

(1967) 03 KL CK 0019

In the High Court Of Kerala

Case No : B.C.C. No. 70 of 1965 (In B.C.P. No. 4 of 1961)

The Catholic Bank of India Ltd., (in liquidation)

APPELLANT

Vs

George Jacob

RESPONDENT

Date of Decision : 17-03-1967

Acts Referred:

Constitution of India, 1950 — Article 14

Kerala Agriculturists Debt Relief Act, 1958 — Section 2, 4(1), 4(2), 4(3), 5(1)

Citation : AIR 1968 Ker 3

Hon'ble Judges : M.S. Menon, C.J;P.T. Raman Nayar, J;P. Govindan Nair, J

Bench : Full Bench

Advocate : Mani J. Meenattoor, for Claimant C.K. Sivasankara Panicker and P.G. Parameswara Panicker, for the Appellant; T.A. Narayanan Nair and K.S. Parameswaran Nair, for the Respondent

Judgement

M.S. Menon, C.J. and P. Govindan Nair, J.—The main controversy in this case relates to the extent of the benefit to which the respondent is entitled under the Kerala Agriculturists Debt Relief Act, 1958. The provisions of the Act to which our attention has been drawn are Clause (c) (xi) of Section 2, Sub-sections (2) and (3) of Section 4, and Sub-section (1) of Section 5.

2. The Act was passed in order to give relief to indebted agriculturists. The expression "agriculturist" is defined in Section 2(a) of the Act. It is not disputed that the respondent comes within the ambit of that definition.

3. Section 2(c) of the Act defines the expression "debt" The definition makes it clear that certain types of debts are not included within the ambit of that expression. One type of debt that is not included is specified in Section 2(c)(xi). That provision including its proviso reads as follows:--

"Any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949:

Provided that in the case of any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949, any agriculturist debtor shall be entitled to repay such debt in eight equal half-yearly instalments as provided in Sub-section (3) of Section 4, but the provisions of Section 5 shall not apply to such debt."

4. It is common ground that the debt with which we are concerned is a debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of the Act to a banking company as defined in the Banking Companies Act, 1949. The proviso, therefore, is attracted to the case.

5. The debts due from an agriculturist to a banking company as defined in the Banking Companies Act 1949, fall into three distinct categories as far as the provisions of the Act are concerned:

- (1) Any debt not exceeding Rs. 1500,
- (2) Any debt exceeding Rs 1500 borrowed under more than one transaction, and
- (3) Any debt exceeding Rs 1500 borrowed under a single transaction. The first two of three categories constitute debts as defined in the Act. The third does not.

6. The only provision in the Act which deals with the third category is the proviso to Section 2 (c) (xi) That proviso makes it clear that the sole benefit conferred on the debtor in respect of debts falling within that category is that he shall be entitled to repay his debt "in eight equal half-yearly instalments as provided in Sub-section (3) of Section 4" The question for determination is: What exactly is meant by the words as "provided in Sub-section (3) of Section 4"

7. Sub-section (3) of Section 4 reads as follows:

"The first instalment of any debt payable under Sub-section (2) shall be paid before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments shall be paid on or before the date of expiry of a period of six months from the last day on which the previous instalment was due".

When applying this sub-section to the cases covered by the proviso to Section 2 (c) (xi) the words "the first instalment of any debt payable under Sub-section (2)" should naturally be read as "the first instalment of any debt payable under the proviso to Section 2 (c) (xi)" And when so read Sub-section (3) of Section 4 will direct as follows:

"The first instalment of any debt payable under the proviso to Section 2 (c) (xi) shall be paid before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments shall be paid on or before the date of expiry of a period of six months from the last day on which the previous instalment was due,"

8. The words "as provided in Sub-section (3) of Section 4" in the proviso to Section 2 (c) (xi) of the Act refer, so far as we can see, only to the time prescribed in Sub-section (3) of Section 4 for the payment of the half-yearly instalments. In other words if we combine the proviso to Section 2 (c) (xi) and Sub-section (3) of Section 4 the proviso will read as follows:

"Provided that in the case of any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949, any agriculturist debtor shall be entitled to repay such debt in eight equal half-yearly instalments, the first instalment being payable before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments on or before the date of expiry of a period of six months from the last day on which the previous instalment was due, but the provisions of Section 5 shall not apply to such debt."

