
(1978) 04 MAD CK 0049
In the Madras High Court

Panthanam Ammal and Others

APPELLANT

Vs

K. Srinivasa Ayyangar, and Sons

RESPONDENT

Date of Decision : 20-04-1978

Acts Referred:

Fugitive Offenders Act, 1881 — Section 10
Income Tax Act, 1961 — Section 139(1)

Citation : (1979) ILR (Mad) 23 : (1979) 92 LW 35 : (1979) 1 MLJ 253

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—This Civil Miscellaneous second appeal arises out of the order of the learned I Additional Subordinate Judge of Madurai, dated 11th August, 1977 made in G.M.A. No. 88 of 1977 on his file reversing the order of the learned Principal District Munsif of Madurai Town, dated 21st April, 1976 made in I.A. No. 769 of 1975 filed under Sections 7 and 15 of the Tamil Nadu Debt Relief Act, 1972, Tamil Nadu Act XXXVIII of 1972, hereinafter referred to as the Act. The Act was published in the Tamil Nadu Government Gazette on 15th December, 1972. Sub-section (1) of Section 7 of the Act stated that where any debtor has paid to any creditor twice the amount of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged. This is a benefit conferred on a debtor to enable him to scale down the debt due by him. Section 15 of the Act dealt with cases where decrees have been passed before the publication of the Act and it made provision for giving the benefit to a judgment-debtor even after the decree has been passed. Sub-section (1) of Section 15 of the Act without the proviso reads as follows:

Where before the publication of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is a debtor within the meaning of this Act, or in respect of a Hindu joint family debt, on the application of any judgment-debtor who is a debtor within the meaning of this Act, or in respect of a Hindu joint family debt on the application of any member of the, family whether or not he is the judgment-debtor or on the

application of the decree-holder within six, months from the date of publication of this Act, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908), amend the decree accordingly or enter satisfaction, as the case may be.

In the present case the decree was passed on 24th February, 1964 and the Act was published, as already pointed out on 15th December, 1972 and the application under Sections 7 and 15 of the Act was filed on 24th October, 1975. The learned Principal District Munsif allowed the application of the appellants herein but on appeal preferred by the respondent herein, the learned I Additional Subordinate Judge of Madurai, dismissed the said application on merits. Hence the present appeal by the legal representatives of the judgment-debtor questioning the correctness of the order of the learned Principal Subordinate Judge on merits.

2. However the learned Counsel for the respondent raised a preliminary objection that the application filed by the appellants herein before the learned District Munsif was barred by limitation and that therefore there was no question of this Court going into the merits of the order or the claim of the appellants herein. Consequently we have necessarily to consider the question whether the application filed by the appellants herein on 24th October, 1975 was barred by limitation or not.

3 A reading of Section 15(1) of the Act, which we have extracted already, will clearly show that that section prescribed a period of limitation of six months for filing an application under that provision for amendment of the decree. However the learned Counsel for the appellants contended that the period of limitation of six months prescribed in that section would apply only to an application Bled by a decree-holder for amendment of the decree and that would have no application whatever to an application filed by a judgment-debtor, as contemplated by that section. In support of this contention, the learned Counsel relied on a decision of N.S. Ramaswami, J., V. Ramakrishnan v. Kandaswami Thevar (1964) T.L.N.J. 378 as well as the absence of a comma after the word "decree-holder" and before the word "wilful" in that section. The judgment of N.S. Ramaswami, J., fully supports the contention of the learned Counsel for the appellants. The learned Judge after extracting the section observed:

On behalf of the decree-holder it is contended that the period of six months mentioned in the above section applies to an application not only by the decree-holder but also by a judgment-debtor. But a true grammatical construction of the section would go to show that the clause within six months from" the date of publication of this Act applies only to an application of the decree-holder and not to an application by a judgment-debtor or a member of a joint family. The significant fact to be noted is that after the words, "on the application of a decree-holder" there is no comma. That means the subsequent clause "within six months from the date of publication of this Act" has to be tacked on to the clause

"on the application of the decree-holder" and the said six months period would not be attracted to the earlier clause in the said section which deals with applications by judgment-debtors or by the-members of a joint family in case of joint family debts.

