

(1980) 09 KAR CK 0008
In the Karnataka High Court
Case No : Writ Appeal No. 631 of 1980

Mohammed Dasthagir

APPELLANT

Vs

Tahsildar and Taluk Magistrate, Magadi Town and Another

RESPONDENT

Date of Decision : 19-09-1980

Acts Referred:

Karnataka Debt Relief Act, 1976 — Section 4, 4 (f), 5 (7)

Citation : AIR 1981 Kar 253

Hon'ble Judges : N. Venkatachala, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : K.S. Gowrishankar, for the Appellant; M. Papanna, for the Respondent

Judgement

Venkatachala, J. 1. By consent of learned counsel this appeal was treated as having been posted for hearing and we heard them.

2. This is an appeal, from the order of Jagannatha Shetty, J., dismissing Writ Petition No 643 of 1978. The petitioner therein has presented this appeal. For the sake of convenience the parties will hereinafter be referred to according to their respective positions in the writ petition.

3. The material facts for deciding this appeal are briefly these :

The petitioner had made two applications before the Sub-Divisional Magistrate, Ramanagaram, seeking relief from indebtedness under the provisions of the Karnataka Debt Relief Act, 1976. Those applications stood transferred to the Taluk Magistrate, Magadi Taluk for being disposed of by him by operation of S. 4, of the, Karnataka Debt Relief (Amendment) Act, 1976, In those applications the petitioner alleged that he had executed a mortgage deed in favour of respondent No. 2, mortgaging his house for a sum of Rs. 4,000/- borrowed by him from the latter. He claimed therein that he being a debtor under the Act, the mortgage stood redeemed and he was entitled to obtain release of the mortgaged property from respondent No. 2. Respondent No. 1 who held an enquiry on those applications recorded the statements of respondent No. 2 and

his witnesses and that of the petitioner. On the basis of such statements he made an order rejecting the applications of the petitioner. That order had been impugned in the writ petition.

4. In the writ petition, the case of the petitioner was that he was not afforded by respondent No. 1 sufficient opportunity to cross-examine respondent No. 2 and his witnesses and to examine his own witnesses and hence the order of respondent No. 1 impugned in the writ petition was vitiated. The learned single Judge did not accept the above plea of the petitioner, on the ground that there was nothing on record to show denial of such opportunity. In that view, the learned single Judge declined to interfere with the order impugned in the writ petition.

5. In this appeal Sri K. S. Gaurishankar, learned counsel for the appellant-petitioner, urged that the learned single Judge was not justified in brushing aside the contention of denial of opportunity to cross-examine respondent No. 2 and his witnesses and to examine the petitioner's witnesses on - the sole ground that the records of enquiry of respondent No. 1 did not reveal such denial. Sri Gaurishankar submitted that by reason of the prohibition contained in S. 5(7) of the Act, the petitioner could not have the assistance of a legal practitioner in the proceeding before respondent No. 1, that principles of natural justice imposed a duty on the authority conducting the enquiry under the Act to intimate each party that he had a right to cross-examine the witnesses produced by the opposite party and to indicate in the record of deposition of each witness whether such opportunity to cross-examine was offered and whether it was availed of. We are of the view that this contention of Sri Gaurishankar is sound and should be upheld.

6. If the record of deposition or the order sheet does not disclose that the party against whom evidence was given by a witness, was not told that he could cross-examine such witness, and such party did not cross-examine, the only inference that can be drawn is that such opportunity was not afforded to such party. In the present case, the records of enquiry held by respondent No. 2, admittedly do not disclose that such " opportunity was afforded to the petitioner. Hence, the proceedings before respondent No. 1 were vitiated.

7. However, Sri M. Papanna, learned counsel for respondent No. 2, contended that the mortgage deed in question was executed jointly by the petitioner and his son and hence, the applications filed by the petitioner alone were not maintainable. We do not consider that we can allow this point to be raised for the first time in this appeal. Whether the applications made by the petitioner were maintainable under the Act or not, is a mixed question of law and fact. which requires examination with reference to the contents of the mortgage deed and other evidence to be adduced by the parties in that regard. Hence, we do not permit this contention to be raised for the first time in this appeal.

8. In the result. we allow this appeal, reverse the order of the learned single

Judge, quash the order of respondent No. 1 impugned in the writ petition and remit the applications under S. 4 (f) of the Act to respondent No. 1 for fresh disposal after affording opportunity to the petitioner to cross-examine respondent No. 2 and his witnesses and to examine petitioner's own witnesses, if any.

9. However, we make it clear that it shall be open to respondent No. 2 to raise before respondent No. 1 the plea that the applications filed by the petitioner are not maintainable. If such plea is raised by respondent No. 2 before respondent No. 1, respondent No. 1 shall permit the adduce evidence in respect of it cording a finding on such plea.

10. The parties are directed to bear their own costs, in this appeal.

11. Appeal allowed.