(1979) 12 MAD CK 0029

In the Madras High Court

Nanjappa Chetty APPELLANT

Vs

Manikkam Chetty RESPONDENT

Date of Decision : 11-12-1979

Acts Referred:

Citation : (1980) 2 MLJ 285

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Judgement

T. Sathiadev, J.—The revision petition is filed against the order in C.M.A. No. 46 of 1978 on the file of the Subordinate Judge''s Court, Krishnagiri C.M.A. No. 46 of 1978 was filed against an order in unnumbered application in R.E.P. 19 of 1978 in O.S. No. 1225 of 1972 on the file of the District Munsif of Krishna giri. It was claimed by the debtor that he is entitled to the benefits u/s 15 of Tamil Nadu Ordinance 5 of 1978 for scaling down the decree debt. The District Munsif held that since the debt has already been scaled down under Act IV of 1938 in I. A. No. 99 of 1975, the judgment-debtor-cannot again seek for scaling down of the debt in view of the proviso to Section 6 of Ordinance 5 of 1978. The said Ordinance has been subsequently replaced by Tamil Nadu Act XL of 1978 which has also been repealed and as on date. Tamil Nadu Act XL of 1979 is in force. The lower appellate Court also held that when the debt had been already scaled down under Act IV of 1938, in view of the specific provision made u/s 6 of Act XL of 1978 no further scaling down is available.

2. Section 7 of Act XL of 1979 is similar to Section 6 of Act XL of 1978 and therefore, Mr. Gandhi, counsel for the petitioner contends that inspite of Act XL of 1979 coming into force, the situation remains the same.

3. Mr. Gandhi, counsel for the petitioner claims that proviso to Section 7 cannot prevent the petitioner from having relief under Act XL of 1979 by virtue of the saving provision found in Section 29(2) of the said Act, wherein it has been provided as follows:

Nothing contained in this Act, shall affect any rights or privileges which a debtor is entitled to under any other law, contract, custom or usage if such rights or privileges are more favourable to him than those to which he would be entitled to under this Act.

According to him, when a saving of this nature had been contemplated under the Act. the Courts below were in error in relying upon proviso to Section 7, He contends that inspite of Act IV of 1938 having been already invoked, it is still open to the judgment-debtor to seek relief for scaling down, because the reliefs available under the present enactment are more favourable to him than those of what had been extended to him under Act XVII of 1938.

4. The contention raised by Mr. Gandhi carries no substance because, what is provided u/s 29(2) is to preserve any privilege or right already available to a debtor under any other law, not being disturbed by virtue of whatever is provided under Act XL of 1979. In my view, Section 29(2), is a protection to the ''debtor'' not to be deprived of any rights or privileges which are more favourable to him under any other enactment than those to which, he would be entitled to under this Act. Hence, there being no conflict between what is provided in proviso to Section 7 and Section 29(2) of Act XL of 1979 the petitioner herein (judgment-debtor) having already availed of the benefits under Act IV of 1938, cannot again ask for scaling down under Act XL of 1979 Hence, proviso to Section 7 will be applicable to the petitioner and therefore, the civil revision petition is dismissed. No costs.