However Balasubrahmanyam, J., who had occasion to consider this question in his judgment dated 23rd March, 1978, in C.M.A. No. 569 of 1975 Annamalai and two Ors. v. Saraswathi Ammal and Anr. (1964) T.L.N. 378 differed from the view of N.S. Ramaswami, J., and according to Balasubrahmanyam, J., the normal construction of the provision does not make a distinction or discrimination between an application filed by a judgment-debtor and an application filed by a decree-holder and the absence of a comma cannot be relied on for imputing any such discrimination to the legislature. It is in the context of these two decisions that we have to consider what exactly is the correct construction of Section 15(1) of the Act. We are of the opinion that the view taken by Balasubrahmanyam, J., is correct and the view taken by N.S. Ramaswami, J., does not represent the true legal position. In our view, there is absolutely nothing in the section or in the Act to indicate as to why there should be a discriminating treatment between an application filed by a judgment-debtor and an application filed by a decree-holder. On the other hand, a perusal of the different provisions of the Act will show that it is the scheme of the Act itself which provides a period of six months as the period of limitation for a judgment-debtor to file an application. Section 14 of the Act contains provisions as to costs in certain cases. Sub-section (1) of that section states:

Where a decree is passed against any debtor in a suit instituted on or after the 1st March, 1972, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of this Act, and where in any such case a decree has -been passed before the publication of this Act the Court shall on application by the judgment-debtor within six months from the publication of this Act, amend the decree accordingly.

Section 18 of the Act contains some special provision in the case of certain sales of movable property and the section states:

Where in execution of any decree, any movable property of any debtor has been sold on or after the 1st March, 1972, any judgment-debtor may, within six months from the publication of this Act, apply to the Court for an order that the provisions of Section 7 and of Sections 10 and 11 be applied to the decree, and the Court, shall if satisfied that the applicant is a debtor entitled to the benefits of those sections, apply the same and order the decree-holder to refund any sum received by him on or after the 1st March, 1972, in excess of the amount to which he would have been entitled if the property had not been sold.

Thus it will be seen that Sections 14 and 18 of the Act expressly state that an application by a judgment-debtor has to be made within a period of six months

from the date of the publication of the Act. In such a context, the question that arises for consideration is, is there any justification for making a departure from this scheme with reference to an application to be filed by a judgment-debtor u/s of the Act. In other words, is there anything special or unique in Section 15 in order to compel the Court to take a view that with reference to that section, the period of limitation prescribed therein will apply only to an application filed by a decree-holder and will not apply to an application filed by a judgment-debtor, though the application filed by both may be for the same relief. In our view, there is absolutely no rational basis for making a distinction between an application filed by a judgment-debtor and an application filed by a decree-holder u/s 15 of the Act and to provide for a period of limitation of six months, only for an application to be filed by the decree-holder. It may also be pointed out that if the argument of the learned Counsel for the appellants is to be accepted, there will be no period of limitation whatever for an application to be filed by a judgment-debtor.

4. There is another interesting feature which can be noticed in this context. As Section 15(1) of the Act talks of an application both by a judgment-debtor and by a decree-holder for amendment of a decree, we asked the learned Counsel appearing for both sides to indicate even a single case in which a decree-holder may conceivably file an application for amendment of the decree under that section. Except for stating that a well meaning and well intentioned decree-holder, with a view to benefit the judgment-debtor in accordance with the provisions of the Act, may file an application for an amendment of the decree, they represented that no other application by a decree-holder can even be conceived. If that be the case, could it have been the intention of the legislature that in a rare case where an application is filed by a decree-holder for the benefit of the judgment-debtor there should be a period of limitation, but in a case where a judgment-debtor files an application for his own benefit, there should be no period of limitation whatever? We are unable to hold that the legislature could have intended any such consequence, particularly in view of the general practice that when a benefit is conferred on a person and that person is also given a remedy for the purpose of enforcing that benefit, the legislature prescribes a period of limitation only for that person to enforce the benefit. Therefore merely as a matter of construction of the statutory provision as it is we are not able to find any rational basis for making a discrimination between an application filed by a judgment-debtor and an application filed by a decree-holder in providing a period of limitation only for the application filed by the decree-holder and not for the application filed by the judgment-debtor.

