
(1954) 11 AP CK 0011
In the Andhra Pradesh High Court
Case No : A. A. O. No. 721 of 1950

Gowkanapalle Thippa Reddy

APPELLANT

Vs

Balarani Reddigari Soma Reddi and Others

RESPONDENT

Date of Decision : 10-11-1954

Acts Referred:

Citation : (1954) 11 AP CK 0011

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : C. Rengaswami Iyengar, for the Appellant; Kasturi Seshagiri Rao and Kasturi Siva Prasada Rao, for the Respondent

Judgement

Umamaheswaram, J.

1.This is an appeal u/s 25 (a) of the Madras Act IV of 1938 as against the order of the District Judge of Cuddappah in O. P. . R. SOMA RBPDI (Umamaheswaram J.) A. I. R.

No. 32 of 1949 allowing the application. The short point that arises for consideration is, as to the scope and effect of Explanation (1) to Section 8 as amended by Madras Act XXIII of 1948. The clause relied on by the Advocate for the Respondent is in the following terms:

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

The District Judge held, that, as the payments were not expressly stated, in writing, to be in reduction of interest, they must be appropriated towards the principal. In the view taken by him, he held that the entire debt should be deemed to have been discharged. The decree-holder has preferred the above appeal.

2. Since the filing of the appeal, a Full Bench of the Madras High Court in Garimella Suryanarayana Vs. Gada Venkataramana Rao, , had to consider this

question. The learned Judges held that, by the Explanation the Legislature did not alter the law as laid down by Wadsworth and Patanjali Sastri JJ" in Kodali Venkayamma Vs. Mamidipaka Ramakotayya, , and Vemireddi Rangareddi Vs. Isaka Venkatareddi and Others, . At page 302 (of ILR Mad): (at P. 401 of AIR Mad), they observed as follows:

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 an the one hand and of. appropriating the other. Such a transaction would, therefore, seem to be outside the Explanation.

3. Lower down, they stated:

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 down the debt in accordance with the provisions of the Act. But where the" payments do not exist, as payments on 1st October 1937, but had become merged in a settlement entered into prior thereto, the Explanation would be inapplicable.

4. The learned Advocate for the Respondent sought to distinguish the Pull Bench decision on the ground that the present case is only one of renewal and not a settlement of accounts. On principle, there is no distinction between the two classes of cases. A renewal may involve a settlement of accounts. The intermediate payments made will have to be deducted and the actual amount due ascertained.

5. The next argument addressed by the learned Advocate for the Respondent was that the District Judge of Cuddappah upheld his plea as to the circumstances under which he renewed the promissory note after the passing of the Madras Act IV of 1938 on 21-8-1940. The payments were all made prior to 23-8-1937. Therefore, the finding of the District Judge in favour of the Respondent on Issue No. I does not in any way affect the question that falls to be determined in this appeal.

6. In the result, the appeal is allowed and the Order and decree of the District Judge of Cuddappah set aside. Having regard to the fact that the decision of the Pull Bench was delivered three years after the filing of the appeal, I think it is just and proper that each party should bear his own costs throughout.