(1977) 06 GUJ CK 0007

In the Gujarat High Court

Rana Mafatlal Gordhanbhai APPELLANT

Vs

Mahendrabhai Babubhal RESPONDENT

Date of Decision : 24-06-1977

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 3
Gujarat Rural Debtors Relief Act, 1976 — Section 11, 11, 11(2)

Citation : (1978) 19 GLR 529

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—A question of some importance has been raised in this petition as to whether Civil Court has jurisdiction prima facie to determine whether a person is a debtor or not under the Gujarat Rural Debtors'' Relief Act, 1976 (No. 35 of 1976) before any suit, appeal, application for revision or an application to execute a decree for recovery of a debt abates u/s 11 thereof. The question arises in the following circumstances in this case:

The opponent herein who is a judgment-creditor obtained a decree for recovery of Rs. 3160/- against the petitioner in Civil Suit No. 433 of 1973 on the file of Civil Judge (J.D.) at Cambay. The attachment which was obtained before the judgment by the judgment creditor was continued and the said property was put to sale in execution of the said decree. It appears that the petitioner, who is a judgment debtor filed some objections against the executability of the decree on June 28, 1976. In the objections, it was contended, inter alia, that the rate of interest was too excessive. Now these objections did not find favour with the executing Court and were over-ruled by its order of October 11, 1976. The petitioner, judgment-debtor, carried the matter in appeal before the District Judge at Nadiad by his Civil Appeal No. I of 1976. While the objections were pending before the executing Court, the Gujarat Rural Debtors'' Relief Act, 1976, was placed on the statute book on August 15, 1976. The petitioner, judgment-debtor, had not raised the plea about the ousted of the jurisdiction in the memo of appeal but was advanced at the time of hearing of the same. It appears that the petitioner judgment-debtor made a fresh application before the executing court on 3-11-1976 for stay of the execution as he was entitled to the benefit of the Gujarat Rural Debtors'' Relief Act, 1976. It appears further that this application for stay of the execution did not find favour with the executing Court, which by its order of 6th December, 1976, dismissed the said application holding that the Act is not applicable without assigning any detailed reasons for the said conclusion. It should be noted that the District Court also rejected the appeal by its order of 12th January 1977 without deciding the aforesaid new plea of jurisdiction raised at the time of arguments. It is the order of the executing Court rejecting the application for stay of the execution of the decree which is the subject matter of this revision before me.

2. In order to answer the question, which has been raised in this revision, application, whether the executing application should be stayed or not, a few provisions of the Gujarat Rural Debtors'' Relief Act, 1976 are to be considered. Section 2 Clause (c) defines what is "debt" and Clause (d) defines who is a "debtor". Clause (g) thereof defines "marginal farmer" and Clauses (1) and (m) define "rural artisan" and "rural labourer" respectively, while Clause (k) defines "rural area". Section 3 provides for the discharge or reduction of debt and the extent thereof in the prescribed cases. Section 4 empowers the debtor to the refund of amount paid in excess of twice the principal before the appointed day. Section 5 empowers the State Government for appointment of Debt Settlement Officers. Section 6 enjoins every debtor and creditor with a duty to furnish particulars of debt etc. to local authority. Section 7 enjoins the authorised Officer to prepare and publish statement of debts. Section 8 gives liberty to the disputing debtor or creditor to file his objections within a specified time before the competent Debt Settlement Officer against the particulars published by the authorised officer u/s 7. Sub-section (4) of Section 8 requires the Debt Settlement Officer after making necessary inquiry to pass the order in respect of the objections lodged. Section 9 requires the debtor to pay debt as determined u/s 8 in 10 equal annual instalments without interest. Section 10 permits postponement of payment of instalment in case of remissions. Sections 11 and 12 are two important sections which are material for purposes of this revision application. Sections 11 and 12 read as under:

11 (i) No Civil or Revenue Court shall entertain-

(a) any suit, appeal, or application for revision-

(1) to recover any debt to which the provisions of this Act apply;

(ii) to question the validity of any procedure or the legality of any order made by a debt settlement officer or an Appellate Officer under this Act;

(b) any application to execute a decree passed by a Civil Court against a debtor;

(2) Any suit, appeal, application for revision against a decree or application to execute a decree pending before any such Court on the appointed day shall

abate:

Provided that if any such suit, appeal or application is spending jointly against such debtor and any other person who is not a debtor, nothing in Sub-section (2) shall affect the continuance of such suit or application or appeal or revision application in so far as it relates to such other person.

