
(1956) 08 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 188 of 1952

Joseph John

APPELLANT

Vs

Varkey Thomas

RESPONDENT

Date of Decision : 30-08-1956

Acts Referred:

Travancore Debt Relief Act, 1115 — Section 15, 15(1), 15(5), 15(6)

Citation : (1956) 08 KL CK 0011

Hon'ble Judges : K.T. Koshi, C.J;M.S. Menon, J;G. Kumara Pillai, J

Bench : Full Bench

Advocate : K.K. Mathew, for the Appellant; K.P. Abraham and K.T. Ninan, for the Respondent

Judgement

M.S. Menon, J.—The order of reference is self-explanatory is as follows "On 13-8-1120 the District Court of Kotayam passed an order by which the debt due under " decree in O.S. No. 43 of 1108 was fixed at Rs. 5820 as on 31-1-1116 and the amount which the debtor had to deposit per installment at Indian Rs. 349, 5 chs. 11 lash. The debtor was also given three months" time to make up the deficit in the installments already paid. Both parties filed appeals from the said order to the High Court, of Travancore and the appeals were dismissed on 20-10-1121.

(ii) The only question that arises for decision In this case is whether the three months" time granted by the District Court should be calculated from 13-8-1120 or from 20-10-1121. It is agreed that if the latter is the material date, the appeal has to be allowed and that if it is the: former, the appeal has to be dismissed.

(iii) The date from which the period allowed should be calculated has been a subject of controversy among the various High Courts in India. The position is summed up as follows in Chitaley and Rao's CPC (Fifth Edition, Volume, I, page 1379 : Suppose a decree of, the primary court which fixes a date for the performance of an act directed thereby is appealed against, and the: appeal is dismissed. Is the period originally fixed, in such a case to be calculated from the

first Court's decree or from the appellate decree? On this point there is a conflict of decisions. It has been held by the High Court of Bombay, and the Chief Court of the Punjab that the period should be calculated from the date of the appellate decree, the reason given being that the lower court's decree is merged in that of the appellate court and though the latter decree may not expressly enlarge the period originally fixed, It; should be deemed to do so "impliedly". On the other: hand, it has been held by the Madras, Allahabad and Nagpur High Courts and the Judicial Commissioner's Court of Upper Burma that though the lower court's decree is merged in the appellate decree, in the absence of express provision extending the time the appellate decree should be taken as confirming the lower court's decree as it stands and cannot be held to extend by implication the period fixed thereby. Opinion in the Calcutta and Patna High Courts is divided, some cases taking the Bombay view and some the Madras view.

In Mulla's CPC (12th Edition, page 160) after referring to Raja Sashikanta Acharyya Vs. Raja Sarat Chandra Rai Chaudhuri, wherein Mukerji, J., said that:

The balance of judicial opinion, as the later authorities stand, is in favour of the view that when time is fixed by the lower court for payment of money and the decree of the lower court is confirmed on appeal, the time for payment runs from the date of the decree of the Appellate Court, though the latter decree does not expressly provide that the: time for payment should be calculated from the date of the appellate decree.

the Commentary goes on to say:

"It is submitted that the correct view is "that the appellate decree not being complete in itself, must be "construed with reference to the decree of the lower court and that time is not extended".

(iv) in view of the conflict of opinion and the importance of the question we refer the appeal to the decision of a Full Bench of this Court".

2. Learned Counsel for the appellant has taken us through the various decisions bearing on the subject but we are unable to agree that there is any valid reason to depart from the statement in Mulla's Commentary to the effect that "the correct view is that the appellate decree, not being v. complete in itself, must be construed with reference to the decree of the lower court and that time Is not extended."

3. The view of the Madras High Court is that "where the appellate decree confirms the decree of the, first court and is silent regarding the time fixed for payment by the court of first instance, a further period would not be given for payment from the date of the appeal decree" and "the party in default is not entitled to reckon the time from the date of the appellate decree" Nimmala Mahankali v. K. Subba Rao AIR 1918 Mad 919 (B). We are in respectful agreement with this view and it follows that the appeal should be dismissed.

4. In the light of the conclusion mentioned above we consider it unnecessary to

deal with the contention of Mr. K.P. Abraham, learned Counsel for the Respondent, based on Sub-sections (1), (5) and (6) of Section 15 of the Travancore Debt Relief Act, 1115, and it is not dealt with in this judgment.

5. The appeal fails and is hereby dismissed; but in the circumstances of the case there will be no order as to costs.

6. We reproduce below, for future guidance, the last paragraph of Ramaswami v. Sundara I Cone ILR 31 Mad 28 (C) "In future cases it is, we think, desirable that Appellate Courts should frame their decrees in. such a manner as to leave no doubt as to whether it is intended to extend the time for performing conditions precedent prescribed by the original, decree".