

(1960) 08 KAR CK 0003
In the Karnataka High Court
Case No : Second Appeal No. 580 of 1956

Pandurang Annaji Kokatnur

APPELLANT

Vs

Channabasappa and Others

RESPONDENT

Date of Decision : 16-08-1960

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1939 — Section 52
Civil Procedure Code, 1908 (CPC) — Section 48
Constitution of India, 1950 — Article 246 (3), 254

Citation : AIR 1961 Kar 259

Hon'ble Judges : B.M. Kalagate, J

Bench : Single Bench

Advocate : K.I. Bhatta, for the Appellant; H.B. Datar, for the Respondent

Judgement

1. This is an appeal by Judgment-debtor 1, against the order dated 8th October, 1956. made by the Extra Asstt Judge, Bsl-gaum, whereby he affirmed the order passed by the executing Court and dismissed the appeal of the appellant.

2. Respondent 1 is the decree-holder who obtained a money decree in O. S. 12/1939 on 28th November, 1940 for a sum of Rs. 1,100. The amount was made payable by instalments of Rs. 200 each and the first instalment was made payable on the 15th February, 1941. The decree also contained a default clause. The decree-holder gave a darkhast on 13th June, 1944 but this darkhast came to be dismissed on the 25th July, 1944. In the meanwhile, the Bombay Agricultural Debtors Relief Act came to be applied to Athni Taluka where both the judgment-debtor and the decree-holder reside. A second darkhast was filed, being darkhast No. 96/54. During the pendency of this darkhast, an application was made by the decree-holder to the hoard on 29th October, 1945 under the provisions of the Bombay Agricultural Debtors Relief Act for the adjustment of his debts. This application was not contested by the judgment-debtor.

There was no finding that the judgment-debtor was an agriculturist. Because it is only the debts due by the agriculturists that are liable to be adjusted in the

Board established under the Act proceedings therefore came to be re-transferred to the executing Court for disposal according to law. But this darkhast came to be dismissed for non-prosecution. The decree-holder then gave a third darkhast being darkhast No. 69/49. But this also came to be dismissed for non-prosecution. Thereafter the present darkhast, out of which this appeal arises, came to be filed on the 30th September, 1952, as darkhast no. 11/52. In this execution proceeding, the properties belonging to the judgment-debtor came to be attached.

But the decree-holder made an application on the 12th July, 1955 whereby he sought to amend the darkhast No. 11/52 by adding other properties. To this application, the judgment-debtor objected. According to him, this must be deemed to be a fresh application and if so, it is barred under the provisions of Section 48 of the Civil Procedure Code. But the Courts below have held that this darkhast is not barred under the provisions of Section 48 of the Civil Procedure Code. For that purpose they relied on the provisions contained in Section 52 of the Bombay Agricultural Debtors Relief Act which state that in computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the court or the Court of appeal, the period during which the proceedings in respect of such debt were prosecuted before the court or the Court of appeal, shall be excluded.

3. Mr. Bhat, the learned counsel for the appellant, contends that if the provisions of Section 52 of the Bombay Agricultural Debtors Relief Act are held to be applicable to the proceeding, then the order passed by the Courts below can be justified, But he urges that the provisions of Section 52 of the Bombay Agricultural Debtors Relief Act are not applicable to the proceeding, and in developing this argument, he has made three submissions to the Court, The first is that Section 52 of the Bombay Agricultural Debtors Relief Act speaks about the computation of the period of limitation for the institution of any suit or proceeding, and he contends that the provision contained in Section 48 of the CPC is not a period of limitation. Therefore the provisions of Section 52 cannot be invoked or pressed into service for the purpose of holding that the darkhast is not barred by Section 48 C.P.C. The second argument is that the darkhast proceedings are not the proceedings included in the word "Proceedings" used in Section 52 of the Bombay Agricultural Debtors Relief Act.

The third submission is that the provision contained in Section 52 of the Bombay Agricultural Debtors Relief Act must be held to be void as the same is repugnant to the provision contained in Section 48 C.P.C. which is a provision of law made by the Central Act. This argument is obviously based on the provisions contained in Article 254 of the Constitution of India. Therefore, according to Mr. Bhat, any one of these contentions is sufficient to hold that the darkhast, out of which this appeal arises, is barred under the provisions of Section 48 of the Civil Procedure Code.

