
(1962) 03 KL CK 0030
In the High Court Of Kerala
Case No : C.R.P. No. 1159 of 1960

Sankaran

APPELLANT

Vs

Kumaran

RESPONDENT

Date of Decision : 14-03-1962

Acts Referred:

Limitation Act, 1963 — Section 3
Presidency Towns Insolvency Act, 1909 — Section 7
Provincial Insolvency Act, 1920 — Section 4

Citation : (1962) KLJ 776

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : T.S. Krishnamoorthy Iyer, K. Subramania Iyer and G. Rajasekhara Menon, for the Appellant; T.S. Venkiteswara Iyer and R.C. Plappilli, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The facts that led to the Civil Revision Petition may be briefly stated. The respondent executed a promissory note on 10th November 1955 in favour of the petitioner. No amount was paid towards the debt; and ultimately on 7th July 1959 the petitioner filed A.R.P. No. 31 of 1959 before the primary court under Sections 4 and 8 of Kerala Act XXXI of 1958, for fixing the instalments payable under the Act and for an executable order for the recovery of such instalments. The respondent-debtor claimed that the debt was barred by limitation, which was accepted by both the lower courts. The petitioner-creditor questions in revision the legality of that order. Mr. Krishnamurthy Iyer on behalf of the petitioner contends firstly, that there is no provision in the Limitation Act which applies to an application u/s 8 of Act XXXI of 1958, and secondly, that even if a suit on the promissory note is barred, it is only the remedy by way of suit that is barred and not the right, and if the right can be enforced in any other manner the law does not prohibit the same. The Act does not appear to prohibit generally the application of the law of limitation under the Indian Limitation Act

to proceedings under the Act. In some cases, for example Sections 21 and 22, some variations are made. It will be interesting to note in this connection Section 3 of the Act. Sub-section 1 of Section 3 enacts that no application for execution of a decree in respect of a debt shall be made against any agriculturist in any court before the expiry of six months from the commencement of the Act. sub-section 2 of the same Section provides that where a creditor files a suit for recovery of a debt before the expiry of six months from the commencement of the Act or after the agriculturist has paid or deposited the sums and instalments specified in Section 4 and during the period when he is so entitled to pay, the court shall in decreeing the suit direct the plaintiff to bear his own costs and to pay the costs of the defendant who is an agriculturist, except in cases where the claim would have been barred by limitation had no such suit been filed or when a debt is jointly due from an agriculturist and a non-agriculturist. This section provides sufficient indication to gather the intention of the Legislature. Sub-section 1 bars only applications for execution of decrees. Regarding suits there is no such bar under sub-section 2. As a matter of fact sub-section 2 contemplates the filing of suits. The only restriction is that if suits are filed before the expiry of six months from the commencement of the Act or after the agriculturist has paid or deposited the sums and instalments specified in Section 4 and during the period when he is so entitled to pay, then the court shall in decreeing the suit direct the plaintiff to bear his own costs and pay the costs of the defendant. Even for this there is an exception provided and that is in cases where the claim would have been barred by limitation had no such suit been filed or when a debt is jointly due from an agriculturist and non-agriculturist. This exception makes the position clear beyond doubt that in a case where the claim would have been barred had no suit been filed and if a suit be filed in such a case, the powers of the court are not in any way restricted to grant a decree with costs.