5. Independent of the above view of ours on the language of the section read in the context of the scheme as well as the object of the Act, we are of the opinion that no reliance can be placed on the absence of a comma, as has been done by N.S. Ramaswami, J., for coming to the conclusion that the provision dealing with limitation is meant to be applied only to an application filed by a decree-holder.

6. All text-book writers are of the unanimous view that a punctuation mark cannot have a controlling effect in the construction of a statutory provision though it may be of some assistance in the case of ambiguity. So long as the language is clear and the purport of the statutory provision is unambiguous, the absence or presence of a punctuation mark cannot have the effect of distorting the statutory provision.

7. It is stated in "Maxwell on the Interpretation of Statutes" Twelfth Edition at page 14 as follows:

Where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuations where none appears on the face of the Act.

8. The position has been more clearly explained by Crawford in "Statutory Construction - "Interpretation of Laws" at pages 342-343 as follows:

Of course, the punctuation of a statute may lend some assistance in its construction, but when the intention of the statute and the punctuation thereof are in conflict, the former must control, even where the punctuation is regarded as a part of the statute. In other words, the punctuation will not control the plain meaning of the text of an enactment. It is subordinate to the text, and the retention of a word is of far more importance than the position of a comma. Indeed the Court may punctuate or disregard existing punctuation, or repunctuate in order to give the legislative intention effect.

Though there had been a particular view in England before 1850, since when punctuation marks started appearing in statutes, still even the English Courts did not hold that the punctuation marks controlled the meaning of a statute. In every case the intention must be gathered from the context to which the words relate and the presence or absence of a punctuation mark cannot conclusively determine the meaning of the statute. The Courts in this country have consistently taken this view.

9. The Judicial Committee of the Privy Council in *Maharani of Burdwan v. Murtunjoy Singh and Ors.* (1886) 14 I.A. 30 : ILR Cal. 365 observed:

But their Lordships think that it is an error to rely on punctuation in construing Acts of the Legislature.

10. The Supreme Court in *Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr.* had to consider the scope of Section 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951. The relevant provision which the Supreme Court had to consider was:

Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practice in that High

Court every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court.

The contention and the reasoning are dealt with in the following observations of B.K. Mukherjea, J:

11. The contention of Mr. Ghosh is that on a proper construction of the language of the clause, the whole of the Bar Councils Act and not merely those provisions in it, which relate to disabilities attaching to Advocates of other High Courts, must be deemed to be eliminated, so that the right of practising that is conferred by the section is to be exercised without the restrictions or limitations flowing from any of the provisions of the Bar Councils Act. In support of his contention that the whole of the Bar Councils Act is excluded by the opening clauses Mr. Ghosh lays great stress on a comma, which separates the Bar Councils Act and the figures and word? that follow, from the expression "or in any other law" which comes immediately after that.

12. He says further that under the ordinary rules of interpretation the adjectival phrase "regarding (sic) the conditions etc" should be taken to apply to the word or phrase immediately preceding it and not to the remoter antecedent term or expression. These arguments, though they have an air of plausibility about them, do not impress me much. Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts. Cockburn, C.J. said in *Stephenson v. Taylor*. (1861) 1 B. & S. 101. On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies". It seems, however, that in the vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio see Craiea on Statute Law, page 185 when a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation, vide Crawford on Statutory Construction, page 343. I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text (ibid).

13. A similar question arose in *Regina v. Governor of Brixton Prison Ex. parte Naranjan Singh* (1962) 1 Q.B. 211 referred to by Balasubrahmanyam, J., in his judgment to which we have drawn attention. That case involved the construction of Section 10 of the Fugitive Offenders Act, 1881 and that section read as follows:

Where it is made to appear to a superior Court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such Court may discharge the fugitive either absolutely or on bail or order that he shall not be returned until after the expiration of the period named in the order,

or may make such other order in the premises as to the Court seems just.

The rival interpretations of that section concerned the meaning in the context of the words "or otherwise", and that controversy arose in view of the absence of a comma, after the words "interests of justice". Lord Parker, C.J., took the view that the Court's discretion to discharge a fugitive could be exercised in any case in which the return of the man would be unjust or oppressive, or too severe, and it was not confined to a case in which the application appeared not to have been made in good faith. The Court rejected the contention based on the absence of the punctuation mark namely, a comma, in between the words "in the interests of justice," and "or otherwise".