9. The contention on behalf of the respondent is that the words "the first instalment of any debt payable under Sub-section (2)" in Sub-section (3) of Section 4 will entitle a debtor coming within the proviso to Section 2 (c) (xi) to all the benefits of Sub-section (2) of Section 4 and Sub-section (1) of Section 5. The only basis for the contention is that Sub-section (1) of Section 5 is mentioned in Sub-section (2) of Section 4 and is mentioned in Sub-section (3) of Section 4.

10. Sub-section (3) of Section 4 has already been extracted Sub-section (2) of Section 4 reads as follows:

"If any debt is repaid in seventeen equal half-yearly instalments together with interest at the rate specified in Sub-section (1) of Section 5 of the principal debt outstanding at the time of each payment, the whole debt shall be deemed to be discharged.

Provided that in the case of debt due to a banking company as defined in the Banking Companies Act, 1949, the number of instalments in which the debt shall be repaid shall be 12 where the debt does not exceed one thousand and five hundred rupees and eight where it exceeds one thousand and five hundred rupees "

and the relevant portion of Sub-section (1) of Section 5.

(b) For determining the amount of a debt due to a banking company as defined in the Banking Companies Act, 1949, for the purpose of payment under this Act, notwithstanding anything contained in any law, contract or decree or order of court,--

(i) interest shall be calculated at the rate applicable to the debt under the law contract or decree or order of court under which it arises or at five per cent per annum simple interest, whichever is less up to the date of publication in the Gazette of the Kerala Agriculturists Debt Relief (Amendment) Act 1960, and at

the rate applicable to the debt under the law, contract or decree or order of court under which it arises or at seven per cent per annum simple interest whichever is less, with effect on and from the date of the publication in the Gazette of the said Act; but nothing in this clause shall be deemed to require a re-appropriation of interest already paid and credited before the said date of publication;

(ii) not more than one-half of the principal shall be payable towards interest which accrued due till the commencement of this Act." We see no force in this submission.

11. It has to be noted that the application of Section 6 is specifically excluded by the wording of the proviso to Section 2 (c) (xi) when it says "but the provisions of Section 6 shall not apply to such debt". It has also to be noted that the word "debt" occurring in Sub-section (2) of Section 4 and Sub-section (1) (b) of Section 5 can only refer to a debt as defined in the Act and not to a debt which has been specifically excluded from the ambit of the definition of that expression, as for example, a debt coming u/s 2 (c) (xi) of the Act. The reference to debts due to a banking company as defined in the Banking Companies Act, 1949 in Sub-section (2) of Section 4 and Sub-section (1) (b) of Section 5 must, therefore, be to the debts falling under the first or the second of the three categories mentioned in paragraph 5 above

12. Counsel for the respondent drew our attention to the following passage in *Kunjamma Karthiani Amma Vs. Lord Krishna Bank Ltd.*,

"Sub-section (3) of Section 4 is not intelligible without reference to Sub-section (2) and is not to be read in isolation from it. The exclusion itself of a debt due to a banking company exceeding Rs. 1500/- and arising out of a single transaction in Section 2 (c) (xi), is subject to the proviso to it. That proviso declares that the instalments shall be as provided in Section 4(3) The provision in Section 4(3) relates, not only, as contended, to the points of time at which the several instalments are due, but also to the amount of each instalment by reference to Section 4 (2). Section 4 (2) prescribes the amount of the debt on which interest is to be computed by reference to the principal debt outstanding at the time of each payment as well as the rate of interest by reference to that as specified in Section 5 (1). It is no doubt true, that the provisions of Section 5 are excluded by the proviso, but such exclusion itself is subject to and has to be harmonised with the inclusion of Section 4 (3). Section 5 (1) does not provide the rate of interest merely, in relation to a debt due to a banking company, besides imposing a bar on re-appropriation by Clause (1) it also prescribes by Clause (ii) the maximum amount of interest which shall be payable till the commencement of the Act. The reference to Section 5 in Section 4 (2) is only to the rate of interest. The result is, that in order to give effect to Section 4 (3), Section 4 (2) has to be written into it, to give effect to Section 4 (2) the rate of interest in Section 5 (1) has to be written into Section 4 (2) and to give effect to the proviso Section 4 (3) as so expanded has to be written into it." We must say, with respect, that we are unable to accept as correct the reasoning or the conclusion embodied in the

passage extracted above.