2. But the first contention of Mr. Krishnamurthy Iyer is that there is no provision in the Limitation Act for such applications as contemplated by Section 8 of Act XXXI of 1958 and therefore, according to him, for an application u/s 8 there is no limitation at all. For this the answer on the side of the respondent is that the application u/s 8 is in effect a suit and the order passed in such proceeding is an executable decree of a Civil Court. The respondent's learned advocate invites my attention to the several provisions of Section 8 dealing with the payment of court fee, the applicability of the provisions of the Code of Civil Procedure, the executability of the order as a decree etc. He also invites my attention to a Full Bench decision of the Madras High Court in *C.V. Muthuswami Chetty v. Official Assignee, Madras* (A.I.R. 1936 Mad. 778). In that case the Madras High Court held that Section 7, Presidency Towns Insolvency Act, was the equivalent in India of Section 72, Bankruptcy Act in England, and an application u/s 7 was equivalent to a suit for the purpose of section 3, Limitation Act, which applied the Articles of the Limitation Act to all suits. Basing on this decision Mr. Venkateswara Iyer the learned advocate of the respondent, urges that the application u/s 8 should also be treated as a suit and the Articles of the Limitation Act applying to

suits should be applied to this proceeding as well. On this, question I do not propose to pronounce any opinion, because in the view I am going to take on the next question a decision on this question may not be necessary. Moreover, this reasoning of the Madras High Court does not appear to have been accepted by a Division Bench of the Bombay High Court, which I shall refer to hereinafter, though the conclusion itself was accepted.

3. The next point urged by Mr. Krishnamurthy Iyer is that even though the suit is barred, it only means that the remedy is barred and not the right. He contends further that if the petitioner has another remedy, apart from his remedy by way of suit, he can enforce that remedy. He brings to my notice the well-known proposition of law enunciated in *Ex Parte Cawley* (34 S.J. 29) that "a debt is still "due" notwithstanding that the Statute of Limitation may have run against it, for that statute only bars the remedy and does not extinguish the debt." According to Mr. Krishnamurthy Iyer, Section 8 has conferred on the creditor an additional remedy, for which there is no period of limitation prescribed and therefore the creditor, in spite of his suit having been barred, may pursue his remedy u/s 8.

4. The Legislature does not appear to have intended to enlarge the rights of the creditor. But if there is a lacuna in the Act which results in such a consequence which could not have been in the contemplation of the legislature, even then the courts cannot in the guise of interpreting the provisions prevent that result, if the normal interpretation perforce leads to that consequence. Therefore the consideration that such a consequence would not have been intended by the legislature should not deter me from giving the natural interpretation even if it results in such a consequence. But I do not think there is any scope for all such considerations in the present case.

5. A decision of the Bombay High Court in *Raoji Bapuchand Pendharkar Vs. K.L. Bavachekar*, has been brought to my notice. In that case Chagla C.J. considered the Madras Lull Bench decision in *Muthuswami Chetty's case* (AIR 1936 Mad. 778) and disagreed with the view that the proceeding therein was a suit. The learned Chief Justice considered Section 4 of the Provincial Insolvency Act corresponding to Section 7, Presidency Towns Insolvency Act, and observed that an application under that Section was not a suit. At the same time the learned Chief Justice observed that when an application u/s 4 was made by the receiver, the court was bound to consider all the defences that were open to the party against whom the application was made and a defence that could be put forward by the party in a suit would be equally available to him in an application made by the receiver. According to me, that observation of Chagla C.J. applies to the present case as well. In this case if the creditor had filed a suit instead of making an application u/s 8 it cannot be disputed that it would have been open to the respondent to plead limitation and to plead it successfully. If the petitioner had filed such a suit he could not have obtained a decree. Can it be contended that the right which the respondent had to plead the Statute of Limitation has been lost to him, because an application is made u/s 8 instead of a suit having been

filed by the petitioner? I think not. In my opinion, when an application is made u/s 8 of the Act the court is bound to consider all the defences that are open to the debtor, against whom the application is made including the plea of limitation. Although the Limitation Act may not apply to the application, inasmuch as the defence under the Limitation Act was open to the respondent if a suit had been filed by the petitioner that defence is equally available to him in the application. In that view I hold that the claim is barred by limitation and the petitioner is not entitled to get any executable order u/s 8 fixing the instalments. The Civil Revision Petition is therefore dismissed; but, in the circumstances, I direct both parties to bear their respective costs throughout.