

(1983) 01 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition No. 595 of 1982

N.R.M. Nachyappa Chettiar alias Srinivasa Chettiar and Others	APPELLANT
Vs	
P.L.S.R.M. Subramania Chettiar	RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Tamil Nadu Debt Relief Act, 1978 — Section 7
Tamil Nadu Debt Relief Act, 1979 — Section 1, 2, 32, 32(2), 32(3)
Tamil Nadu General Clauses Act, 1891 — Section 8

Citation : (1983) 01 MAD CK 0002

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : N. Palaniappan, for the Appellant; M. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Swamikkannu, J.—This is a civil revision petition filed u/s 115 of the CPC by the Plaintiffs inter alia contending that the order in Interlocutory

Application No. 432 of 1978 in Interlocutory Application No. 512 of 1976 in Original Suit No. 530 of 1973 dated 26th February, 1979, on the

file of the Court of the 3rd Additional Subordinate Judge of Madurai is revisable in view of the fact that the learned Judge had not properly

appreciated the provisions of the Tamil Nadu Debt Relief Act, (XL of 1979) which had provided as follows u/s 32:

32. Pending proceedings to abate, etc:

(1) Section 8 of the Tamil Nadu General Clauses Act 1891 (Tamil Nadu Act I of 1891) shall not apply to the repeal of the said Act by this Act.

(2) Every proceedings made or taken under the said Act and pending before the date of the publication of this Act in the Tamil Nadu Government

Gazette shall abate.

(3) No legal proceedings or remedy in respect of any right privilege, obligations or liability acquired, accrued or incurred under the said Act shall

be instituted, continued or enforced under the said Act.

2. Mr. N. Palaniappan, learned Counsel for the Plaintiffs revision Petitioners herein, would contend that Section 8 of the Tamil Nadu General

Clauses Act, 1891 usually validating all the proceedings taken when the Act is in force has been made in applicable so far as the Act XL of 1978

are nullified and the litigants who built high hopes on Act XL of 1978 are in quandary. The learned Counsel had also expressed the above opinion

in his commentary on the Tamil Nadu Debt Relief Act XL of 1979, published by the Tamil Nadu Law Notes Journal, Madras-600 004.

3. Mr. N. Palaniappan would further contend that a reading of Section 32(2) will show that:

all the pending proceedings abated under this section including appeals and revisions thereon.

The learned Counsel also has expressed his opinion in page 33 of his Book that.

no legal proceedings could be instituted or continued or enforced under the Act XL of 1978 and all the rights, privileges, obligations or liability

acquired, accrued or incurred under the old Act XL of 1978 lapsed.

By relying on the opinion expressed by him, Mr. N. Palaniappan, as learned Counsel for the Petitioner herein, would submit that the order of the

lower Court is unsustainable in law in view of the Tamil Nadu Debt Relief Act, XL of 1979 passed by the Government of Tamil Nadu which came

into force from 13th June, 1979 superseding the earlier Act XL of 1978. The learned Counsel for the Petitioner would further contend that

according to Section 32(3) of Act XL of 1979, the debt scaled down u/s 7(b) also cannot be continued or enforced as the Act had been repealed

and all the privileges are lapsed. In this regard, he points out Clause 3 of Section 32 of Act XL of 1979.

4. Mr. N. Palaniappan, the learned Counsel for the revision Petitioner herein would further contend that Act XL of 1978 under the provisions of

which the order impugned in this revision petition had been passed by the lower Court is legally unenforceable by subsequent Act XL of 1979

which come into force on 13th June, 1979, namely, the date of publication of the

said Act in the Government Gazette which date is significant,
because it is specifically provided in Section 1 of the said Act XL of 1979 itself that this Act except Sections 32, 33 and 34 shall be deemed to
have come into force on the 15th day of July, 1978 and Sections 32, 33 and 34 of this Act shall come into force on the date of the publication of
this Act in the Tamil Nadu Government Gazette. It is not in dispute that this Act was published in the Tamil Nadu Government Gazette

Extraordinary to Part IV, Section 2, dated 13th June, 1979 at pages 181 to 200.

5. In other words, the learned Counsel for the revision Petitioner would submit that the petition u/s 7(b) of the Tamil Nadu Debt Relief Act, (XL of 1978) to scale down the debt was filed by the second Defendant and the said petition had been disposed of by the learned third Additional

Subordinate Judge, Madurai holding that as per Section 7(b) of Act XL of 1978, in case of debts of the principal sum of Rs. 5,000, the debt will

be scaled down to half of the principal and half of the interest, and accordingly he ordered scaling down of the decree.

6. The learned Counsel for the Petitioner would contend that the lower Court could not go into the question of applicability of Section 32 of Act

XL of 1979 in its order under revision which was disposed of on the 26th February, 1979 itself, and as such, this revision has been filed only to

contend that the provisions of Section 32 has to be interpreted in the light of Section 8 of General Clauses Act, 1891.

7. On the other hand, Mr. M. Srinivasan, the learned Counsel for the second Defendant, Respondent herein, contends that the provisions of Act

XL of 1979 except with reference to Sections 32, 33 and 34 shall be deemed to have come into force on the 15th day of July, 1978, and Sections

32, 33 and 34 of this Act shall come into force from the date of publication of this Act in the Tamil Nadu Government Gazette, and that as stated

above, the publication was made in the Gazette on 13th June, 1979. So, according to him, the contentions raised on behalf of the revision

Petitioners herein cannot be upheld in view of the fact that the order under revision had been passed by the learned Subordinate Judge on 26th

February, 1979 itself on which date Section 32 of Act XL of 1979 was not in force as per Section 1 Clause 3, of the said enactment. When this

aspect is quite clear from the provisions of Section 32 of the enactment read

together with Section 8, Clause (a) of the General Clauses Act, 1891,

Mr. M. Srinivasan, the learned Counsel for the Respondent Contend that the contention raised on behalf of the revision Petitioner cannot be upheld by this Court.

