

**(1982) 06 KL CK 0011**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 930 of 1981**

Kooran Kuriappu Kunjipalu

APPELLANT

Vs

Kooran Chakku Pappu

RESPONDENT

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**Date of Decision :** 25-06-1982

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Kerala Agriculturists Debt Relief Act, 1970 — Section 2(4), 8(1)

**Citation :** AIR 1982 Ker 361

**Hon'ble Judges :** P. Subramonian Poti, Acting C.J.; George Vadakkal, J

**Bench :** Division Bench

**Advocate :** T.S. Venkateswara Iyer, P.K. Balasubramanyan, K.S. Rama Warriar and S.V. Balakrishna Iyer, for the Appellant; T.L. Viswanatha Iyer, for the Respondent

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## Judgement

P. Subramohian Poti, Ag. C.J.

1. Our learned brother Sukumaran, J. referred this case to a Division Bench as an important question of a recurring nature was said to arise in the revision and therefore an authoritative decision of this Court was considered desirable by the learned Judge. The question is whether a compromise decree in a suit for money could be reopened for amending the decree u/s 8 (2) of the Kerala Agriculturists' Debt Relief Act, 11 of 1970. There is another controversy and that is whether the debt in this case is a debt falling within the purview of Act 11 of 1970.

2. When the decree-holder filed an application for execution of the decree passed against the judgment-debtor, he filed I. A. No. 412 of 1981 seeking amendment of the decree u/s 8 (2) of Act 11 of 1970. This provision enables a person to apply for such amendment of a decree for repayment of any debt if the judgment-debtor is an agriculturist. Such amendment is to be made so as to apply the provisions of the Kerala Agriculturists' Debt Relief Act to the decree- In the case before us the suit was based upon a promissory note executed by the defendant in favour of the plaintiff in 1971 and when the case came up for trial

the defendant withdrew his contentions. A decree was passed as agreed to by the parties. It is agreed that in the written statement of the defendant he did not seek the benefit of the Kerala Agriculturists' Debt Relief Act, 11 of 1970 so much so the withdrawal of his contentions did not involve withdrawal by him of any contention as to the benefit of the Act. He seeks the benefit of the Act because, Recording to him, he is an agriculturist -- a fact not in dispute --and further the debt though under a promissory note of 1971 is really a debt incurred in 1968 under a promissory note executed then. His case was that the note in 1971 was only a renewal of the earlier note. Since the basic question would be whether the debt falls within the purview of the Act the finding of the Court below on this question is of relevance. That Court finds that the debt cannot be said to be incurred by the petitioner before the commencement of the Debt Relief Act on the ground that it was in renewal of a note executed in 1968. It proceeds to observe that no evidence was adduced with respect to that contention in the suit or in the proceeding before him and even assuming that it was so, by agreeing to the compromise after withdrawing all the contentions it was not open to the judgment-debtor to plead that the debt was incurred before the commencement of the Debt Relief Act. Whether it is open to the judgment debtor to plead so is the main question arising for decision and we will advert to that shortly. But the learned Judge is not right in assuming that a debt incurred in 1968 under a promissory note and renewed in 1971 under fresh note does not fall within the scope of the Act. The observation as to absence of evidence is evidently erroneous as the plaint itself refers to the renewal of the 1968 note. The reply notice of the defendant is seen produced in the case as Ext A1. That reply notice mentions that the note of 1971 was in renewal of the note of 1968 and it is with reference to that the plaint averments have been made which averments do show that the plaint note is in renewal of an earlier note of 1968 and incurring of the liability is prior to the commencement of Act 11 of 1970.

3. Now we will advert to the question whether a debt falls within the scope of the Act when it is under a promissory note or other transaction entered into renewing an earlier transaction which was before the amendment of the Act. It is true that on the happening of such an event the parties are bound by the obligations under the fresh contract and their rights also will be defined by the terms of such contract. What we have to consider is the definition of the term "debt" in the Act. The term "debt" is defined in Section 2 (4) of the Act as meaning any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of the Act, whether payable under a contract, or under a decree or order of any Court, or otherwise. We need not advert to that part of the definition which may not be relevant for our purpose. One of us in the decision in Philipose Thomas v. State Bank of Travancore 1969 KLT 922 had to consider the similar definition of the term "debt" in Section 2 (c) of the Kerala Agriculturists' Debt Relief Act, 31 of 1958 in the context of a plea that if such a debt incurred prior to the commencement of the Act is renewed under a fresh contract the benefit of Act 31 of 1958 will not

be available to the debtor. Dealing with this, this Court said :

