(1963) 01 KL CK 0008

In the High Court Of Kerala

Case No : C. R. P. No. 869 of 1961

State Bank of Travancore Ltd. APPELLANT

Vs

Ayyappan Pillai RESPONDENT

Date of Decision : 01-01-1963

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1958 — Section 15

Citation : (1963) KLJ 207

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

Bench : Single Bench

Advocate : K.C. John, for the Appellant; S. Narayanan Potti and P.P. Mathew, for the Respondent

Final Decision : Allowed

Judgement

Raghavan, J

1. In a petition u/s 15 of Act XXXI of 1958 a fourth of the estate was given to the debtor and the balance was distributed among two secured creditors, the petitioner and the respondent. The respondent had a prior secured debt of Rs. 3,000/- and the petitioner had another secured debt of over Rs. 3,000/-, which was subsequent to the debt of the respondent. The trial court in distributing the estate reduced the principal amount due to the respondent by a fourth and allowed him only Rs. 2,250/-. The rest of the estate, which came to very much less than three-fourths of the petitioner''s principal, was given to the petitioner. In appeal, the learned District Judge of Kottayam reversed that decision and granted Rs. 3,000/- to the respondent, that is the respondent''s entire principal, and the petitioner was only given the balance, which came to only four or five hundreds. A Full Bench decision of the Travancore High Court in Padmanabha Pillai Padmanabha Pillai v Ouseph Chacko (33 T. L. J. 787) was cited before the learned District Judge. That case arose under a similar provision in the Travancore Debt Relief Acts (II and III of 1116) and their Lordships of the Full Bench held that the secured debts should also be reduced in the same proportion

as the amount given to the debtor bore to the value of the entire estate. Krishnaswami Iyer C. J. observed at p. 791 of the reports:

Whatever share the amount paid to the debtor represents in its relation to the value of the entire assets, to the extent of that share, therefore, the securities of the secured creditors would get diminished and even so, the fund available for distribution to the simple creditors.

This is the only equitable way of distributing the assets. What Act XXXI of 1958 contemplates is a reduction in the entire estate to the extent of the amount given to the debtor, so that that reduction affects all the secured creditors as well. There is no point in claiming that an earlier secured creditor must get his entire debt without any reduction and the others should go without any payment at all, because the amount given to the debtor is not from any particular item or portion of the estate but from the entire estate, thus reducing the security of all the secured creditors to that extent in proportion. The Full Bench decision of the Travancore High Court lays down a very just and equitable rule and I am not able to understand why this failed to appeal to the learned District Judge. The Civil Revision Petition is therefore allowed, the order of the learned District Judge is set aside and that of the learned Subordinate Judge is restored. The respondent will pay the costs of the petitioner in this court and in the lower appellate court.