4. I will examine these three contentions one by one. The first contention with

which I will deal first is as regards the meaning to be given to the word "limitation" which occurs in Section 52. and whether it can be said that the provisions contained in Section 48 C.P.C. can truly be regarded as the period prescribed for applying for execution. According to Mr. Bhat, the word "limitation" must mean the period of limitation as prescribed by the Indian Limitation Act of 1908 and when the Legislature has used the word "limitation" in Section 52 it must be mean the period of limitation as prescribed by the Indian Limitation Act. Now the word "limitation" has not been defined in the Limitation Act. But the meaning of the word given is the Concise Oxford Dictionary 4th Edition at Page 691 is:

"Limitation--legally specified period beyond which action cannot be brought (statute of limitation--any that fixes such period.)

Section 48 C.P.C. refers to "Execution barred in certain cases." Sub-section (1) thereof runs thus:

"Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from--(a) the date of the decree sought to be executed....."

Now this sub-section speaks that no order for execution shall be made upon an application presented after the expiry of the period of 12 years from the date of the decree. Therefore according to Mr. Bhat, all that this section says is that no order shall be made for execution of the decree. Therefore he urges that it cannot be said that this section deals with the period of limitation. Now the effect of Section 48 is that execution is barred under certain circumstances. As I stated, the meaning of the word "limitation" given in the dictionary is "legally specified period beyond which action cannot be brought." Section 48 C.P.C. is a legal provision which specifies a certain period beyond which execution cannot be ordered. Thus the provisions contained in Section 48 C.P.C. must truly be regarded as a period prescribed for applying for execution. It must also be held that the word "limitation" appearing in Section 52 of the B.A.D.R. Act, does not mean the period of limitation as prescribed by the Indian Limitation Act, but a legally specified period beyond which action cannot be brought.

Therefore though the bar contained in Section 48 of the C.P.C. does not appear in the law of limitation, yet, it must, as I stated, be truly regarded as a period prescribed for applying for execution. If so, then, the provisions of Section 52 of the B.A.D.R. Act can be invoked by the decree-holder to save the bar of Section 48 of the Code of Civil Procedure. However. Mr. Bhat has sought to reinforce his argument by relying on the case reported in Basiruddin Ahmad Chaudhuri v. Noakkhali Loan Office Ltd. ILR (1946) 1 Cal 343. This is a decision of a single Judge. In that case, the learned Judge was called upon to consider whether the execution application was not barred under the provision of Section 48 of the Civil Procedure Code. Reliance was placed upon the provisions contained in

Section 52 of the Bengal Agricultural Debtors Act, (Ben. VII of 1936) to save the bar of limitation. The relevant words of that section are thus:

"The time during which such proceedings continue and the time during which the person interested in such debt is barred by any of the provisions of this Act from making or institution a suit shall be excluded."

Relying upon this provision, it was contended that the application was not barred under the provision of Section 48 C.P.C. in this connection the learned Judge stated:

"Section 48 of the CPC does not form part of the law of limitation. If the whole of the limitation Act were repealed, it would still be there."

Therefore the learned Judge held that the provisions contained in Section 52 of the Bengal Agricultural Debtors Act cannot save the period of limitation and the bar contained in S. 48 C.P.C. will operate.

5. But the same provisions contained in Section 52 of the Bengal Agricultural Debtors Act came to be considered with reference to Section 48 of the CPC in a subsequent case of the same High Court reported in *Promode Kumar Roy and Others Vs. Hirendra Nath Mukherjee and Others*, . This is a decision of a Division Bench. In that case also, one of the contentions raised by way of cross-objection by one of the judgment-debtors was that the execution of the decree is barred altogether by limitation. Both the Courts below held that the application was not barred by limitation, inasmuch as the decree-holders were entitled to exemption of the period during which the application for the settlement of the debt was pending before the Debt Settlement Board. In appeal, it was contended by the learned counsel for the appellant that the Courts below were wrong in applying Section 52 of the Bengal Agricultural Debtors Act (7 of 1936) inasmuch as that section applied only to periods of limitation prescribed by limitation Act or it might be some other Act; but did not apply to such a provision as contained in Section 48 of the CPC by which no period of limitation was prescribed.

The contention was that Section 48 merely lays down the maximum period within which an application for execution can ever be made and that it was said that was something very different from prescribing a period for making an application. Their Lordships of the High Court of Calcutta, negatived this contention by pointing out that it may now be taken to be fairly well settled that Section 48 really amounts to providing that the application for execution must be made within such time as would enable the Court to make an order thereon within twelve years and such a provision is not in substance different from a provision which prescribes a certain period within which an application must be made.