13. A further contention of the respondent is that even if our view is as stated above, the special treatment given in the Act to debts coming under the third of the three categories mentioned in paragraph 6 is violative of the equality guaranteed by Article 14 of the Constitution. We are not impressed by this argument.

14. The proposition that there should be no discrimination either in the privileges conferred by a statute in the liabilities imposed by it is not a proposition that is absolute in its application. Societies are unequal in their basic structure and normal manifestations and a reasonable classification, therefore, is not only permitted but is essential for the achievement of the equality that is desired and the progress that is necessary. All that can be said is that the classification effected should not be arbitrary in character and that it should be based upon differences pertaining to the subject and the purpose of the enactment concerned.

15. The Supreme Court has stated the law on the subject in the clearest possible terms in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . That decision sums up the position as follows:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself:

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation: and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain

individuals or corporations to hostile or discriminating legislation."

16. IN applying these propositions one should of course remember the warning administered by Mr. Justice Subba Rao in his Srinivasa Sastri Lecture on Fundamental Rights. He said:

"Courts evolved the principle of classification to give a practical content to the doctrine of equality. It shall be remembered that a citizen is entitled to the fundamental right of equality before the law and that the doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the said doctrine. Undue emphasis on the doctrine of classification or anxious or sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the Article of its glorious content. The process would inevitably end in substituting the doctrine of classification for the doctrine of equality, and the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification."

17. With due regard to the warning administered and the subsidiary character of the doctrine of classification we think we should still say that banking Companies form a class by themselves, that there is a rational basis for the differential treatment impugned before us, and that the differential treatment is consistent with the subject and the purpose of the Kerala Agriculturists Debt Relief Act. 1958 The rates of interest that banks charge are usually lower than those of the private or professional money-lender The usurious rates of the private or professional money-lender have been the bane of our rural economy, and it is the banking companies and the co-operative credit institutions that have ensured a measure of relief.

18. The advance by a bank of a sum exceeding one thousand five hundred rupees under a single transaction will normally be to a person who does not belong to the poorer sections of the State. This also will provide a rational basis for a differential treatment of such debts

19. It has also to be remembered that banking institutions lend other people's money, the money they borrow from their customers through the medium of fixed deposits and current accounts. In order to attract such deposits and accounts they have to pay a reasonable rate of interest; and the rate of interest at which they lend is determined by the rate of interest at which they borrow plus the incidental charges of management and supervision. A bank thus occupies a dual position: of a debtor to those who invest money with the bank and of a creditor to those who borrow from it. Any substantial inroad into the rate of interest that banks charge, in these circumstances, cannot but endanger their financial position and reduce their utility as an instrument of credit

20. Counsel for the respondent drew our attention to State of Rajasthan Vs. Mukandchand and Others, , and submitted that if an exclusion or exception is discriminatory, it is the excluding or the excepting clause--and not the statute itself--that should be struck down as violative of Article 14 of the Constitution. In

the view we have taken it is not necessary to evaluate this submission.

21. In the light of what is stated above we must hold that the claim made by the Liquidator is justified, and order the payment of the amount claimed. We do so; but in the circumstances of the case without any order as to costs.

22. The present short title of the Banking Companies Act, 1949, is the Banking Regulation Act, 1949. The change was effected by section 11 of Central Act 23 of 1965 which came into force on 1-3-1966. Sub-section (2) of Section 11 reads as follows:

"Any reference to the Banking Companies Act, 1949 in any law for the time being in force, or in any instrument or other document shall be construed as a reference to the Banking Regulation Act, 1949."

Raman Nayar, J.

