
(1981) 09 MAD CK 0063
In the Madras High Court

P.S. Ramamurthy and Company

APPELLANT

Vs

Salvar Paints and Varnish Works (P.) Ltd.

RESPONDENT

Date of Decision : 29-09-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37

Citation : (1982) ILR (Mad) 414 : (1982) 95 LW 46 : (1982) 1 MLJ 191

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The respondent herein obtained a decree against the petitioner herein in A.S. No. 89 of 1967 on the file of the Bombay City Civil Court. The decree got transferred to the file of the Subordinate Judge of Chengalpattu and execution by way of attachment and sale of the immovable properties of the petitioner is being prosecuted in E.P. No. 130 of 1979. The petitioner filed E.A. No. 727 of 1979 u/s 18 of the Tamil Nadu Debt Relief Act (XL of 1979), hereinafter referred to as the Act, for stay of execution. That application has been dismissed" by the Subordinate Judge of Chengalpattu on 14th February, 1980 and the present revision is directed against the said order.

2. The reasoning of the Court below for dismissing the application u/s 18 pf the Act is that the Act as such could not apply to Bombay City Civil Court, which passed the decree and hence the petitioner cannot seek amendment of such a decree u/s 16 of the Act and in the said circumstances the stay of the proceedings u/s 18 of the Act is incompetent.

3. Mr. M. Section Subramanian, learned Counsel for the petitioner submits that no such limitation as the Court below has spelt out is possible on a construction of the provisions of the Act and in particular sections 16 and 18, thereof. Sections 16 and 18 of the Act read as follows:

16. Amendment of certain decrees. - Where before the date of the publication of this Act in the Tamil Nadu Government Gazette, 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 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 such publication 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:

Provided that all payments made or amounts recovered, whether before or after the date of such publication in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

18. Stay of execution proceeding. - Every Court executing a decree passed against a person entitled to the benefits of this Act, shall, on application, stay the proceedings until the Court which passed the decree has passed orders on application made or to be made u/s 16:

Provided that where within sixty 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 16 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in this Act to the contrary.

Explanation. - The expression, "the Court which passed the decrees shall have the same meaning as in the Code of Civil Procedure, 1908 (Central Act V of 1908).

4.The expression "the Court which passed the decree" has been defined u/s 37 of the CPC as follows:

37. Definition of Court which passed a decree. - The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,...

(a) where the decree to be executed has been passed" in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit where-in the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

5. If the Court which passed the decree is in the State of Tamil Nadu, there will be no difficulty in invoking the provisions of Section 16 of the Act for the purpose of an amendment as set out thereunder. The difficulty arises because admittedly in the instant case the Court which passed the decree is the Bombay City Civil Court, which is beyond the State of Tamil Nadu. The provisions of the Act are

analogous and in pari materia with the provisions of the Tamil Nadu Agriculturists Relief Act (IV of 1938). These pieces of legislation are expropriatory in character and if there is any doubt as to the meaning of the terms and the scope of the application of such statutes, the doubt should be resolved in favour of the person expropriated and not of the person who claims the right to expropriate. The provisions of such statutes should be strictly construed and their scope ought not to be extended beyond what is clearly and expressly indicated by their terms. Sub-Section (2) of Section 1 of the Act clearly states that the Act extends to the whole of the State of Tamil Nadu. It leaves no room for ambiguity that the provisions should be invoked and worked out only within the State of Tamil Nadu and nowhere else. The machinery u/s 18 -of the Act can be set in motion only for a specific purpose and that is to enable the person entitled to the benefits of the Act to approach the Court which passed the decree to have it amended u/s 16 of the Act. The Court which passed the decree in the instant case is the Bombay City Civil Court and as stated above it is beyond the State of Tamil Nadu. Hence it would be not in terms of Section 16 of the Act to clothe that Court with jurisdiction to amend such decrees invoking the provisions of Section 16 "of the Act.

6. Mr. M.S. Subramanian, learned Counsel for the petitioner, draws my attention to a judgment of Krishna Rao, J., in V. Ananta-ramaiaft v. M. Venkata Subba Rao¹, for the proposition that the provisions of the Madras Agriculturists Relief Act (IV of 1938) have been held to be applicable for the purpose of scaling down a debt which was originally incurred in an area to which the said Act did apply but which debt subsequently got assigned in an area to which the said Act did not apply. The contention raised in that case was that the parties are governed by the law in force at the place where the debt was incurred and therefore the debtor was entitled to claim the benefits of the Madras Agriculturists Relief Act (TV of 1938). This has been accepted by the learned single Judge of the Andhra Pradesh High Court. We are not faced with a similar situation in the present case. The question that has come up for consideration in the instant case is as to whether the Bombay City Civil Court, which is beyond the State of Tamil Nadu, can amend the decree u/s 16 of the Act. It is not known as to whether the debt was incurred in the State of Tamil Nadu. No material has been placed either in the Court below or before this Court to indicate that the debt was incurred within the State of Tamil Nadu. In this state of affairs, it is not even possible to consider the ratio of the learned single Judge of the Andhra Pradesh High Court as having any bearing on the facts of this case. In the said circumstances, I do not feel called upon to express any opinion one way or the other on the ratio of the learned single Judge of the Andhra Pradesh High Court. The statute being expropriatory in nature, it has got to be strictly construed and there is no warrant for extending its operation beyond what the express terms of the Act indicate. Section 16 of the Act as such could be invoked only by a Court which passed the decree, provided that Court is within the State of Tamil Nadu and not elsewhere. If there is no scope for amending the decree u/s 16 of the Act, it will

be futile to invoke, the aid of Section 18 of the Act. In this view, I am not able to spell out any infirmity in the order passed by the Court below and accordingly this revision fails and the same is dismissed. There will be no order as to costs.