(3) On the appointed day, every debtor undergoing detention in a civil prison in execution of any decree passed by a Civil Court in respect of his debt, shall be released.

12. If a question arises in any proceeding under this Act, as to

(a) whether a person is a debtor;

(b) whether a debtor is a marginal fanner, small farmer, rural artisan, or runt labourer;

(c) whether the income of a rural artisan exceeds or does not exceed rupee 2,400 per year or as the case may be, rupees 4,800 per year;

(d) Whether any liability is a debt or not; the debt settlement Officer shall decide such question and his decision shall be final and shall not be called in question in any Court.

Section 13 provides for an appeal against the decision or order of a debt Settlement Officer to the Appellate Authority appointed by the State Government. Now, the particular question which arises in this revision application is whether the executing Court had jurisdiction to decide the question whether the Act is applicable to the case of the petitioner or not or, in other words, whether the petitioner is a debtor or not. It has been urged on behalf of the petitioner judgment-debtor that u/s 11 the jurisdiction of Civil Court is ousted and the Court is prohibited from entertaining any suit, appeal or application for revision to recover any debt to which the provisions of the Act apply, or any application to execute a decree passed, by a Civil Court against the debtor and any such suit, appeal or application pending before any Court on the appointed day is to abate. It has been further urged that the question as to whether a person is a debtor or not is within the exclusive jurisdiction of the Debt Settlement Officer u/s 12 It was, therefore, submitted that the executing Court has clearly exceeded the jurisdiction in going into the question, whether the petitioner is a debtor or not and holding that the Act was not applicable to the case of the petitioner. On the other hand, on behalf of the respondent judgment-creditor it was sought to be argued that the jurisdiction of Civil Court is ousted when a question, whether a person is or is not debtor arises in any proceeding under the aforesaid Act and the Civil Court has always jurisdiction to try the question unless it is expressly or by necessary implication excluded. Section 11 gives indication that Civil Court will not entertain any suit, appeal or application for revision where the question of recovery of the debt to which the provisions of the Act apply is involved or application to execute a decree passed by a Civil

Court against the debtor and only in those cases the suit, appeal or application is to abate. In other words, the contention is that Civil Court''s jurisdiction is not ousted till it is prima facie determined by the Civil Court that the suit, appeal or application before it involves any question of a debt to which the provisions of the aforesaid Act apply or Where the decree is passed by a civil court against a debtor. All debtors and all kinds of debts are not with in the purview of the Act and atleast the debts of artisans and labourers, who are within municipal areas, are not within the sweep of the Act, and it necessarily follows, according to the argutoent of the respondent judgment-creditor that Civil Court''s jurisdiction is saved till the question is decided, whether a person is or is not a debtor.

3. I am afraid, I cannot accede to these submissions made on behalf of the opponent judgment-creditor obviously for the following reasons:

In the first place, the interpretation canvassed on behalf of the judgment-creditor would lead to patently absurd result, viz. the Civil Court will have jurisdiction to determine the question, whether a person feet is not a debtor in cases of rural artisans and rural labourers and not in cases of rural farmers and in cases of marginal farmer and, small farmers. The term "debtor" has been defined to mean a marginal farmer, a small farmer, a rural labourer, or a rural artisan, who on the appointed day is in debt Now term "debt" has been defined to mean any liability which is due from a debtor incash or kind, whether secured or unsecured or whether payable under a decree or order of any Civil Court or otherwise and subsisting on and legally recoverable on or after the appointed day. "Rural artisan" has been defined to mean a person who being residing in rural area, earns his livelihood appreciably, by practising any craft in such area by his own labour or by the laboured of the members of his family, and who either does not hold any land, or who holds land to the extent specified in the Act. "Rural labourer" means a person who, being resident in a rural area, earns his livelihood principally by manual labour from any of the occupation of farming, cutting of wood dairy farming, poultry farming, breeding of livestock etc. and person holding land in any of the villages specified in the Schedule to the Act. Therefore, only those artisans and labourers are rural artisans and rural labourers, who are residents of aruralare a anndearn livelihood principally in the manner prescribed in Sub-sections (1) and (m) of Section 2. Now "rural area" has been defined to mean as under:

2 (k) ''rural area'' means an area, which for the time being, is not within the limits-

(i) a city constituted u/s 3 of the Bombay Provincial Municipal Corporations Act, 1949, as in force in the State of Gujarat.