23. I agree, And my excuse for pronouncing this separate judgment, I had already prepared--"a poor thing, yet mine own"" is not excuse enough -- is that it deals with certain aspects of the matter in greater, and I trust not altogether unnecessary detail.

24. Two defences are taken by the debtor in this proceeding u/s 45-D of the Banking Regulation Act for the recovery of a decree debt due to a banking company that is being wound up. The first is that, on a proper construction of the statute, the debtor, who is admittedly an agriculturist within the meaning of Act 31 of 1958, is entitled to the benefits of Sections 4 and 5 thereof notwithstanding that the debt is not a debt as defined by Section 2(c), falling as it does within the exclusion in Clause (xi) thereof. The second is that this exclusion in favour of banking companies is discriminatory and that, therefore, the excluding clause, not mark you the statute itself, must be struck down, notwithstanding that to take away an exclusion is to add, and that the result would be to extend the provisions of the Act through the judicial process to a subject-matter which the legislature expressly excluded from its scope. The first defence it is said, is directly covered by three Division Bench rulings of this court. *State Bank of Travancore v S. Musaliyar* 1964 Ker LT 796, *Kunjamma Karthiani Amma Vs. Lord Krishna Bank Ltd.*, and it is claimed that the decision in *State of Rajasthan Vs. Mukanchand and Others*, is authority for the second.

25. It will be necessary to consider the following provisions of Act 31 of 1958:

"2. Definitions - In this Act unless the context otherwise requires.

* * * *

(c) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract or under a decree or order of any Court, or otherwise, and includes any debt or balance of debt due at the commencement of this Act under the Madras Indebted Agriculturists (Re-payment of Debts) Act,

1955 or the Travancore-Cochin Indebted Agriculturists Relief Act, 1956, but does not Include--

* * * *

(xi) any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Article 19:

Provided that in the case of any debt exceeding one thousand five hundred rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949, any agriculturist debtor shall be entitled to repay such debt in eight equal half yearly instalments as provided in Sub-section (3) of Section 4, but the provisions of Section 5 shall not apply to such debt;

* * * *

4. Payment of debt in instalments.--

(1) Subject to the provisions of Sub-section (5), notwithstanding anything contained in any law or contract or in any decree or order of court, any debt may be discharged in the manner specified in Sub-sections (2) and (3).

(2) If any debt is repaid in seventeen equal half yearly instalments together with interest at the rate specified in Sub-section (1) of Section 5 on the principal debt outstanding at the time of each payment, the whole debt shall be deemed to be discharged.

Provided that in the case of debts due to a banking company as defined in the Banking Companies Act, 1949, the number of instalments in which the debt shall be repaid shall be twelve where the debt does not exceed one thousand and five hundred rupees and eight where it exceeds one thousand and five hundred rupees.

(3) The first instalment of any debt payable under Sub-section (2) shall be paid before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments shall be paid on or before the date of expiry of a period of six months from the last day on which the previous instalment was due.

* * * *

5. Interest payable on debts and rents--(1)(a) For determining the amount of a debt other than a debt due to a banking company, as defined in the Banking Companies Act, 1949, for the purpose of payment under this Act, notwithstanding anything contained in any law, contract or decree or order of court,

(i) interest shall be calculated at the rate applicable to the debt under the law, custom, contract or decree or order of court under which it arises or at five per

cent per annum simple interest, whichever is less, and credit shall be given for all sums paid or credited towards interest and only such amount as is found outstanding, if any, as interest thus calculated, shall be deemed payable together with the principal amount or such portion of it as is due; and

(ii) notwithstanding anything in Clause (i) not more than one-half of the principal shall be deemed payable or to have been payable towards interest which accrued due till the commencement of this Act.

If the amount paid or credited towards interest exceeds the amount payable under Clause (i) or Clause (ii) such excess shall be credited towards the principal and the balance If any, and the future interest alone shall be recoverable.