8. The only point urged on behalf of the revision Petitioners is that the commencement of the provisions of Section 32 of Act XL of 1979 has not been properly appreciated. In this view it is relevant to note that Section 8 of the General Clauses Act, 1891 provides that where any Act, to which this chapter applies, repeals any other enactment, then the repeal shall not affect anything done or any offence committed, or any fine or penalty incurred in any proceedings begun before the commencement of the repealing Act; or revive anything cot in force or existing at the time at which the repeal takes effect.

9. The petition Interlocutory Application No. 432 of 1978 had been filed by the second Defendant in Original Suit No. 530 of 1973 before the lower Court u/s 7(b) of the Tamil Nadu Act XL of 1978 scale down the debt dated in the preliminary decree inter alia stating in the affidavit accompanying the said petition that he is the second Defendant in the mortgage suit, that the Plaintiff obtained a mortgage decree against the Petitioner second Defendant and the first Defendant for a principal amount of Rs. 5,000 and. that a preliminary decree was passed. Then the Respondent Plaintiffs applied for passing of a final decree. The second Defendant is entitled to the benefits of Act XL of 1978 and the decree has to be scaled down and a final decree passed for half of the principal and half of the interest, and any amount claimed in excess is not sustainable.

10. On the other hand, the Plaintiffs resisted this application, namely, Interlocutory Application No. 432 of 1978 on the following contentions. The Petitioner second Defendant has no locus standi to file the petition. The Petitioner is only a purchaser of the suit property at Court auction where in the suit mortgage was notified as subsisting encumbrance. The Petitioner purchased the suit property subject to the encumbrance, namely, the suit mortgage. Therefore, he is not entitled to invoke the provisions of Act XL of 1978. In any event, the Petitioners is a very big businessman having considerable properties at Singapore. He is an income tax Assessee. He has buildings and properties fetching annual rental value of more than Rs.

1,200. For these reasons, the Petitioner is not entitled to have the decree scaled down.

11. On the above pleadings, the following points were formulated by the learned II Ird Additional Subordinate Judge of Madurai, for

determination:

(1) Whether the Petitioner is a person who is entitled to apply for scaling down the debt under Act XL of 1978?

(2) Whether the Petitioner is a debtors as defined in Act XL of 1978?

On the first point, the learned Judge held that the Petitioner is a person who is entitled to apply for scaling down the debt under Act XL of 1978,

and on the second point he held that the Petitioner is a debtor as defined in Act XL of 1978 and therefore allowed the application.

12. Aggrieved by the above said under order, the Plaintiff have come forward with this revision petition inter alia contending that the scope of

Section 32 of Act XL of 1979 has to be taken into consideration with respect to the plea taken by the Plaintiffs in the counter that had been filed in

Interlocutory Application No. 432 of 1978. In other, words, though the lower Court might, not have the opportunity to apply the provisions of

Section 32 inasmuch as the order under revision had been pronounced by the lower Court on 26th February 1979, yet the revision required to be

ordered in favour of the Plaintiffs revision Petitioners herein because the scope of Section 32 of Act XL of 1979 is very wide in its amplitude and

application.

13. I am unable to uphold the contention of the Plaintiffs revision Petitioners herein. It is only u/s 7(b) of the Tamil Nadu Debt Relief Act (XL of

1978) to scale down the debt in the preliminary decree the second Defendant had filed interlocutory Application No. 432 of 1978 in interlocutory

Application No. 512 of 1970 before the learned III Additional Subordinate Judge, Madurai. The provisions under which enlightenment with

respect to this aspect of institution as well as disposal is sought for is Section 32 of the Tamil Nadu Debt Relief Act, (XL of 1979) which came into

force only on 13th June, 1979. When the order under revision has been disposed of even on 26th February 1979, it is clear that the contention this

raised on behalf of the revision Petitioner is not sustainable. Therefore, the contentions raised by the revision Petitioners, though interesting, have to

be rejected as unsustainable in law.

14. The provisions of Section 32 of the Tamil Nadu Debt Relief Act XL of 1979 cannot be said to be having any bearing on the proceedings that

had been instituted by the aggrieved second Defendant with respect to the petition filed by him u/s 7(b) of the Tamil Nadu Debt Relief Act XL of

1978 to scale down the debt in the preliminary decree passed in Original Suit No. 530 of 1973. Therefore, the only point of law that is raised in

this revision petition cannot be up-held in the circumstances.

15. Mr. N. Palaniappan, the learned Counselor the revision Petitioners would submit that the revision Petitioners may be given as opportunity to

file a petition under the relevant provisions of the new enactment, namely, Act XL of 1979, and request that the same way be made clear by way

of observation in this order. This Court does not feel that any observation of such nature is warranted in the circumstances of the case. If the

revision Petitioners herein have got any right under the new enactment, certainly they can invoke the relevant provisions of law claim such a right.

Therefore, any observation as prayed for by the learned Counsel for the revision Petitioner cannot be made in this order.

16. In the result, the civil revision petition is dismissed. Under the circumstances, there is no order as to costs.