

(2005) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1298 of 1995

Hari Ram Soni

APPELLANT

Vs

Damdu Lal Ahirwar and others

RESPONDENT

Date of Decision : 26-09-2005

Acts Referred:

Madhya Pradesh Anusuchit Jati Tatha Anusuchit Janjati Rini Sahayata Adhiniyam, 1967
— Section 1, 10, 10(ii), 22, 8

Citation : (2005) 4 MPLJ 367

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : Girish Kekre, for the Appellant; B.P. Sharma for Respondent No. 1, 5 and Vivekanand Awasthy, Govt. Advocate for Respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

The petitioner a registered Money Lender was approached by the first respondent for grant of loan. The petitioner acceded to his request and initially granted a loan of Rs. 200/- on 19-8-1991 against security of 58 grams of Silver "LACHCHAS" (ornament) to him. Thereafter again a sum of Rs. 600/- was given on loan on 20-4-2002 by the petitioner to the first respondent against security of 145 grams of Silver "LACHCHAS". Out of the total loan amount advanced of Rs. 800/- to him, the first respondent returned Rs. 135/- towards interest and Rs. 85/- towards principal amount; total Rs. 220/-. The petitioner contends that thereafter due to refusal to grant further loan by him, the first respondent felt offended and filed a false case against him.

As per the averments made in the petition, on 26-6-1993 the petitioner served with a notice bearing heading of "RAJASWA MAMLE ME NOTICE (NYAYALAY NAZUL ADHIKARI)". The said notice mentioned the name of petitioner only. The name of first respondent as the other party was not mentioned in the notice. The

notice did not accompany copy of application filed by the first respondent u/s 8(3) of the Madhya Pradesh Anusuchit Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967 (for short "the Adhiniyam). The petitioner enquired from the process server about the said notice but the process server was ignorant about the facts. On reading of the " notice it gave an impression to the petitioner that it had been issued from the Court of NAZUL ADHIKARI which deals in Urban Land Dispute. As the petitioner did not have any Nazul land in Jabalpur, the petitioner endorsed a remark at the back of the notice that there is no Nazul land or case. Similar remark was made by the process server on the notice (Annexure P-4). The petitioner further states that due to such defective notice the petitioner was totally ignorant about the pendency of any case under the Adhiniyam filed by the first respondent against him.

On 18-5-1994, he received a copy of the order dated 22-2-1994 passed by the Debt Relief Court the second respondent. The said order dated 22-2-1994 was an ex parte order directing him to return the ornaments of the first respondent. It also directed return of gold ornaments even, which were never kept by the first "respondent. The petitioner was also directed to return the balance amount of Rs. 550/- On receiving the copy of the said order the petitioner approached to the second respondent by filing a review application for setting aside the ex parte order dated 22-2-1994. The said application was dismissed on 15-6-1994 by the second respondent holding that the petitioner had due notice and he deliberately avoided appearance in the Debt Relief Court. Feeling aggrieved the petitioner filed revision u/s 22 of the Adhiniyam before the Collector, Jabalpur. The said revision was heard and dismissed by the Additional Collector, Jabalpur by order dated 30-3-1995.

Feeling aggrieved by the said orders the petitioner has filed this petition. The petitioner contends that the second and third respondent have ignored the mandatory requirement of serving a notice along with copy of the application as provided u/s 8(3) of the Adhiniyam. Petitioner also contends that the service of so called summon/notice was neither sufficient nor proper. Notice besides being defective on account of non-accompaniment of the copy of the application was not properly worded. The notice did not mention names of both the parties. Notice did not mention the name of Debt Relief Court. The heading "NYAYALAYA NAZUL ADHIKARI, S.D.O" is also misleading. It is contended that the petitioner was denied proper and sufficient opportunity to even obtain knowledge of the pendency of any case against him. By way of defective notice the precious right of knowledge/being heard, cannot be taken away especially when civil consequences flow out of ex parte order of Debt Relief Court. None can be denied of the right to be heard when being penalised. It is also contended by the petitioner that the authorities have failed to take note of provisions of section 8(3), 10(ii) of the Adhiniyam and Rule 12 of the Madhya Pradesh Anusuchit Jan Jati Rini Sahayata Niyam, 1967 (for short the Niyam).