(b) For determining the amount of a debt due to a banking company as defined in the Banking Companies Act, 1949, for the purpose of payment under this Act, notwithstanding anything contained in any law, contract or decree or order of court,--

(i) interest shall be calculated at the rate applicable to the debt under the law, contract or decree or order of court under which it arises or at five per cent per annum simple interest, whichever is less, up to the date of publication in the Gazette of the Kerala Agriculturists Debt Relief (Amendment) Act, 1960, and at the rate applicable to the debt under the law, contract or decree or order of court under which it arises or at seven per cent per annum simple interest, whichever is less, with effect on and from the date of the publication in the Gazette of the said Act; but nothing in this clause shall be deemed to require a re-appropriation of interest already paid and credited before the said date of publication;

(ii) not more than one-half of the principal shall be payable towards interest which accrued due till the commencement of this Act.

(2) * * * *"

26. In view of the express disclaimer contained in the words, "but the provisions of Section 5 shall not apply to such debt", occurring in the proviso to Section 2(c)(xi) -- which it may be noted is not really a proviso to the definition but is an independent substantive provision in respect of debts falling within the exclusion in the clause -- the claim to the benefits of Section 5 was abandoned, and wisely abandoned, in the course of the hearing and the first defence is now confined to the claim to the benefit of Sub-section (2) of Section 4 which, it is contended, applies proprio vigore, or, if that be not so, is attracted by Sub-section (3) of Section 4 which in turn it attracted by the reference thereto in the proviso to Section 2(c)(xi). And in this connection it is pointed out that Sub-section (2) of Section 4 only refers to Section 5 for the purpose of specifying a rate of interest. It says that the rate shall be that specified in Sub-section (1) of Section 5 but does not in any way call for an application of Section 5. Therefore an application of Sub-section (2) of Section 4 does not involve an application of Section 5 and would not offend the disclaimer in the proviso to Section 2(c)(xi). That, of course

is so.

27. The precise benefit claimed by the debtor as flowing from an application of Sub-section (2) of Section 4 is that what is recoverable from him is only the outstanding principal (as "principal" is defined in Section 2(h), namely, the principal actually advanced without any addition of interest to principal in accordance with the terms of the contract) and the outstanding interest on such principal, reckoned at the rate specified in Sub-section (1) of Section 6 from the very inception of the debt.

28. The Division Bench rulings of this Court already referred to are directly in "point and undoubtedly support this view. But, with great respect, I do not think they were rightly decided. Assuming for the moment that Sub-section (2) of Section 4 applies to a debt excluded from the definition of "debt" in Section 2(c) (xi), an excluded debt as I shall hereafter call it the result, I apprehend, is not what has been stated. In my view, what Sub-section (2) of Section 4 provides for is the payment in instalments of the debt outstanding at the commencement of the Act. It also specifies the interest payable for the period over which the instalments are spread. It has nothing to do with the determination of the quantum of the debt at the commencement of the Act, in other words, with what sum is payable by way of principal and what sum by way of interest accrued due before the commencement. That, but for Sub-section (1) of Section 5, would have been the debt outstanding in accordance with the contract or decree, both in respect of principal and interest--See in this connection *Kochunny Mathoo v. Travancore Forward Bank Ltd* 1960 Ker LT 373, paragraph 6 of which, if I may say so with respect, correctly sets out the effect of Sub-section (2) of Section 4 of the original Act (before its retrospective amendment by Act 2 of 1961) which, so far as this question is concerned is no different from the present Sub-section (2)

It is Sub-section (1) of Section 5, which does not apply to an excluded debt, that provides for the determination of the amount of a debt for payment under the Act, in other words, which determines what is the quantum of the debt which Sub-section (2) of Section 4 permits to be paid in instalments. That sub-section imposes a ceiling on interest and limits the principal to what I might call the Act principal while, at the same time, providing for the adjustment of any payments already made, which, it may be noted Sub-section (2) of Section 4 does not do. In most cases the application of Sub-section (1) of Section 5 would result in a scaling down of the debt. That scaled down debt is the debt payable under the Act, and is the debt payable in instalments under Sub-section (2) of Section 4

