

(1980) 03 MAD CK 0035
In the Madras High Court
Case No : C.R.P. No. 2419 of 1978

M.S. Sivakozhundu Mudaliar

APPELLANT

Vs

Amaravathi Finance Corporation

RESPONDENT

Date of Decision : 07-03-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1
Tamil Nadu Debt Relief Act, 1918 — Section 2(1)

Citation : AIR 1980 Mad 230 : (1980) 93 LW 408

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Advocate : V.C. Palaniswami, for the Appellant; P. Chandrasekharan, for C. Chinnaswami, for the Respondent

Judgement

Balasubrahmanyam , J.—A registered partnership firm by name Amaravathi Finance Corporation, Karur, obtained a money, decree, and

proceeded to execute it against the judgment debtor. The latter then moved the execution court for stay of execution under Tamil Nadu Ordinance

No. 5 of 1978, called the, Tamil Nadu Debt Relief Ordinance, 1978. The execution court, however, rejected the application on the ground that

the relief under the Ordinance was not available to a debtor whose creditor was a partnership firm. The court said that while a partnership firm was

not a person in the eye of the law, Ordinance No. 5 of 1978 had defined a creditor only in terms of his being a person.

2. This conclusion is challenged in this civil revision petition filed by the judgment debtor. I uphold this contention as well founded on more than one ground.

3. Section 2(1) of Ordinance No. 5 of 1978 defines the term "creditor" as under

""Creditor" means a person from or in respect of whom the debtor has borrowed or incurred a debt and includes the heirs, legal representatives and assigns of such person"".

4. The Court below concentrated on the expression "person" occurring in the above definition, and observed that the decree-holder in this case

cannot be brought within the definition of "creditor" since under the law of partnership, a firm is not a legal person.

5. This view of the court below is "in my judgment, erroneous in law, for two reasons. The first reason can be found from another provision in this

very Ordinance namely, Section 2(7). This clause carries a definition of the term "person" for the purposes of the Ordinance. The definition reads

as under-

"Person" means an individual and includes an undivided Hindu family a marumakattayam or aliyasanthana tarwad or tavazhi, but does not include

a body corporate, a charitable or religious institution or an incorporated company or association or any firm as defined in the Indian Partnership

Act 1932 (Central Act IX of 1932)"".

The court below obviously overlooked this pertinent interpretation clause in the Ordinance, and gave its decision in the teeth of the inclusive

definition, which treats a registered firm also as a person.

6. Quite apart from the specific definition of the expression "person" in this very Ordinance, a definition of that expression is to be found even in the

General Clauses Act, The Central General Clauses Act (Act 10 of 1897) enacts that a "person" shall include any company or association or body

of individuals, whether incorporated or not. In the Madras General Clauses Act (Act 1 of 1891) the expression is defined to include any company

or association of individuals, whether incorporated or not. Hence, even on the pure theory of a firm being merely a collective name for a group of

partners, it must be regarded as a person within the meaning of the General Clauses Act since it answers the description of an unincorporated

association or body of individuals.

7. The view expressed by the court as to the position of a partnership firm even under the Partnership Law is not quite correct. While lawyers are

fond of saying that a firm is only a compendious way of referring to all the individuals who are copartners, there is authority for the position that

under the Indian Partnership Act, 1932, a partnership firm does possess a limited or quasi-legal personality of its own. It was so held in a Privy

Council ruling reported in AIR 1948 100 (Privy Council) The Privy Council added that in assigning a limited juristic personality to the partnership

firm, the Indian Law was more akin to the Scottish Law than to the English law on the subject.

