

(1942) 07 MAD CK 0051
In the Madras High Court

J.A. Subba Rao

APPELLANT

Vs

Vommena Seshayya

RESPONDENT

Date of Decision : 27-07-1942

Acts Referred:

Citation : AIR 1943 Mad 7 : (1942) 55 LW 693 : (1942) 2 MLJ 551

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner was the mortgagor under a mortgage of 1924, whereby he borrowed Rs. 11,000. He filed an application

before the learned District Judge of Nellore under the rules framed under G.O. No. 2634, Development, dated 27th October, 1939, praying for a

declaration of the amount of the debt having regard to the provisions of Madras Act IV of 1938. His application contained two main averments.

One was that on applying the provisions of Madras Act IV of 1938, nothing would be found due to the creditor and the other was a plea that

having regard to the nature of the payments relied upon to save limitation, the debt was time barred. The learned District Judge declined to go into

the question of the amount of the debt unless the petitioner withdrew the averment that the debt was barred by limitation. The learned Judge states:

As I read Rule 2, it is only a person who admits that a debt is due from him who can apply for a declaration of the amount of the debt due by him.

He cannot in the same breath say that no debt is due from him at all whether on grounds of limitation or other grounds outside the scope of Act IV

of 1938.

It seems to us that this view is correct. Whatever may be the position, when a

debtor is seeking to resist an application by the creditor under the rules, he cannot in our opinion ask the Court for a declaration under the rules, unless he concedes that there is a debt upon which the provisions of Act IV of 1938 can operate. No doubt Sub-rule (2) of Rule 2 expressly provides that the Court may inquire into a petition in which the debtor asserts that the debt has been discharged by virtue of the provisions of the Act. But there seems to be no occasion for the Court under the rules to go into a claim by the debtor to scale down a debt which has been discharged in full or has become unenforceable by the operation of some other law than Act IV, for to do so would be to give an adjudication on hypothetical facts. Rule 7 gives the Court a very wide discretion to take such evidence or make such inquiry as it may consider necessary and to pass such order as it thinks fit. The Court in this case having refused to adjudicate upon the amount of the debt which according to the applicant was unenforceable, it certainly cannot be held that the Court acted without jurisdiction in so refusing or that it improperly declined to exercise a jurisdiction which it had. The petition is therefore dismissed with costs.