29. As pointed out in *Varghese v. Thomas* 1967 Ker LT 10 AIR 1968 Ker 1 (FB) Sections 4 and 5 provide two distinct and separate reliefs in the matter of the repayment of a debt by an agriculturist. Sub-section (1) of Section 5, by providing a ceiling on interest, and by limiting principal to what I have called the Act principal, scales down the debt payable, while Section 4 (which should logically come after and not before Section 5) provides that even the debt as so

scaled down may be paid in instalments As I have already stated, the rate of interest specified in Sub-section (2) of Section 4 is in respect of the interest payable for the period over which the instalments are spread, and that sub-section has nothing whatsoever to do with the interest or for that matter the principal payable at the commencement of the Act, in other words, with the quantum of the debt payable at that time. That is determined by the contract or decree, the amount being scaled down under Sub-section (1) of Section 5 in the case of debts (namely, debts as defined by Section 2(c)) to which that provision applies.

Hence, even if Sub-section (2) of Section 4 applies to the excluded debt we are here considering, the only relief the debtor would get would be the benefit of being liable to pay interest only on the Act principal outstanding, at the rate specified therein, for the period over which he is allowed to pay the debt in instalments He will not get any relief either in respect of interest accrued due before that, or in respect of the principal payable which, in terms of the contract, includes arrears of interest added on to the principal from time to time.

30. But then it seems to me quite clear that Sub-section (2) of Section 4 cannot apply to an excluded debt. The disclaimer in the, proviso to Section 2(c)(xi) with regard to Section 5 is entirely by way of abundant caution and in no way implies that the other provisions of the Act apply notwithstanding that the debt is not a debt within the meaning of the Act. An excluded debt is not a debt as defined by Section 2(c), and, unless the context otherwise requires, the word, "debt", wherever it occurs in the Act, must be read as meaning a debt as so defined. It is conceded that there is nothing in the context of the body of Sub-section (2) of Section 4 that compels one to read the word, "debt" occurring therein otherwise than as defined by Section 2(c), but it is said that the context of the proviso thereto compels this and that therefore the word must be read in the body of the sub-section also in the same way.

31. It was at first suggested that the word, "debt" as occurring in Sub-section (2) of Section 4 means a debt in the ordinary sense of the word, not a debt as defined by Section 2(c) If that be so, it would include a debt due from a non-agriculturist and also a debt incurred after the commencement of the Act apart from including the excluded debts in clauses (i) to (xi) of the exclusions in Section 2(c) This, together with the construction placed on behalf of the debtor on Sub-section (2) of Section 4, would, of course, make nonsense of the statute, and therefore, the next suggestion was that the word "debt" occurring in Sub-section (2) of Section 4 must be read as meaning a debt as defined by Section 2(c) but without the exclusion in Clause (xi) thereof (making nonsense only of the exclusion), the reason stated being that this is the only sense in which the word "debt" can be understood in the context of the proviso

32. I do not know that it is permissible to modify the meaning of a word that has been defined by a statute, because of the compulsion of the context, otherwise than by giving the word its true and natural meaning, in other words, to give the

word a meaning which is neither its true meaning nor its assigned meaning. However, I shall assume that it is. But, the reason given for reading the word, "debt" occurring in the proviso to Sub-section (2) of Section 4 in the modified sense suggested is fallacious in that it proceeds on the mistaken assumption that the proviso necessarily covers debts coming within the exclusion in Section 2(c) (xi). That it does not. The proviso deals with debts due to banking companies, both debts exceeding and those not exceeding Rs. 1500. Now such a debt, not exceeding Rs. 1500, does not, of course, come within the exclusion in Section 2(c)(xi); at the same time it is not every such debt exceeding Rs. 1500 that comes within the exclusion. To attract the exclusion, the debt exceeding Rs. 1500 must have been borrowed under a single transaction and it must have been due to a banking company before the commencement of the Act. If a debt exceeding Rs. 1500 due to a banking company was borrowed under more than one transaction, or was not due to a banking company before the commencement of the Act, it does not come within the exclusion and is a debt as defined by the Act. It is obviously for such debts, namely, debts as defined by the Act and due to a banking company that the proviso to Sub-section (2) of Section 4 makes provision according as the amount of the debt exceeds or does not exceed Rs. 1500; and there is nothing in the context of the proviso that compels one to read the word, "debt" therein as meaning something other than a debt as defined by the Act.

