

(1952) 11 MAD CK 0013

In the Madras High Court

Case No : Letters Patent Appeal No. 66 of 1949

Garimella Suryanarayana

APPELLANT

Vs

Gada Venkataramana Rao

RESPONDENT

Date of Decision : 14-11-1952

Acts Referred:

Contract Act, 1872 — Section 60

Tamil Nadu Agriculturists Relief Act, 1938 — Section 8

Citation : AIR 1953 Mad 458 : (1953) ILR (Mad) 295 : (1953) 66 LW 113

Hon'ble Judges : Rajamannar, C.J.; Venkatarama Aiyar, J.; Chandra Reddi, J

Bench : Full Bench

Advocate : C. Rama Rao, for the Appellant; U. Sethumadhava Rao and N. Ramamohan Rao, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—The question raised in this appeal is of considerable importance and relates to the construction of Expl. I to Section 8 of

Madras Act 4 of 1938 recently introduced by Act 23 of 1948. Our attention has been drawn to an unreported decision of a Division Bench in

O.S. A. No. 17 of 1948, in which the learned Judges took the view that this explanation would not affect adjustments and settlements already

made between creditor and debtor. This decision has since been followed by a learned Judge sitting single in S.A. No. 2115 of 1947 and by

another Division Bench in C. M. A. No. 180 of 1950. We are inclined to think that the learned Judges who decided O.S. A. No. 17 of 1948 have

not attached sufficient importance to the word /"expressly"" which occurs in the explanation in arriving at their conclusion. In the appeal now before

us Fanchapakesa Aiyar J. has taken a contrary view. We think it desirable that there should be an authoritative ruling as to the interpretation of this

new provision. The appeal will be posted before a Full Bench of three Judges.

OPINION

Venkatarama Aiyar, J.

2. This appeal has been referred for the decision of a Full Bench as it raises a question of considerable importance on the construction of Expl. (I)

to Section 8, Madras Agriculturists' Relief Act, 4 of 1938, op which there is a conflict of judicial opinion. The facts are that on 12-11-1921 the

respondent borrowed a sum of Rs. 2,000 from one Lakshminarayana Sastri and executed a promissory note therefore (Ex. D-1). Nine payments

were made towards this promissory note and endorsed thereon. We are concerned in this appeal with five of them. The endorsements relating to

them have been marked as Exs. D. 1(e) to D. 1(j) & they state that the payments were made ""towards principal and interest"". On 14-7-1929

there was a settlement of accounts & after giving credit for the payments made, the balance found due was Rs. 1658 and for this amount a fresh

promissory note EX. D. 2 was executed. The appellant is an endorsee of this promissory note. The respondent filed O.P. No. 23 of 1943 on the

file of the Sub-Court, Rajahmundry, for declaring the amount payable under the promissory note after scaling the debt under the provisions of the

Act. Several contentions were raised, but only one of them is now material & that is as to how the five payments under Exs.D. 1(e) to D. 1(j)

should be dealt with. The respondent claimed that being open payments they were liable to be appropriated towards the principal, while the

appellant contended that those payments had been appropriated towards interest at the settlement which resulted in the execution of the

promissory note Ex. D. 2 and that that appropriation could not be reopened. The Courts below held that though the payments under Exs. D. 1(e)

to D. 1(j) were open payments at the time when they were made, the debtor had appropriated them towards Interest at the time of Ex. D. 2. and

that such appropriation could not be reopened. Against that decision the respondent preferred C.M.S.A. No. 150 of 1947 on the file of this court

& while that was pending Expl. (I) to Section 8 of the Act came to be enacted by the Madras Act 23 of 1948, That Explanation is as follows:

In determining the amount repayable by a debtor under this section every payment made by him shall be credited towards the principal, unless he

has expressly stated in writing that such payment shall be in reduction of interest.

3. Panchapakesa Aiyar J. who heard the appeal held that the payments in question should be appropriated towards the principal, as the settlement

of accounts and the execution of the promissory note did not amount to an express statement by the debtor that they should be appropriated

towards interest as required by the new explanation. Against this judgment, the creditor has preferred this appeal under the Letters Patent. The

point for decision in this appeal is whether on a true construction of the Explanation, appropriations made by the debtor as part of a settlement

could be reopened and the payments reappropriated towards the principal.

4. In an old English case known as -- "Heydon's case" (1584) 3 Co. Rep. 7: 76 E. R. 637, Lord Coke observed that to arrive at the real meaning

of a Statute it was necessary to consider

""(1) what was the law before the Act was passed: (2) what was the mischief or defect for which the law had not provided; (3) what remedy

Parliament has appointed; and (4) the reason of the remedy.

In -- "Mayfair Property Co., In re, Bartlett v. Mayfair Property Co.", (1898) 2 Ch. D. 28, Lindley M. R. stated:

In order properly to interpret any statute it is as, necessary, now, as it was when Lord Coke reported "Heydon's case," to consider how the law

stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the

statute to cure that mischief.

