
(1968) 09 KL CK 0019
In the High Court Of Kerala
Case No : CRP No. 419 of 1967

Mohammed Bava Abubacker

APPELLANT

Vs

South Indian Bank Ltd. and others

RESPONDENT

Date of Decision : 23-09-1968

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1970 — Section 15

Citation : (1969) KLJ 77

Hon'ble Judges : V.R. Krishna Iyer, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, D. Narayanan Potti, P.G. Parameswara Panicker and T.A. Narayanan Nair, for the Appellant; T.C. George and Jose Thomas for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Krishna Iyer, J.—Elegance of diction apart, lucidity of language is a vital virtue in a judgment and this case illustrates the possibility of parties becoming martyrs of ambiguity, thanks to misapprehension about their position traceable to lack of clarity in the Judgment. A certain debtor filed a petition u/s 15 of the Kerala Agriculturists Debt Relief Act, Act 31 of 1968--a quasi-insolvency provision--stating that he was entitled to a settlement of his debts as contemplated in that provision. A.D.R.P. No. 26 of 1961 i.e. the petition aforesaid, was heard on the merits and disposed of by the Subordinate Judge recording findings on the various points for determination framed in the case. The points raised therein were:

- i. That the petitioner has included in the petition, assets which do not really belong to him.
- ii. The petitioner is able to pay his debts.
- iii. The petitioner is not an agriculturist in that he pays sales-tax.

iv. The debt of the 3rd counter-petitioner does not come within the purview of the Act.

2. On point No. 1 the learned Subordinate Judge recorded a finding to the effect that the petitioner had included in the petition assets which he really did not possess. On point No. 2 the Court held:

The petitioner has therefore failed to prove to the satisfaction of the court that he is not able to pay his debts.

On point No. 3, the Court observed:

Though this in itself (i.e. payment of sales tax in 1957) may not disentitle him from seeking benefits under Act 31 of 1958, the petitioner has formally to prove that he is an agriculturist. He has not done so. He has not even tendered evidence before this court to prove the allegations in the petition. He has felt shy of the court.

Thus, the Court had found that there was no proof of the petitioner being an agriculturist or that he was unable to pay his debts. It is agreed that these two findings were fatal enough for the petition, A.D.R.P. No. 26 of 1961, to be dismissed. However, the Subordinate Judge went on to observe in para 9 of the judgment:

On the solitary ground that the petitioner has included in the A schedule to the petition assets which he really does not possess, the petition is liable to be dismissed. In the result the petition is dismissed with costs to counters 2, 4, 5, 15, 17 and 18 costs to include an advocate fee of Rs. 15/- each set.

If a petitioner includes, in his application u/s 15, items which belong to him and others which do not, that may not in itself be a ground for dismissing his application for relief. Nevertheless, the Subordinate Judge thought so and held that the entire application was liable to be dismissed. As a matter of law, this may not be correct. But, we are not concerned with that aspect here, for, very strangely, the learned Subordinate Judge, after having recorded findings on 3 out of the 4 issues--the result of the findings on issues 2 and 3 would necessarily have been dismissal as stated earlier--wound up, in para. 9, with the statement that

On the solitary ground that the petitioner has included in the A schedule to the petition assets which he really did not possess, the petition is liable to be dismissed.

What obviously he meant was that he could dismiss even on the solitary ground or rather, on that ground.....alone without more or something to that effect. However, he expressed himself in the manner indicated above, with the result that the petitioner alleges now that he took the Subordinate Judge to mean what he said, that is to say, that the dismissal of the petition was only on the solitary ground of the petitioner having included the items which he did not possess and

not on any other ground. But reading the judgment as a whole, I am prepared to agree with the respondent that the Subordinate Judge considered the petition on the merits, recorded findings on the other points raised and dismissed the application as a cumulative result of the various findings. He had been tripped in his language in para 9, although the petitioner cannot reasonably claim to have been misled on that score. When judicial officers have to express themselves in an exotic tongue, proficiency in which is making headway steadily backwards among the intelligentsia in our country such imperfect expression of ideas is inevitable, though avoidable.

3. However, as if acting on the finding in para 9 of the judgment in A.D.R.P. 26 of 1961, the debtor came up to the Court with A.D.R.P. No. 1 of 1963, deleting the items found not belonging to him and claiming all the reliefs which he would be entitled to u/s 15 of the Kerala Agriculturist Debt Relief Act. The Subordinate Judge, who heard this petition, dismissed it on the score that "a prior petition of a similar nature" had already been dismissed "especially on the merits" on the principle of law that when an earlier one had been dismissed on the merits a second petition, on the same facts, for the same relief, was barred. Review was sought of that order by the petitioner, taking advantage of the observation in the judgment in A.D.R.P. 1 of 1963 that the non-maintainability was based on the earlier petition having been dismissed on the merits. The ground urged in review was that the earlier petition, A.D.R.P. No. 26 of 1961 had not been dismissed on the merits but on the "solitary ground" that the petitioner had included items not belonging to the petitioner, and the Judge was under a misapprehension as was apparent on the face of the record. Had I not read the order in A.D.R.P. No. 26 of 1961 I might have been inclined to agree with the petitioner, particularly because, the judgment dismissing the review application is couched in unclear language and the learned Subordinate Judge, before whom the order in A.D.R.P. 26 of 1961 had been produced, has perused and relied on it but not marked it as an exhibit. Curious and perfunctory! Of course, the Subordinate Judge has refused the review and I agree with his conclusion, on the principle that "it is a settled rule that the court will not allow a party to succeed, on a second application, when he has previously applied for the very same thing and failed, except in case of alteration in the form of a title or jurat in the affidavit " (See *Mohamedaly Sarefaly and Co. v. Incometax Officer, Central Circle III, Madras* 1968 ITR 807, 808). It is necessary that a judgment must not only be a record of right conclusion but should contain reasons lucidly expressed, unmistakably indicating the grounds on which the order is rested. Rights and liabilities of citizens should not be left to depend on dubious expression. Be that as it may, the petitioner must now agree, after the entire matter has been discussed in detail in this Court, that A.D.R.P. No. 26 of 1961 has not been disposed of on the "solitary ground" of inclusion of items not belonging to the petitioner but on other grounds also which are necessarily fatal to his application. There is, therefore, no merit in the review petition nor force, apparent or real, in the make-believe grievance of the petitioner that he was a victim of ambiguous expression

in the judgment in A.D.R.P. No. 26 of 1961, on the basis that had he known the real import of that order as one on merits he would have appealed against it instead of bringing a fresh petition. The revision petition is dismissed; no costs.