For a debt due to a banking company from an agriculturist debtor which is not a debt as defined by the Act, it is the proviso to Section 2(c)(xi) that makes provision --this proviso it may be noted, uses the word, "debt" in its ordinary sense and not as defined by the Act--and the provision in the proviso to Sub-section (2) of Section 4 that a debt exceeding Rs. 1500 due to a banking company shall be repaid in eight equal half yearly instalments instead of the seventeen mentioned in the body of the sub-section is not a repetition of the provision in the proviso to Section 2(c)(xi) which says that an excluded debt due to a banking company shall be repaid in eight equal half yearly instalments. The former provides for debts due to banking companies which are debts within the meaning of the Act while the latter provides for such debts which are not debts within the meaning of the Act.

33. It follows that Sub-section (2) of Section 4 does not apply of its own force to an excluded debt. Nor do I find it easy to understand how the proviso to Section 2(c) (xi) can have the effect of attracting the subsection through Sub-section (3) of the section. It seems to me that all that is meant by the proviso when it says that the "debtor shall be entitled to repay such debt in eight equal half yearly instalments as provided in Sub-section (3) of Section 4" is that the instalments shall be paid at the times specified in that sub-section. For, all that that sub-section does is to specify the times at which the instalments payable under Sub-section (2) are to be paid. That is the only provision it makes and it provides for nothing more. It is Sub-section (2) and not Sub-section (3) that provides for the number of instalments and for determining the interest payable with each

instalment, and to say that a debt may be repaid in eight equal half yearly instalments as provided in Sub-section (3) of Section 4 is not to say that the quantum of each instalment is to be fixed with reference to Sub-section (2) any more than that the number of instalments is to be so fixed. Surely, sub Section (3) of Section 4 does not provide that debts not payable under Sub-section (2) of the section are debts so payable. There is no question of reading Sub-section (3) of Section 4 in isolation. In the case of debts payable under Sub-section (2) of Section 4, it has to be read with that sub-section; and in the case of debts payable under the proviso to Section 2(c)(xi) it has to be read with that proviso. It seems to me that the true way of reading sub section (3) of Section 4 for the purpose of the proviso to Section 2(c)(xi) would be as if the sub-section read:

"The first instalment of any debt payable under the proviso to Section 2(c)(xi) shall be paid before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments shall be paid on or before the date of expiry of a period of six months from the last day on which the previous instalment was due."

34. It follows that the only benefit that the debtor in this case is entitled to is the benefit of paying the debt as decreed, in eight instalments as provided by the proviso to Section 2(c)(xi) at the times specified in Sub-section (3) of Section 4. But since the date for paying the last of these instalments has long since* expired this is no longer of any practical significance

35. I might add that under the original Act the reference in the proviso to Section 2(c) (xi) which did not provide for the number of instalments was to Sub-section (2) of Section 4 which, as it then stood, virtually comprised the present Sub-sections (2) and (3) without the proviso to the former. The excluded debt therefore got the benefit more or less of both Sub-sections (2) and (3) of the present Section 4 and the result was, as I have already said, as set out in 1960 Ker LT 373. But now, as we have seen, the benefit of Sub-section (2) is not available one of the objects of the amending Act, Act 2 of 1961, was to curtail the benefits given to the debtor by the original Act in so far as debts due to banking companies were concerned and the debtor must pay in the eight instalments specified in the proviso to Section 2(c)(xi) with interest as provided by the contract or decree for the period over which the instalments are spread. This the amendment has made quite clear by splitting the old Sub-section (2) of Section 4 into the present Sub-sections (2) and (3) and by confining the reference in the proviso to Section 2(c)(xi) to Sub-section (3) of Section 4. This surely rules out the application of Sub-section (2) of Section 4.