"5. It appears to me that Section 2 (c) enables a Court to treat a liability incurred prior to the commencement of the Act and renewed after the commencement of the Act as a debt coming within the scope of the Act. No doubt, incurring of the liability must be on or before the commencement of the Act; but if it is payable under a contract, a decree or an order of the Court whether before or even after the commencement of the Act, the definition in Section 2 (c) would apply. If a fresh document is executed renewing the liability under an earlier transaction or settling an earlier transaction, one that is prior to the commencement of the Act, and if a suit is instituted on the basis of the fresh document so executed, no doubt, for the purpose of the suit the amount is payable by the defendant by virtue of the fresh contract but it is in respect of a liability incurred prior to the commencement of the Act. If so, I cannot see my way to accept the contention of the learned counsel for the respondent that Section 2 (c) has no application to a case of execution of a fresh document renewing the earlier debt u/s 2 (c) of the Act. I am supported in coming to this conclusion by the decision of this Court in Joseph v. Varkey 1966 KLT 1143."

We are in agreement with the above statement of the law. It is therefore evident that the debt in this case falls within the purview of the Kerala Agriculturists' Debt Relief Act, 11 of 1970.

4. The further question is whether the right to the benefit of the Act must be taken to have been waived by the judgment-debtor and therefore is not to be permitted to be urged. Section 8 of Act 11 of 1970 reads;

"8. Amendment of certain decrees.--(1) Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Civil P. C., 1908, amend the decree accordingly or enter satisfaction, as the case may be.

(2) The provisions of Sub-section (1) shall also apply to cases where, after the commencement of this Act a Court has passed a decree for the repayment of any debt."

Section 8(1) applies to cases of decrees passed before the commencement of the Act. Sub-section (2) applies to all cases where after the commencement of the Act a Court has passed a decree for the repayment of arty debt falling within the Act The Court may pass such a decree after the commencement of the Act in a suit filed before the commencement of the Act. The written statement might also have been filed before the commencement of the Act. It may pass a decree in a case where the written statement is filed after the commencement of the Act in a suit pending when the Act came into force. In a case where a plea is available to a defendant, but he has not urged the plea the theory of "might and ought" embodied in Explan. IV to Section 11 of the Civil P. C. would operate to preclude

the defendant from urging such a plea once the decree is passed. But by the operation of Sub-section (2) of Section 8 there will be no such bar. Therefore merely because the defendant failed to set up in the trial the plea that he was entitled to the benefit of the Act he would not be debarred from raising the contention in a petition to amend the decree in exercise of the provision in Section 8 (2) of the Act. In fact construing a similar provision, Section 19 of the Madras Agriculturists Relief Act, the Supreme Court in the decision in S. PL. Narayanan Chettiar Vs. M. AR. Annamalai Chettiar, ) held that the Act conferred the right on a judgment-debtor to obtain the relief of scaling down notwithstanding the provisions of the Civil P. C. in a case where the debtor did not seek any relief at the time of disposal of an appeal by the High Court when by that time the Act had come into force. The provision of the Madras Agriculturists Relief Act which was considered by the Supreme Court is similar to the provision before us. The provision in Section 7 of the Kerala Agriculturists' Debt Relief Act, 31 of 1958 relating to amendment of decrees is also similar to the provision to Section 8 of Act II of 1970. A Division Bench of this Court in M. K. Kuruvilla v. M. S. Joseph 1960 KER LT 1207 following the decision of the Supreme Court in S. PL. Narayanan Chettiar Vs. M. AR. Annamalai Chettiar, ) held that Section 7 (2) clearly indicates that an agriculturist debtor who failed to take advantage of the provisions of Sub-sections (2) and (3) of Section 10 of Act 31 of 1958 and allowed a decree to be passed against him, can, subsequent to the passing of the decree apply for amendment of the decree u/s 7 (2). The same must be said of the provision in Section 8 (2). It is plain that on the language of Section 8 (2) there is no bar in seeking amendment of the decree merely because the question had not been raised at the time the decree was passed. In this view the order of the learned Subordinate Judge requires to be reversed. We set aside the order and remit the case back to that learned Judge for disposal in accordance with law.