(1954) 10 AP CK 0005

In the Andhra Pradesh High Court

Case No : S.A. No''s. 1935 and 1936 of 1950

The Bank of Bapatla Limited — APPELLANT

Vs

Manyam Biti — RESPONDENT

Date of Decision : 15-10-1954

Acts Referred:
Reserve Bank of India Act, 1934 — Section 2(e), 8, 9

Citation : (1954) 10 AP CK 0005

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : P. Satyanarayana Raju and M. Ramakrishana, for the Appellant; A.L. Narayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—These Second Appeals coming on for hearing, the Court delivered the following Judgment:

S. A. No. 7936 of 1950:

This Second Appeal arises out of O. S. No. 273 of 1948, a suit filed by the Bapatla Mutual Benefit Company Limited against the defendants for recovery of a sum of Rs. 246-2-1 claimed to be due to them under a simple mortgage dated 23rd November, 1936. The said document was executed by the 1st defendant for herself and as guardian of the 2nd defendant in favor of the plaintiff for Rs. 500.

2. The main defense raised in the case is that the debt is liable to be scaled down under the provisions of the Madras Agriculturists Relief Act (Act IV of 1938). The plaintiff contended that the debt is exempted from the operation of the Act, both under S. 4 (e) and also under S. 10 (2) (iii). Both the Courts held against the contention of the plaintiff. Hence the appeal.

3. The two points may be considered separately. S. 4 (e) of the Act reads:

Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:

(e) any liability in respect of any sum due to any Co-operative Society, including Land Mortgage Bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or any debt due to any Corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any Special Indian Law or Royal Charter or Letters Patent.

4. It is the common case that the plaintiff-company was registered under the Indian Companies Act. The question, therefore, is whether the plaintiff company is a Corporation formed in pursuance of any Special Indian Law. The learned Government Pleader contends that the said company having been registered under the Indian Companies Act, it is a Corporation formed in pursuance of a Special Indian Act. It appears to me that the words "formed in pursuance of any Special Indian law" are intended to take in companies constituted by an Act, such as a University, Corporation, Port Trust and similar other institutions formed under Special Acts. A company formed by a private arrangement and registered under the Companies Act is not a company formed under a Special Act, though registered under the Companies Act, certain statutory conditions are annexed to functioning of the said company. The decision of Horwill, J. in Boppana Rukminamma and Another Vs. Maganti Venkata Ramadas, does not strike a different note, for in that case, the question raised and decided by the learned Judge was only whether the plaintiff society was a Corporation. I, therefore, agree with the Court below that the plaintiff company is not a Corporation formed under a Special Indian Law.

5. The next question turns upon the provisions of S. 10 (2) (iii) which reads:

Any liability in respect of any sum due to any public company, as defined in the Indian Companies Act, 1913, or to any scheduled Bank as defined by S. 2 (e) of the Reserve Bank of India Act, 1934, if the interest payable in respect of the liability is not more than nine per cent per annum.

6. By reason of this provision, the provisions of Ss. 8 and 9 of the Act will not apply to a debt due to a company mentioned therein, if the interest payable in respect of the liability is more than 9 per cent per annum. Under the suit mortgage, interest is payable at 6 1/4 per cent per annum and if a default is made, it carries interest at 18 3/4 per cent per annum. The defendants made default and at the time the liability was sought to be enforced, interest at 18 3/4 per cent per annum was payable in respect of that liability. If so S. 10 (2) (iii) does not in terms apply to the said liability. But the learned Government Pleader contends that the principal liability under the document is less than 9 per cent, and therefore, the document comes with, in exemptions laid in S. 10 (2) (iii).

7. This argument, if accepted, will lead to many anomalies. The rate of interest will be changing from time to time. Before the default is made, the rate is below 9 per cent. If the default is waived, it is below 9 per cent and if default occurs, it is above 9 per cent. Even if as a matter of fact, the plaintiff is recovering interest

at 18 3/4 per cent, if the contention is correct, he should get exemption. That could not have been the intention of the Legislatures. A more reasonable construction would be that the rate of interest payable in respect of the liability at the time it is brought to be enforced should be the criterion for the application of the S. 10 (2) (iii). If so, at the time the liability was sought to be enforced the liability was carrying interest at the rate of more than 9 per cent. I would, therefore, hold that the suit liability is not covered by S. 10 (2) (iii) of the Act. I accept the conclusion arrived at by the lower Court.

8. The appeal fails and is dismissed. No costs.

Second Appeal No. 1935 of 1950.

The same point arises in this appeal also. For the same reasons, this appeal also is dismissed with costs. No leave in both.