The view expressed by the Privy Council is borne out by the very scheme of the Indian Partnership Act 1932. Some of the detailed provisions of

the Act would be quite inexplicable excepting on the basis that a firm has some sort of a personality of its own. See. 32 of the Act, for instance,

provides for retirement of a partner, without a general dissolution of the firm. Section 31 provides for the introduction of a new partner, without

putting an end to the existing firm. Section 37 provides for continuance of the firm after the exit of a partner, being only liable to pay interest on

share capital or a share of profits, as the case may be, to the outgoing partner or his estate. The provision u/s 59 of the Act for registration of firms

is also meant to confer on the firm the juristic personality of a suitor. That the intention of these provisions was to "concede some degree of

personality to the firm is very clear from the report of the Special Committee which preceded the enactment of the Indian Partnership Act 1932.

The Committee observed that the amendments to the Partnership Law, as suggested by them gave "greater emphasis to the personality of the firm

while adhering to the old established view that a firm is not a legal person. The Committee pointed out that English law itself had been forced, of

late, to depart from the strict legal view of the firm when it spoke of changes in a firm, debts due to the firm, and the like. While analysing their draft

amendments, the Committee made a distinction between the use of the word "partnership" on the one hand, which signified a jural relationship in

the abstract, and the use of the word "firm" on the other, which signified the concrete entity which a firm in action was.

8. While the substantive law of partnership found in the provisions of the Partnership Act had conferred a limited personality on a firm, the

procedural law emphasised it in a fuller measure. Order 30, Rule 1, C. P. Code entitled the firm as such to sue and be sued in its own name,

wherever a partnership relation was claimed to exist between two or more persons. The tendency of modern law, it would seem, is more and more

in the direction of assigning to a firm a definite personality of its own, quite apart from that of every one of the firm's individual partners. This trend is discernible more especially in taxing statutes and in laws governing commercial transactions. In these events, therefore, it would be quite inaccurate to mouth the old world refrain that a firm as such is a non-entity and is but a convenient terminology to lump the partners under a single appellation.

9. There is yet another overwhelming consideration in this case for setting aside the order of the court below. At the time when the judgment-debtor applied for stay and the court passed its order refusing to grant him relief, Tamil Nadu Ordinance No. 5 of 1978 had not yet been replaced by a legislative enactment. It has since been supplanted by Tamil Nadu Act 40 of 1978, in this Act, the expression "creditor" is defined in the following terms

"Creditor includes his heirs, legal representatives and assigns".

When the court below decided the case in the way it did, there was much argument on the expression "person". This is quite understandable because that court was construing the provisions of Ordinance No. 5 of 1978, and Section 2(1) of the Ordinance had employed the expression "person" in the process of defining who a creditor was. In contrast, the definition of the same term creditor in Act 40 of 1978, as extracted above, avoids referring to the creditor as a person. Hence, the discussion whether an Arm is or is not a person would be quite an idle discussion under the Act.

10. It may be observed that Tamil Nadu Act 40 of 1978 replaced the Ordinance with retrospective effect, right from 15-7-1978, which was the date of commencement of the Ordinance. Hence, the ruling definition of a creditor even at the time when the court below happened to consider it, did not involve an enquiry as to whether the creditor was a "person" or not. In my judgment, it is enough that a partnership firm could sue its debtor in its own name, by virtue of the provisions of Order 30, Rule, C. P. Code. That I think is enough to make the firm a creditor, as much in law as in commerce.

11. In view of the above considerations, the court below was in error in rejecting the judgment-debtor's application for stay of execution.

12. Ordinance No. 5 of 1978 as well as the Act which replaced it, both show that stay of execution can be refused to a judgment-debtor only if

the decree holder was in a position to prove that the debtor was assessed to Income Tax, agricultural Income Tax and the like, during the relevant

year. In this case, the decree-holder firm did raise this plea, but led no evidence at the enquiry to establish it. The judgment-debtor is accordingly

entitled to an order of stay of execution proceedings as prayed for him by him.

13. The order of the court below is set aside. There will be stay of the proceedings in E P. No. 66 of 1978. The stay will subsist until the court,

which passed the decree under execution, passes an order on airy application that might be filed u/s 15 of the Tamil Nadu Act No. 40 of 1978.

14. The civil revision petition is allowed on the terms aforesaid. There will, however, be no order as to costs.

15. Revision allowed.