
(1944) 03 MAD CK 0037
In the Madras High Court

Ps. Ar. Ar. Arunachalam Chettiar by agent Sivaraman Chettiar APPELLANT
Vs
Palaniswami Goundan RESPONDENT

Date of Decision : 03-03-1944

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 20

Citation : AIR 1944 Mad 455 : (1945) ILR (Mad) 188 : (1944) 57 LW 334

Hon'ble Judges : Leach, C.J.;Wadsworth, J

Bench : Full Bench

Judgement

Leach, C.J.—On 20th July 1935 the appellant obtained a mortgage decree against the respondent for the sum of Rs. 2998-5-4. The mortgage was dated 22nd December 1931 and had been given as security for the repayment of amounts due on three promissory notes. On 12th July 1939 the decree-holder filed an application for the execution of his decree and, in due course, the Court fixed 17th July 1940 as the date for the sale of the mortgaged property. On 15th July the judgment-debtor applied u/s 20, Agriculturists' Belief Act, 1938, for a stay of the execution proceedings, pending an application for scaling down u/s 19 of the Act. On 17th July the Subordinate Judge passed an order of ad interim stay. That was a stay pending the filing of the counter affidavit by the judgment-debtor and the hearing of the application. The application was heard on 25th July when an order for stay was passed u/s 20. The application for scaling down was filed on 23rd September 1940 and resulted in the decretal amount being reduced to Rs. 2088-9-6. The decree-holder appealed against this order to the District Judge, who affirmed the order of the Subordinate Judge. The decree-holder then appealed to this Court. He contended that the order could not stand because the application had not been filed within 60 days of the order of ad interim stay and that the application was not maintainable because the Official Receiver had not been made a party to the proceedings u/s 19. It appears that the respondent had been adjudicated an insolvent before the institution of the mortgage suit. The decree-holder also attacked the order on the merits. The appeal was heard by Patanjali Sastri J. who found against the decree-holder on all the points raised

by him. This appeal is from the judgment of the learned Judge under Clause 15, Letters Patent.

2. Section 20 of the Act states that the Court executing a decree shall, on application, stay the proceedings until the Court which passed the decree has passed orders on an application made or to be made u/s 19. Then follows a proviso which states that where within 60 days after the application for stay has been granted the judgment-debtor does not apply to the Court which passed the decree for relief u/s 19 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in the Act to the contrary. The appellant says that inasmuch as the application u/s 19 was made more than 60 days after the order of ad interim stay, he is entitled to have the decree passed by the Subordinate Judge executed without any reduction. Patanjali Sastri J. held that the order for stay contemplated by the section was the order for stay passed on 25th July 1940 and not the ad interim order, and I respectfully agree. There is nothing in the section which contemplates an ad interim order. I do not doubt that the Court has the power to pass an order staying the execution proceedings pending the hearing of the application u/s 20, but that application was not heard until after the respondent had filed his appearance and admitted that he was an agriculturist. If the ad interim order were to be the starting point for the 60 days" period of limitation, it would mean that if the creditor were not served within the period the judgment-debtor would be precluded from having his decree scaled down, which could never have been intended. In my judgment it is quite clear that the ad interim order was not an order falling within the section and that the order which did fall within the section was the order of 25th July.

3. The contention of the appellant that the Official Receiver was a necessary party to the application u/s 19 appears to be made on the observations of my learned brother Wadsworth J., in *Jagannatha v. Seeniveera* AIR 1941 Mad. 487 and *Krishnarao v. Official Receiver* AIR 1942 Mad. 254. In the former case my learned brother said that it seemed to him proper that on such an application the Official Receiver in whom the estate vests should be impleaded as a party, and, in the second case, said that it seemed to him desirable that both the Official Receiver and the insolvent should be made parties to an application under the section. Patanjali Sastri J. did not read these observations as meaning that an application u/s 19 would not lie in the absence of the Official Receiver but that it was desirable that he should be made a party. I read the observations in the same way. Section 19 specifically refers to the application of the judgment-debtor who is an agriculturist. Section 21 provides that the Act shall not be applied to the debts of an insolvent where the dividend has been declared in the insolvency proceedings, but it goes on to state that if a dividend has not been declared the Act shall apply to debts payable by the insolvent if he would have been an agriculturist within the meaning of the Act but for his adjudication. It is quite a different matter to say that the Official Receiver should be a party to an application u/s 19 from saying that the proceedings are altogether bad if he is

not made a party. It is obviously desirable that he should be joined and this is the usual procedure. I am certainly not prepared to go so far as to say that proceedings would be void if the Official Receiver has not been made a party. In any event the objection should be taken when the application is made. There was no objection taken in this case to the nonjoinder of the Official Receiver until the case came before Patanjali Sastri J., on second appeal. The learned Judge dealt with the question; but having done so rightly, went on to disallow it.

4. On the merits there is even less to be said for the appellant's case. The contract between him and his mortgagor provided for the payment of interest at the rate of 36 per cent. per annum. He made his claim however on the basis of interest at 24 per cent. per annum. The mortgagor contended that this was far too high and asked the Court to apply the Usurious Loans Act. The Subordinate Judge held that 12 per cent was ample and passed a decree on that basis. The appellant preferred no appeal. He now asks that the decretal amount should be calculated on the basis of interest at 24 per cent and the appropriations settled by the District Judge should be made on this basis. This is a request which has only to be made to be refused. The decree stands and cannot be re-opened. The respondent is entitled to have it scaled down in accordance with the provisions of the Act, and this has been done. The appeal must be dismissed with costs.

Wadsworth, J.

5. I agree entirely with the judgment which my Lord has just pronounced and wish only to add a few words with reference to observations of mine which have been quoted in support of the appellant's arguments. On the question of limitation, the appellant has quoted an obiter dictum in *Nataraja v. Sivakolundu* AIR 1943 Mad. 245. The facts are not given in the report. The point raised was one of limitation with reference to an ad interim order of stay in an application u/s 20. I observed that the procedure of granting an ad interim stay followed by an absolute order is not contemplated by Section 20 of Act 4 of 1938 and that when once a stay has been granted limitation for an application u/s 19 will begin to run. I should like to make it clear that in my opinion Section 20 does not contemplate the grant of ad interim order of stay, but that if the Court finds it necessary to stay execution pending the hearing of the application u/s 20 the Court has ample power to do so under the ordinary law. Such an ad interim stay order is not an order u/s 20 at all and limitation for a proceeding u/s 19 cannot run from that order. The order contemplated in the proviso to Section 20 is the order of stay pending the disposal of an application u/s 19, passed on the application u/s 20.

6. On the question of the procedure to be adopted u/s 21 of the Act, two decisions of mine have been quoted, which lay it down as a desirable procedure that both the insolvent and the Official Receiver should be parties to such an application. That is the procedure which has, I think, been generally adopted. The Act itself lays down no procedure when the debt to be scaled down is due from an insolvent on whose estate no dividend has been declared and is due

under a decree, it is obvious that Section 21 has to be read with Section 19 and that the application has to be made by the person who is the judgment-debtor on the record. In the present case both the present respondent and the Official Receiver were judgment-debtors on the record. There was nothing to prevent the application from being made by either of them and, in my opinion, it was desirable that whichever made the application the other party should be joined. But clearly the question whether the Official Receiver is a party on the record is largely a question of form, for, in all probability when the application is made by the debtor, the Official Receiver will be financing the application and ready to come on record if desired. As no objection was taken for the non-joinder of the Official Receiver in the trial Court, it is obvious that the objection cannot be raised in appeal. I agree with the order that the appeal must be dismissed with costs.