36. So far as the second defence is concerned it seems to me that the exclusion in the impugned provision in Section 2(c)(xi) is based on a classification that is eminently just and is in no way discriminatory, and I see nothing in State of Rajasthan Vs. Mukanchand and Others, that requires me to take a different view. That decision was concerned with an entirely different statute, namely, the Rajasthan Jagirdars' Debt Reduction Act, dealing with an entirely different class

of debtors. Act 31 of 1958 was enacted to give relief to indebted agriculturists in the State of Kerala, and it is notorious that they stood in need of this relief because of their exploitation by money-lenders whereas the Jagirdars of Rajasthan stood in need of relief by reason of the resumption of their Jagirs and their consequent impoverishment. Now, this exploitation of the agriculturist was effected not merely by taking advantage of his dire need for money to impose extortionate terms with regard to interest and the like, but lay also in such non-apparent abuses as the deduction of interest in advance at a higher rate than that specified in the contract, and not giving due credit to payments made.

It is on the assumption, which the legislature could legitimately make, that such exploitation would not exist in the case of the exclusions mentioned in Section 2(c) that those exclusions are based. With particular reference to a banking company, it may be assumed that the rate of interest charged by it would be reasonable, that its books and accounts are truly and properly kept, and that the transaction is no different from what it purports to be. Moreover, an agriculturist who borrows money from a banking company, especially one who borrows more than Rs. 1500 under a single transaction, is not an ordinary agriculturist. He would be richer than an ordinary agriculturist more or less in the same position as an excluded agriculturist u/s 2(a) and would not stand in need of relief to the same extent as an ordinary agriculturist. The transaction also would savour more of a commercial transaction. Then, in relieving a person of a burdensome obligation, it is proper to consider whether that would be fair to the obligee who might be in a worse position and this is an additional consideration underlying Clauses (iv), (v) and (viii), and, I think, also (xi) of the exclusion in Section 2(c). For, the money lent by a banking company is money put in by its depositors (though, of course, legal title is with the company) and the result of scaling down all debts due from agriculturists to a banking company dealing largely with agriculturists might well be the failure of the banking company and the deprivation of the depositors, many of whom might be poorer men than the borrowers, of their money. Moreover, the interests of the public as a whole must outweigh those of a section thereof, however important, like agriculturists, and there can be no doubt that the failure of a banking company adversely affects the interests of the public as a whole. Public interest also seems to inform the classification in Clause (xi) as it does that in Clauses (i) and (ii) of Section 2(c).

37. I do not think that the exclusion in Clause (xi) of the exclusions in Section 2(c) is discriminatory. And I might add that I do not regard the decision of the Supreme Court already referred to as authority for the proposition that, if an exclusion or exception is discriminatory, it is the excepting or excluding clause, and not the statute itself, that has to be struck down. It is true that the exclusion there impugned was held to be discriminatory, but nowhere in the judgment is it said that the consequence is that the excluding clause should be struck down. The effect of striking down an exclusion or an exception would be to extend the provisions of the statute to the excluded subject-matter, in other words, for the court to legislate in respect of a subject-matter which the legislature expressly

excluded from the scope of the statute,

Supposing, for example, the definition of "debt" in Section 2(c) were in a different form, and, instead of giving a general definition, with certain exclusions attached to it, has positively enumerated the classes of debts meant by the word, "debt". And supposing it was found that the omission of certain other classes of debts amounted to discrimination attracting Article 14 of the Constitution. Would the court then write these omitted classes of debts also into the definition so that the provisions of the statute would apply to them as well? Or would it strike down the statute itself as discriminating unfairly against the creditors to whom the debts included within its scope are due? Why should the position be different when the omission is in the form of an express exclusion? Or again, supposing the court were to find that the Act was discriminatory in that it confined its favours to agriculturist debtors, or rather (since it is not so much the discriminatory favour as the corresponding discriminatory disfavour if any, that attracts Article 14) its disfavours to the creditors of such debtors, there being no rational classification between such debtors and creditors on the one hand and other debtors and creditors on the other, Would the court then set about striking out the words in the statute that have the effect of limiting its application to agriculturist debtors so as to make it applicable to all classes of debtors? Or would it strike down the statute itself thus making its benefits available to none? Indeed I should have expected this objection of unconstitutional discrimination to be taken by an included creditor rather than by an excluded debtor.