

(1978) 02 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Revision No. 38 of 1978

Mangilal and Others

APPELLANT

Vs

Registered Firm Mittilal-Radhey Lal Rastogi and Others

RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Madhya Pradesh Anusuchit Jati Tatha Anusuchit Janjati Rini Sahayata Adhiniyam, 1967 — Section 2(4), 7, 7(1)
Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 — Section 1

Citation : AIR 1978 MP 160 : (1978) JLJ 223 : (1978) 23 MPLJ 284

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : R.S. Saxena, for the Appellant; B.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Mishra, J.

This is a revision preferred by the defendant-applicants against order dated 10-12-1977 passed by the Second Additional District Judge, Gwalior, passed in Small Cause Suit No. 70/ 1976, whereby it has been held that the Madhya Pradesh Anusuchit Janjati Rini Sahayata Adhiniyam (12 of 1967) is not applicable, because the loan sought to be recovered on the basis of a bond dated 5-5-1974 was not subsisting on the appointed date.

Learned counsel for the applicants Shri B. S. Saxena has raised the following contentions:--

(i) That although the debt sought to be recovered is alleged to have been advanced on the basis of a bond dated 5-5-1974, yet by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (No. 108 of 1976) assented to by the President on 18th Sept. 1976 published in the Gazette of India (Extraordinary) Part II, Section 1 dated 20-9-1976, the appointed date will be deemed to be the date of publication of the aforesaid Amendment Act and, as

such, the applicants are entitled to the benefit of the Act No. 12 of 1967.

(ii) That the aforesaid Amendment Act No. 108/1976 should be deemed to be retrospective in effect, Therefore, it should be deemed that the loan was advanced on the appointed date and, as such, the applicants will be entitled to the benefit of the Act. In the alternative it was contended that even if the provisions of the aforesaid Amendment Act are prospective in effect, the benefit of the Act will go to the applicants, as the appointed date will be considered to be 20-9-1976. Consequently, the jurisdiction of the Civil Court is ousted in view of the provisions of Section 7(2) of the Act No. 12 of 1967.

Learned counsel for the plaintiff-non-applicants Shri B. M. Agrawal supported the impugned order and contended that none of the aforesaid contentions raised by the learned counsel for the applicants has any force and that since the debt was not subsisting on the appointed date, the Act No. 12 of 1967 is not applicable. He further argued that the appointed date is 15-8-1973. The loan being advanced on 5-5-1974, the Act No. 12 of 1967 has no applicability to the suit. He placed reliance on the ratio of the case reported in).

After having heard the learned counsel for both the parties, I am of opinion that none of the contentions advanced by the learned counsel for the applicants has any force,

Before taking up for consideration the contentions advanced by the learned counsel for the applicants, It is necessary to trace the history of applicability of the Act No. 12 of 1967, The Act in Section 1 provides that it extends to the whole of Madhya Pradesh. Sub-section (3) of Section 1 reads as under:--

"(3) It shall come into force-(a) in the scheduled areas, on the date on which the Madhya Pradesh Scheduled Tribes Debt Relief Regulations, 1962, In force therein are repealed, and

(b) in other areas, at once." The definition Section 2 provides that-

"In this Act, unless the context otherwise requires-

(1) "appointed date" means-

(a) in relation to the Scheduled areas, the date on which the Madhya Pradesh Scheduled Tribes Debt Relief Regulations, ,1962 in force therein are repealed, and

(b) in relation to other areas, the 15th March 1967, x x x x."

It is common ground that the Act No. 12 of 1967 did not extend to Scheduled Castes prior to 15-8-1973. It was applicable to Scheduled Tribes before the State Government by issuing Notification No. 164-73-XXV-II dated 30th June 1973, published in the M, P. Raj-patra Part I dated 20-7-1973, appointed 15th Aug. 1973 as the date on which the said Adhiniyam (Act No. 12 of 1967) shall come into force In its application to the members of the Scheduled Castes,

Thereafter, by the Scheduled Castes and Scheduled Tribes Orders (Amendment)

Act, 1976 (No. 108 of 1976), referred to above, Koli Kori were Included in the list of Scheduled Castes so far as Madhya Pradesh is concerned, and in the Schedule, Part IX, Madhya Pradesh at serial No. 31 Koli Kori stood included in the Constitution (Scheduled Castes) Order, 1950.

Now, I revert back and take up the contentions of the learned counsel for the applicants for considerations. The first contentions of the learned counsel is to the effect that although the debt sought to be recovered Ss alleged to have been advanced on the basis of a bond dated 5-5-1974 yet by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (No. 108 of 1976) assented to by the President of India on 18th Sept. 1976, published in Gazette of India (Extraordinary) Part II, Section 1 dated 20-9-1976, the appointed date will be deemed to be the date of publication of the aforesaid Amendment Act and, as such, the applicants, are entitled to the benefit of the Act No. 12 of 1967. The arguments advanced by the learned counsel overlook the fact that the Amendment Act No. 108 of 1976 does not concern itself with fixing the appointed date. The appointed date for purposes of the Act No. 12 of 1967 by virtue of the aforesaid Notification was and remained to be 15th Aug. 1973. What Section 7 of the Act No. 12 of 1967 provides is consequences which shall ensue on coming into force of the Act, In Sub-section (1) of Section 7 it is provided that as from the appointed date, the following consequences shall ensue, namely-

(i) No Civil Court having jurisdiction shall entertain any suit or proceeding against a debtor for the recovery of his debt.

