himself as P.W.1 and he got Exs. A-1 to A-7 marked, whereas the respondent/decree holder did not adduce any evidence. It has been contended on behalf of the respondent/ decree holder that the benefits of Act 45 of 1987 are not available to the revision petitioner as the debt was incurred in Tamil Nadu State and he relied on a judgment of Madras High Court reported in P.S. Ramamoorthy Sastry Vs. Selvar Paints and Varnish Works (Pvt.) Ltd., .

Following the above Judgment, the learned Munsif held that the decree passed in Tamil Nadu Court is not protected by Act 45 of 1987 and accordingly the E.A. has been dismissed with costs. Aggrieved by the above order, he filed the present revision petition.

3. In the grounds of revision it is asserted that the Executing Court will have to apply the provisions of Act VII of 1977 read with Act 45 of 1987 and see whether the judgment-debtor is a small farmer or not though the decree is passed by a Court in Tamil Nadu. Mr. R.V.S. Prasad, learned Counsel for the respondent/ decree holder on the other hand contended that the Executing Court has rightly followed the Judgment of Madras High Court cited supra (1) and dismissed the petition. He has, however, brought it to my notice that one learned single Judge of this Court held in S. Naga Raju v. S. Anji Reddy 1986 (2) ALT 563 : 1987 (1) Cur Civ Cas 626 that even if the decree was obtained in Madras and sent for execution in Andhra Pradesh, the judgment-debtor can apply for benefit of Act VII of 1977 and he distinguished the same on facts.

4. The question is whether the revision petitioner is entitled for the benefits of Act VII of 1977 or Act 45 of 1987.

5. Although the background of the case culminating in the decree under execution is not available, it is evident that a suit was filed in the Court of District Munsif at Dharmapuri and a decree has been passed for recovery of Rs. 4, 741.26 Ps. with costs. It is also evident that the above decree has been transferred to the Court of District Munsif, Dhone, for execution. These facts are not in dispute.

6. The revision petitioner/judgment-debtor has filed E.A. seeking protection of Act 45 of 1987 on the ground that he is a small farmer. In the judgment cited supra (1), it is held,

"Sections 40, 41 and 42, Civil P.C. prescribed only the procedure for executing the decree passed by one Court transmitted to the transferee Courts for execution and was not substantive law. That the transferor Court retained substantial control over the decree was evident from the provisions under Sections 41 and 46. The power conferred under Sec. 42 on the executing Court was the power for the limited purpose of execution of the decree. Matters concerning discharge, satisfaction and the like of the decree has to be determined by the proper Law of Contract, viz., the substantive law of the place where the debt was contracted and where the decree was passed. Therefore, a debt which ripened into a decree in Bombay and was transmitted to Tamil Nadu Court for execution against the judgment-debtor could not be declared to have been discharged under the provisions of Tamil Nadu Debt Relief Act which was only substantive law in the transferee State lex loci solutionis. The fact that the said Tamil Nadu Act by the principle of territorial operation of State Acts applied to all persons and debts in the State of Tamil Nadu could not however lead to the position that the Bombay Court''s decree transmitted to the Court in Tamil Nadu for execution could be held discharged by the provisions of the Tamil Nadu Act and that the proceedings in execution had abated".

It is noteworthy that the transfer of a decree for execution in another Court is a matter of procedure and it does not in any way and cannot touch upon the substantive rights of the parties., A Division Bench of Madras High Court has, therefore, held that the transfer of decree for execution is not under any substantive law and hence substantive rights cannot be affected by such transfer.

7. The principle laid down therein is that the Debt Laws of Tamil Nadu State cannot be applied to the debt incurred in the State of Bombay and when the decree obtained in a Bombay Court is transferred to Tamil Nadu State. Evidently the decree in this case was obtained in Tamil Nadu State and it is transferred to Andhra Pradesh State for execution and hence it can be held that without any hesitation that the Debt Laws applicable to the State of Andhra Pradesh cannot be applied to the above decree.

8. In the judgment cited supra (2), the promissory note was executed in Andhra Pradesh State and that was endorsed to a party for collection in Madras and on that basis a suit was filed in Madras and decree was obtained. Justice K. Ramaswamy, as he then was, therefore, held that the endorsement was made with a view to circumvent the Debt Laws applicable to Andhra Pradesh State where the promissory note was executed and debt was incurred and that the device adopted by the promisee is to avoid the provisions of the Act. Therefore, the case on hand is distinguishable on facts inasmuch as the decree sought to be executed was passed in Madras State and it is nobody''s case that the debt was incurred in this Stale.

9. Viewing from any angle I do not find any illegality or irregularity in the impugned order and hence the revision petition is fit to be dismissed.

10. In the result, the revision petition is dismissed, but without costs.