The respondents on the other hand supported the impugned orders and

contended that petitioner in spite of being noticed and having knowledge deliberately remained absent and, therefore, the authorities have committed no error in passing the impugned orders.

The relevant provisions of the Adhiniyam and Niyam are extracted below:

Section 8(3) of the Adhiniyam :

Application by creditor to Debt Relief Court -

(1)

(2)

(3) Notwithstanding the provisions of sub-sections (1) and (2), a debtor may apply to the Debt Relief Court within whose jurisdiction he owns land, ordinarily resides or earns his livelihood within sixty days of the establishment of the said Court, for the determination of his debts giving out the names and full addresses of all his creditors and on receipt of such application the Court shall issue notice in the prescribed form to each creditor named therein that in case he failed to submit an application as required by sub-section (1) in respect of the said debtor within thirty days from the date of the notice, all debts due to him from the said debtor shall stand discharged.

Provided that in any area where a Debt Relief Court was established before the date appointed under sub-section (4) of section 1, the period of sixty days for filing an application by a debtor belonging to Scheduled Caste shall be counted from the aforesaid date.

Section 10 of the Adhiniyam :

Procedure of Debt Relief Court dealing with claim. - The Debt Relief Court dealing the claim u/s 8 shall - (i) pass an order fixing a date of hearing;

(ii) cause notice of the date of hearing together with a copy of the application to be served on all the creditors of the debtor, and the debtor; and (iii) cause copies of such notice and application to be affixed to the Court.

Rule 12 of the Niyam:

Notice - (1) A notice under sub-section (3) of section 8 shall be in Form FV-A. Other notices and summons to be issued under the Adhiniyam shall, so far as possible, be in the form prescribed under the Code of Civil Procedure.

(2) No notice shall be deemed void on account of any error in the name or designation of any person referred to therein unless such error has produced substantial injustice." Form IV-A appended to the Niyam:

FORM IV-A (See Rule 12)

Notice under rule 12 of the Madhya Pradesh Jan Jati Rini Sahayata Adhiniyam, 1967.

In the Debt Relief Court of....

To

Name of the creditor.... S/o Resident of village Tahsil...district.... Whereas Shri...resident of village.... Tahsil...district...has applied to the Court for the determination of his debt and has named you as one of his creditors.

Now, therefore, you are hereby required to take notice that in case you fail to submit an application as required by sub-section (1) of section 8 of the Madhya Pradesh Jan Jati Rini Sahayata Adhiniyam, 1967, for the determination of debts due to you in respect of the said debtor within thirty days from the date of this notice, all such debts due to you from the said debtor shall stand discharged.

Under the Seal of Debt Relief Court.

Admittedly, the petitioner was issued a notice of the case on the form (Annexure P-4) with heading "RAJASWA MAMLE ME NOTICE NYAYALAY, NAZUL ADHIKART. In the notice only the name of petitioner is mentioned. The name of first respondent as other party is not mentioned. The notice did not accompany copy of application filed by the first respondent u/s 8(3) of the Adhiniyam. At the back of the notice it contains endorsement of the process server mentioning that the petitioner informed him that he has no land or property. Service of such notice (Annexure P-4) in which the names of the parties is kept blank, the name of the Court is not described cannot be regarded as due service of notice on the petitioner, under Rule 12 of the Niyam. On the basis of service of such notice the conclusion drawn by the second and the third respondents that the petitioner had notice of the case and he was duly served cannot be sustained. The notice served on the petitioner is not in conformity of above quoted provisions of Adhiniyam and Niyam.

Accordingly, I am of the view that the petitioner was not duly served with the notice of case filed by the first respondent before the Debt Relief Court. In this view of the matter the ex parte order dt. 22-2-1994 and the order dated 15-6-1994 by which the petitioner's prayer to set aside the ex parte order was rejected as also the order dt. 30-3-1995 passed by the third respondent Additional Collector in revision are liable to be, and are hereby quashed. The matter is remitted to the Debt Relief Court (Sub-Divisional Officer), Jabalpur for adjudication in accordance with law.

The petitioner and the first respondent shall remain present before the Debt Relief Court (S.D.O), Jabalpur on 8-11-2005. Petition is allowed. No orders as to cost.