In their Lordships' view, if one looks at the substance of the matter, one must at once be convinced that there is no real difference between the various periods prescribed by the Limitation Act and a provision of the nature of Section 48 of

the Code of Civil Procedure. Thus in their Lordships' opinion, the period mentioned in Section 48 of the CPC may truly be regarded as a period prescribed for applying for execution. With respect, I am entirely in agreement with the view taken by their Lordships of the High Court of Calcutta in this case.

6. It appears that the earlier case reported in ILR (1946) 1 Cal 373, was not brought to the notice of their Lordships in the subsequent case. I however, respectfully dissent from the view taken in ILR (1946) 1 Cal 373.

7. Thus the first contention of Mr. Bhat that Section 52 of the Bombay Agricultural Debtors Relief Act speaks about the computation of the period of limitation for the institution of any suit or proceeding and that provision contained in Section 48 of the CPC is not the period of limitation, is not sound and cannot be accepted.

8. The next contention to which a reference has already been made is that the word "proceeding" appearing in Section 52 of the Bombay Agricultural Debtors Relief Act, does not include the execution proceeding and therefore, Section 52 has no application. Mr. Bhat, seeks to reinforce his argument with reference to the words appearing in Section 19 of the said Act. He has drawn my attention to the words contained in Section 19(1) of the Act viz., all suits, appeals, applications for execution and proceedings in respect of any debt,"According to Mr. Bhat, Section 19 contains the words "applications for execution" and if the applications for execution were to be included in the word "proceedings" then, according to him, there was no necessity of mentioning separately "applications for execution."

But, in my view, there is no substance in this contention because, in sub-section (2) of Section 19, it is provided that when an application for adjustment of debts has been made to a Court u/s 4 in respect of which a suit, appeal, application for execution or proceeding is pending before a Civil or Revenue Court, the Court shall give notice thereof to such other Court and the latter Court on receipt of such notice shall transfer the suit, appeal, application or proceeding as the case may be, to the Court. Thus, when the application for execution, it pending in a Court in respect of a debt to be adjusted, then the Civil Court, on receipt of a notice must transfer the proceeding to the Debt Adjustment Court and if the Debt Adjustment Court finds that the judgment-debtor is not a debtor as defined under the Act, then the debt adjustment Court is under an obligation under Sub-section (4) of Section 19 to retransfer the application for execution to the Court from which it was transferred and on retransfer, the said Court shall proceed to dispose of the application for execution according to law.

9. Therefore, if we read Section 19 and Section 52 of the Bombay Agricultural Debtors Relief Act, it is clear that the word "proceeding" occurring in Section 52 includes application for execution. That being so, the second contention of Mr. Bhat must also be rejected.

10. The last contention of Mr. Bhat is based on the provisions contained in Article

254 of the Constitution of India. He contends that Section 52 of the B. A. D. R. Act is repugnant to Section 48 of the CPC and if it is repugnant then that section must be held to be void to the extent of the repugnancy. According to him, u/s 48 of the Code of Civil Procedure, where an application to execute a decree is made after the expiration of twelve years from the date of the decree sought to be executed, then no order for execution of the same decree shall be made upon such an application.

In other words, if any application for execution is presented after the expiration of twelve years from the date of the decree sought to be executed, no Court can make an order for execution of the same and if the time taken before the Debt Adjustment Court is to be excluded as stated in Section 52 of the Act, then it has the effect of extending the period mentioned in Section 48 of the CPC and therefore, Section 52 must be held to that extent, repugnant to Section 48 of the Code of Civil Procedure.

11. Now, the question of repugnancy would not arise unless the law made by Parliament and the law made by the State Legislature occupy the same field. If they deal with separate and distinct matters, though of a cognate and allied character, repugnancy does not arise. This is clear from the decisions of the Supreme Court reported in (1) Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, ; (2) Deep Chand Vs. The State of Uttar Pradesh and Others, . In my view, therefore Article 254 of the Constitution of India cannot be pressed into service by Mr. Shaft in support of his contention.