Following these principles, it is necessary to consider what changes were effected in the general law relating to appropriation of payments by a

debtor, by the Madras Agriculturists' Relief Act 4 of 1938; what led to the further amendment in 1948; and what its precise effect is.

5. The principles governing appropriation of payments made by a debtor are under the general law well settled. When a debtor makes a payment,

he has a right to have it appropriated in such manner as he decides and if the creditor accepts the payment, he is bound to make the appropriation

in accordance with the directions of the debtor. This is what is known in England as the rule in "Ciayton's case" (1816) 1 Mer. 572; 35 E.R. 761

and it is embodied in Section 59, Contract Act. But when the debtor has not himself made any appropriation, that right devolves on the creditor

who can exercise it at any time, vide "Cory Bros. & Co. v. Owners of the Turkish Steamship "Mecca", (1897) A.C. 286; and even at the time of

the trial: Vide -- "Seymore v. Pickett", (1905) 1 K.B. 715. That is Section 60, Contract Act. It is only when there is no appropriation either by the

debtor or the creditor that the Court appropriates the payments as provided in Section 61, Contract Act. That was the law in force at the time

when the Madras Agriculturists' Relief Act 4 of 1938 was enacted. That Act introduced a substantial change in the right of a creditor to make an

appropriation u/s 60, Contract Act, if there had been no appropriation by the debtor. Section 8(1) of the Act provides that all interest outstanding

on 1-10-1937 shall be deemed to have been discharged. On this, the question arose whether payments which had remained unappropriated either

by the debtor u/s 59 or by the creditor u/s 60 prior to 1-10-1937 could thereafter be appropriated by the creditor towards interest. But for the

Act, they could have been. But it was held that as on 1-10-1937 all arrears of interest stood discharged, it was not open to the creditor thereafter

to exercise his right of appropriation and that all such payments should be appropriated only to the principal: Vide -- Duraiswami Aiyanger v.

Raghavachariar", ILR (1941) Mad 57: (1940) 2 Mad L. J. 648. It was further held that payments made generally towards the debt or ""towards

principal and interest"" were open payments and were liable on the above principle to be appropriated towards the principal after 1-10-1937: Vide

-- Chittapragada Veerraju and Another Vs. Muppala Rayanim Dora Garu and Others, and -- Kallakuri Venkateswarlu and Others Vs. Kalidindi

Narayanaraju and Others, . These authorities were understood as settling the law on the subject and had been uniformly followed, until we come to

the decision in -- A.S. Duraiswamy Mudaliar and Others Vs. Muhammad Amiruddin and Others, . There, a sum of Rs. 5400 was paid ""in part

payment of a decree debt in C.S. No. 500 of 1930"" and it was held by Gentle C.J. and by Bell J. that the payment was liable to be appropriated

first towards the interest due under the decree and then to the principal The reason for the decision was thus stated by the Chief Justice:

The principle of law which always has been observed and recognised is that when a payment is made in respect of principal and interest, there is

an inference that the payment is ordinarily first allocated towards interest and thereafter any balance in respect of principal. That was recognised in

the decisions under the Madras Agriculturists' Relief Act, 1938 in -- K.V. Ramaswami Ayyar Vs. Ramayya Sastrigal, and in -- S. Venkiteswara

Aiyar Vs. T.N. Ramaswami Aiyar and Others, . In my view, the recognised and acknowledged principle regarding the utilisation of a payment

which is made in respect of principal and interest has in no way been interfered with by any provision in the Madras Agriculturists' Relief Act, 1938.

In the two decisions referred to in the Judgment, there had in fact been appropriation of the payments before the Act came into force. The larger

principle laid down in this decision was that when there was no specific appropriation by either the debtor or the creditor, an Inference of

appropriation would arise in law and that therefore the payments could not be reappropriated towards principal u/s 8(1) of the Act. This of course

was a reversal of the long course of authorities which had held that unless there was specific appropriation, the payments should be held to be

open and that such payments should be appropriated towards principal as by the operation of. Section 8(1) there would be no interest outstanding.

The Legislature then intervened and enacted Expl. 1 to Section 8 by the Amendment Act 23 of 1948. The-substance of that Explanation is that

payments made by a debtor could be appropriated towards interest only if lie had stated expressly in writing that they should be so appropriated.

The object of the amendment was to take away the right of the creditor to appropriate payments towards interest unilaterally as he would be

entitled to u/s 60, Contract Act; to nullify the effect of the decision in -- A.S. Duraiswamy Mudaliar and Others Vs. Muhammad Amiruddin and

Others, and to give legislative recognition to a principle which prior thereto rested on a course of judicial decisions. Thus far, the scope of the

explanation is clear and intelligible.