(ii) All proceedings in execution of any decree for money or proceeding for making final any preliminary decree for foreclosure or sale or proceedings in execution of any final decree for sale against a debtor for the recovery of his debt shall stand withdrawn and all property of debtor under attachment in any such proceeding shall forthwith be released;

(iii) Every debtor in detention in a Civil Prison in execution of any decree for money passed against him by a Civil Court in respect of a debt shall forthwith be released.

Sub-section (2) of Section 7 of this Act provides that-

(2) "If, on the appointed date any suit or proceeding of the nature specified in Sub-section (1) is pending before any such Civil Court, the Civil Court shall issue a direction to the plaintiff to submit the claim in respect of such debt before the Debt Relief Court having jurisdiction over the area within a period not exceeding sixty days as may be specified in such direction,

(Underlining is mine)

Now, Section 2(4) of the Act No. 12 of 1967 defines the word "debt" to include :

"(i) all liabilities owing to a creditor In cash, or kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise and subsisting on

the appointed date whether due or not due;

(ii) arrears of owing or salary subsisting on the appointed, date."

Reading the aforesaid provisions together, in order to attract the applicability of the Act No. 12 of 1967, the "following things must co-exist:--

(1) The debt must be one which is subsisting on the appointed date

(2) that the suit or proceeding must be of the nature specified in Sub-section (1) of Section 7 and

(3) that the suit or proceeding of the nature specified in Sub-section (1) of Section 7 must be for recovery of the debt as defined by the Act,

In the instant case, the debt is alleged to have been advanced on the basis of a bond dated 5-5-1974 i.e., after the appointed date (15-8-1973). Therefore the debt which is sought to be recovered in the suit was not subsisting on the appointed date. Consequently the contention of the learned counsel that the Act is applicable to the suit has to be rejected as untenable.

The question whether the Amendment Act No. 108 of 1976 has retrospective or prospective effect has absolutely no bearing on the present controversy because the Amendment Act directs itself only to provide for inclusion in or exclusion from the lists of Scheduled Castes or Scheduled Tribes of certain Castes and Tribes. It does not concern itself with altering the appointed date. As stated above, by virtue of the Notification dated 20th June 1973, the State Government had appointed the aforesaid date, and the Act No. 12 of 1967 came into force in its application to the members of the Scheduled Castes from that date alone. No notification is shown to the effect that 20th Sep. 1976 was ever appointed a date for this purpose. Therefore, the contention of the learned counsel on both the hypotheses that the Amendment Act No. 108 of 1976 is prospective or retrospective cannot help the cause of the applicant. The Amendment Act No. 108 of 1976 is not retrospective in effect. In order to give retrospective effect, there must be intention of the Parliament expressed in so many words or such intention must be gathered by necessary implication from the language employed therein. After reading the entire Amendment Act it will be clear that there are neither any words expressly giving the Act retrospective effect nor there are words from which by necessary implication it may be inferred that the Amendment Act was intended to be retrospective in effect. Generally in absence of words giving retrospective effect, a Statute has to be regarded as prospective in effect only. Therefore, the argument of the learned counsel about the retrospective effect of the aforesaid Amendment Act is not tenable.

This brings me to the alternative submission of the learned counsel to the effect that even if the Amendment Act is deemed to be prospective in effect, the Act will be deemed to (have come into force on and the appointed date will also be deemed to have been as 20-9-1976. By no process of interpretation such a conclusion can be arrived at because the field in which the Amendment Act No.

108/1976 has to operate is entirely different from the field which is covered by the Notification dated 20-9-1976 issued u/s 1(4) of the Act No. 12/ 1967.

Learned counsel on behalf of the plaintiff-non-applicants relied on the ratio of the case Channilal and Another Vs. Bundelal, and contended that since the debt was not subsisting on the relevant date (which for the present case is 15-8-1973), the plaintiffs cannot be asked to approach the Debt Relief Court established under the Act No, 12 of 1967. The ratio of the case relied on by the learned counsel for the plaintiff-non-applicants can be extended to the present situation also. It has been held in this case that the Act, therefore, applies only to a debt borrowed before the appointed date and does not apply to a debt incurred after that date. In the present case, the debt is alleged to have been incurred after the appointed date.

In view of the aforesaid discussion, none of the contentions of the learned counsel for the applicants has any force. The revision is devoid of force and is, consequently, dismissed. In view of the nature of the controversy the parties are left to bear their own costs of this revision.