12. Now the subject "relief of agricultural indebtedness" appears in Entry No. 30 in List H--State List, in the VII Schedule to the Constitution of India and Article 246(3) states:

(3) "Subject to Clause (1) and (2), the Legislature of any Statehas exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")"

i.e..the State Legislature has been empowered to enact the necessary legislation to give relief to the agricultural debtors and Section 52 which is contended to be repugnant, forms part of an Act known as the Bombay Agricultural Debtors Relief Act. By that Act, the State of Bombay wanted to relieve the agricultural debtors from indebtedness and with that view, they made a provision in that Act that agricultural debtors may make an application for adjustment of their debts to the Board or to the Court as the case may be, under that Act. It may happen that certain proceedings may be pending in a Civil Court by way of suit, appeal or execution proceedings in which the agricultural debtor is involved and in order to give relief to such person, the Act contains a provision whereby the Board or the Court under the Bombay Agricultural Debtors Relief Act may withdraw the suit, execution application or other proceedings pending in a Civil Court and give relief to him if it finds the agricultural debtor is a debtor as defined under the Act.

But it may happen for example that in execution proceedings the judgment-debtor may not satisfy the requirements of the Act, in that, he may fail to prove that he is a debtor as defined under the Act. If so, then the Court under the Bombay Agricultural Debtors Relief Act cannot give relief to him. In such cases, the Board or the Court as the case may be, has got to retransfer the case to the court from which it had withdrawn before. But the question may arise then as to what is to happen to the period during which it was pending in the Board or the Court under the Bombay Agricultural Debtors Relief Act. It is in that connection that a provision has been made u/s 52 of the B. A. D. R. Act to exclude the period occupied by the Court or the Board in computing the period of limitation for the institution of any suit or proceeding. The State Legislature has not enacted any provision with regard to limitation. But Section 52 incidentally touches upon the period, mentioned in Section 48 of the Code of Civil Procedure.

13. The "pith and substance" of the law contained in the Bombay Agricultural Debtors Relief Act is to relieve the agricultural debtors from their indebtedness. "Relief of Agricultural Indebtedness" is a State subject and while enacting an Act intended to give relief to the agricultural debtors, if the State Legislature makes some provision in the Act which incidentally touches some provision of the Central Act, then in such cases the provisions contained in Article 254 of the Constitution of India cannot be invoked.

14. In this connection, Mr. Datar, the learned counsel appearing for the respondent has drawn my attention to a case reported in *Prafulla Kumar v. Bank of Commerce, Ltd.* *Khulna AIR 1947 PC60*. In that case, the question that arose for consideration before their Lordships of the Privy Council was as to the validity of Section 30 of the Bengal Money-Lenders Act, 1940. That Section provides that, "notwithstanding anything contained in any law for the time being in force or in any agreement, no borrower shall be liable to pay after the commencement of that Act, more than a limited sum in respect of principal and interest or more than a certain percentage of the sum advanced by way of interest." It was also made retrospective in its effect. The Bengal Money-lenders Act, 1940, it is enough to say that, that Act limits the amount recoverable by a money-lender of his loan for principal and interest and prohibits the payment of sums larger than permitted by the Act.

15. Now the Federal Legislative List referred to in Section 100 of the Government of India Act, 1935 assigns to the Federal Legislature jurisdiction to make laws with respect to "(28) Cheques, Bills of Exchange, promissory notes and other like instruments." It was sought to be contended in that case before their Lordships of the Privy Council that Section 30 of the Bengal Moneylenders Act was ultra vires since it encroaches upon the provisions contained in the Federal Legislative List stated above. Their Lordships negated that contention by pointing out that "money-lending" was a provincial subject and that the "pith and substance" of the Act was money-lending, and while enacting legislation in the garb of money-lending it incidentally touched upon the subject which fell within the Federal

Legislative List. Therefore, Section 30 of the Bengal Money-lenders Act was not ultra vires. If that is the correct position in law, which with respect, I hold it to be, then while considering the applicability of Article 254 of the Constitution of India, we have to see what is in "pith and substance" of the law, the provisions of which are sought to be contended as repugnant to the Act which the Parliament has or may enact. Therefore, viewed in that light, this third contention of Mr. Bhat also must fail.

16. The result is, all the contentions urged by Mr. Bhat, the learned counsel for the appellant fail and the finding of the Courts below that the Darkhast is not barred by the provisions contained in Section 48 of the Code of Civil Procedure is upheld. Consequently, this appeal fails and the same is dismissed with costs.

17. Appeal dismissed.