14. Before the Bombay High Court in *Bijibai Saldhana Vs. Rama Mandhar Thannu Mishra and Another*, a similar argument based on the absence of a comma was advanced and the Court held that it was well-known that punctuation could not be regarded as a controlling factor and could not be allowed to control the plain meaning of a text.

15. Similar argument was advanced before this Court (Ramanujam, J.) in *Dr. N. Natesan Vs. Mrs. S. Santhalakshmi*, . In that case the argument turned upon the definition of the term "tenant" contained in Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. That provision defined the tenant as meaning "any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant, who had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant." The argument that was advanced in that case was that because there was a comma after the expression "surviving spouse" and before the expression "or any son or daughter" even the son or daughter or a tenant would be deemed to be a tenant for the purposes of the Act. Ramanujam, J., rejected that contention. The learned Judge observed:

I am of the opinion that the definition will only take in sons or daughters or the legal representatives of the tenants only after the death of the tenant and not when the tenant himself is alive. To construe otherwise will lead to considerable absurdities and anomalies. Even when the tenant is alive if his sons and daughters are to be treated as-tenants, there will be more than one tenant in respect of the same building and they may independently seek the protection of the Act in respect of the same building. If the statute intended to confer a benefit also on the other members of the tenant's family it could have specifically stated so. I am not inclined to agree with the learned Counsel for the respondent that the punctuation between the words "surviving spouse" and "or any son and daughter" showed that the word "surviving" qualified only spouse and not the son and daughter. The punctuation though regarded as a guide for the interpretation of a statutory provision, it cannot be conclusive. Orders in his "The Construction of Deeds and Statutes", 4th Edition, page 249 says.

"The title, marginal notes and punctuation in a statute are regarded merely as contemporanea expositio "which though useful as a guide to a hasty inquirer" ought not to be relied upon in construing an Act of Parliament".

Maxwell "on the Interpretation of Statutes" at page 14 of the 12th Edition also points out that:

Where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuations where none appears on the face of the Act.

Though punctuation can be regarded as a kind of contemporanea expositio it cannot be treated as forming part of the statute itself.

16. Lastly, Ramaprasada Rao, J., as he then was, had to deal with the question in relation to Section 139(1) of the Income Tax Act, 1961 in *Mahendrakumar Ishwarlal and Co. and Others Vs. Union of India (UOI) and Others*, In that case the learned Judge observed:

Even on the question whether the punctuation adopted in Sub-clauses (a) and (b) gives a guide to the interpretation put upon it by the learned Counsel for the petitioner, I am inclined to agree with him. No doubt, for historic reasons, English Courts were chary to be guided by punctuation marks in statutes as no preliminary rule contained any punctuation. But in an enactment like the Indian Income Tax Act, where meticulous care has been taken to punctuate the provisions and the sections contained therein, it would not be inappropriate if such a punctuation of a particular provision is also taken into consideration for purposes of interpreting the relevant provision. This is on the principle of contemporanea expositio.

Thereafter the learned Judge extracted a passage from the judgment of the Supreme Court in *Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr.* which we ourselves have already extracted.

Having regard to the above general principles, we are not able to hold that on account of the mere absence of a comma before the expression "six months" the period of limitation of six months prescribed in Section 15(1) of the Act applies only to an application by a decree-holder.

17. Apart from the general principles referred to above, we are not able to discern any rational basis or justification whatever for the Legislature making a distinction between an application filed by a decree-holder and an application filed by a judgment-debtor and hence we are unable to attribute any intention to make such a discrimination to the Legislature. As we have pointed out already, if the contention put forward on behalf of the appellants is to be accepted, the result will be that there will be no period of limitation for a judgment-debtor to file an application u/s 15(1) of the Act, while there will be a period of limitation for a decree-holder to file an application, for which discrimination no justification

is conceit vable or discernible.

18. Under these circumstances, we are unable to share the view expressed by N.S. Ramaswami, J., and we hold in the present case that the application in question filed by the appellants herein, which was admittedly beyond six months from the date of the publication of the Act, namely, 15th December, 1972 was clearly barred by limitation and hence liable to be dismissed. Accordingly the appeal fails and is dismissed. There will be no order as to costs.