6. The question now is, does it extend further and have the effect of annulling appropriations made, not by the creditor unilaterally, but by the

debtor himself as part of a settlement. Before the amendment, it had been held in a series of cases that where accounts between the parties had

been settled and a fresh document executed there was appropriation by the debtor and that such appropriation could not be reopened under the

provisions of Act 4 of 1938. In -- Kodali Venkayamma Vs. Mamidipaka

Ramakotayya, the debtor executed a promissory note on 23-3-1931 for Rs. 259-9-6. Towards this note he paid Rs. 150 on 9-10-1932 without expressly appropriating it either towards principal or interest. On 17-8-1934 there was a settlement of accounts under which after giving credit for Rs. 150 with counter interest the balance was struck at Rs. 162-10-0, and for that a promissory note was executed on 17-8-1934. One of the questions raised was whether the payment of Rs. 150 on 9-10-1932 which was an open payment when made should under the Act be appropriated towards the principal. It was held by Wadsworth and Patanjali Sastri JJ. that there was an appropriation of the payment by the debtor on 17-8-1934 and that it could not be reopened. In -- Vemireddi Rangareddi Vs. Isaka Venkatareddi and Others, there was a mortgage in January 1922 towards which two payments had been made. On 29-1-1934 the accounts were settled and a fresh mortgage was executed. In holding that the payments made under the mortgage of 1922 could not be treated as open and unappropriated, the Court observed:

When these two payments were adjusted to the debt in order to calculate the amount for which the later document was executed, it could no longer be contended that they were unappropriated.

The point for decision is whether by the Explanation the Legislature intended to alter the law as laid down in these decisions. An examination of the scheme of Section 8 does not support the contention that such alteration was intended. Section 8(1) enacts that ""all interest outstanding"" on 1-10-1937 shall be deemed to be discharged. These words presuppose that interest as such remains outstanding and payable on that date and it is that outstanding interest that is discharged by the operation of the statute. If in fact there was no interest payable on that date Section 8(1) would have no application. Likewise, when the explanation provides that the payments shall be credited towards principal, it presupposes that those payments are still open and, unappropriated. In other words, for the Explanation to apply there must be on the one hand arrears of interest outstanding and payable and on the other payments, open and unappropriated and the Explanation provides how in that contingency the payments are to be appropriated. Where there has been in fact a settlement of accounts and a fresh document executed by the debtor, that must necessarily have the

effect of discharging the interest on the one hand and of appropriating the payment on the other. Such a transaction would therefore seem to be outside the Explanation.

7. It is argued for the respondent that Ex. D 2 does not satisfy the requirements of the Explanation inasmuch as it does not expressly appropriate

the payments towards interest and that it should therefore be disregarded and that if Ex. D. 2 is disregarded, we are thrown back on the original

payments which, being open payments, should be appropriated towards principal. EX. D. I is for Rs. 2000 and after giving credit for the payments

made towards it, the balance struck is Rs. 1658 and that is the principal under Ex. D. 2. As the amount under Ex. D. a is less than the principal of

Ex. D. I, the whole of it must represent the balance of principal due under Ex. D. I and that means that the payments had been appropriated in

discharge of the entire interest due on Ex. D. 1 and also a part of the principal. Clearly, therefore, there is appropriation towards interest: Vide --

Kodali Venkayamma Vs. Mamidipaka Ramakotayya, . The contention of the respondent is that the Explanation requires something more than a

writing signed by the debtor from which an appropriation could be inferred, that the document should expressly state that the payments were to be

appropriated towards interest and the appropriation involved in Ex. D. 2 is not saved by the explanation. But, as already mentioned, the

explanation contemplates a stage when there are open payments, remaining to be appropriated and appropriations being made In the process of

scaling the debt in accordance with the provisions of the Act. But where the payments did not exist as payments on 1-10-1937, but had become

merged in a settlement entered into prior thereto, the Explanation would be inapplicable,

8. This question has also been considered in a number of cases which have come up before this Court subsequent to the decision of Pancha-

pakesa Aiyar J. now under appeal. In O.S. A. No. 17 of 1948 Horwill and Raghava Rao JJ. held that the true scope of Expl. I was only to nullify

the decision in -- A.S. Duraiswamy Mudaliar and Others Vs. Muhammad Amiruddin and Others, and that it had not the effect of overruling the line

for authorities which had held that settlement made by parties involving appropriation of payments could not be reopened. This decision was

followed by Govinda Menon & Ramaswaini JJ. in C. M. A. No. 180 of 1950 and by Subba Rao J. in S. A. No. 2115 of 1947. We agree with

the views expressed in these decisions and do not find sufficient reason for upsetting the construction which had been put upon the explanation in a

long course of decisions. We are accordingly of opinion that appropriations made by a debtor as part of a settlement are not liable to be reopened

under Expl. I to Section 8.

9. In the result, this appeal is allowed and the decree of the Courts below are restored with costs throughout.