(ii) a municipal borough, or a notified area constituted, or deemed to be constituted, under the Gujarat Municipalities Act, 1963.

(iii) a cantonment declared as much under the Cantonments Act, 1924.

4. The argument, therefore, on behalf of the judgment-creditor is that the Act is not applicable to all finds of debts of all the debtors and an artisan or a labourer who is a resident within the Corporation, Municipal Borough or Cantonment area would necessarily be not a debtor and Whenever a question arises in any proceeding before; civil Court, whether a person is a debtor in the sense of being rural artisan or rural laboofgr or not, it his got to be determined by that Court since it is not a question arising in the proceeding under the Act. The proceeding under the Act, according to this argument, would comiHittce only u/s 7 when the authorised officer of the local authority concerned publishes the statement of the debt u/s 7 and when an issue is joined by the opponent-creditor or debtor u/s 8. Till that point of time, when the question arises as to whether he is a debtor or not, the jurisdiction of Civil Court is not ousted. I am of the opinion that the entire reasoning is misconceived. The Act is put on the statute book to provide relief from indebtedness to certain farmers, rural artisans and rural labourers. Till Act would apply rural the debts of those debtors, namely, marginal farmers, rule artisans and rural labourers. The ittoflaent the question arises before Civil Court in a Civil Appeal or application for revision of review of a decree, whether a person is or is not a debtor in the sense in which it is defined in the aforesaid Act, the Civil Court''s jurisdiction is obviously excluded. It is no doubt true that the Debt Settlement Officer Will determine that question in the proceedings under the Act, but to say that the Debt settlement Officer would be invested with the jurisdiction to determine that question about the status of a person being a debtor only if the proceedings are effectively initiated u/s 7 is unwarranted under the relevant provisions to which I have referred hereinabove. Apart from the patent absurd result to which this interpretation would lead to, this would also result in conflict of the jurisdictions of two authorities. In a given case. Civil Court may determine that the Act does not apply to a debtor and in a proceeding arising under the Act the Debt Settlement Officer may determine that very person to be a debtor. No provision has been made in the Act as the one which I find in the Gujarat Rural Debtors (Temporary Relief) Act, 1976, which has been repealed by the present Act, in Section 2(2) thereof that if a question arises, whether the person is a rural artisan or rural labourer or a small farmer, the question shall be decided by the Civil Court as a preliminary issue and the decision on such question shall be final and conclusive and shall not be called in question in appeal or revision. It is no doubt true that Section It is not pari materia with the provision which I find in Sections 85 and 85A of the Tenancy Act. However, it is difficult from difference in the phraseology to jump to the conclusion that Civil Court''s jurisdiction to determine prima fade whether a person is or is not a debtor, and whether the Act applies to him or not, is not ousted. There is another weighty reason for accepting the interpretation advanced on behalf of the judgment debtor that the jurisdiction of Civil Court is ousted in such cases. Section 12 provides that the decision of the Debt Settlement Officer on the question, inter alia whether a person is or is not a debtor is final and cannot be called in question in any Court. In other words, the moment the person is determined to be a debtor by the Debt Settlement Officer,

the question will be concluded and cannot be challenged in a Civil Court and if any suit, appeal or application for revision is pending before the Civil Court in respect of such parson, the proceedings abate as provided in Section 11(2.). It, therefore, would clearly lead to not only an anomalous position but lead to a conflict between the jurisdictions of two forums. That interpretation is to be adopted which is harmonious reconciling the jurisdiction of the Tribunal and other forums. In my opinion, therefore, the interpretation which has been advanced by the judgment-debtor should be accepted audit should be held that till the question is determined by the Debt Settlement Officer inappropriate proceedings that may be initiated under the Act, whether the petitioner herein is or is not a debtor, the Civil Court must stay the execution of the decree passed Mainst him. If the person is ultimately held to be a debtor, the proceeding shall a bate and if the person is held not to be debtor the Civil Court will be entitled to proceed with the suit, appeal or application for revision or execution of the decree. In that view of the matter, therefore, this revision must succeed.

5. The result is it that this revision application is allowed and the Order of the executing Court is set aside and the execution application should be stayed till the status of the petitioner is determined by the competent authority under the aforesaid Act. Rule is made absolute accordingly with no order as to costs.

