courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 10/09/2026

(1957) 11 AP CK 0027

In the Andhra Pradesh High Court

Case No : Appeal No. 343/4 of 1352 F

Trimbak Lal APPELLANT

Vs

Chatrik Veeranna (sic)d Others RESPONDENT

Date of Decision : 26-11-1957

Acts Referred:

Jagirdars Debt Settlement Act, 1952 — Section 11

Citation : AIR 1958 AP 361

Hon'ble Judges : K. Subba Rao, C.J;Ranganadham Chetty, J;P. Satyanarayana Raju, J

Bench : Full Bench

Advocate : Sadasiva Rao, for the Appellant; Sadasiva Rao for 1st Respondent in Cross Appeal and Jaleel Ahmed for Respondents Nos. 6 to 8, for the Respondent

Judgement

K. Subba Rao, C.J.—I have had the advantage of reading the judgment prepared by my learned brothel, Ranganatham Chetty J. and I agree with him.

P. Satyanarayana Raju, J.

2. I agree.

Ranganadham Chetty, J.

3. These are two cross-appeals arising from a decree of the Court of the Sadar Adalat Medak, in which the plaintiff claimed damages, to the extent of Rs. 13,666-7-0 against the 1st defendant and Rs. 2,352-12-6 against defendants; 2 to 4. A decree was passed against the 1st defendant for Rs. 5.828-12-0 and against defendants 2 to 4 for Rs. 2,205-11-8.

4. The 5th defendant was impleaded as a proper party inasmuch as he and the plaintiff were jointly entitled to damages but the 5th defendant declined to join the plaintiff in filing the suit. The plaintiff''s claim was limited to his own share of the damages.

5. The suit claim arose thus. The 1st defendant''s father, Raja Mohanlal, was a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-...

Jagirdar He was the owner of a village called Sargapur,. He granted a licence to the plaintiff and the 5th defendant Narasinga Rao jointly for a period of ten years. The rent reserved was Rs. 11,850/-per year. A sub-lease was granted for annual rent of Rs. 3,850/- to defendants 2 to 4. The Jagirdar repudiated the contract during the subsistence of the licence and collected from the "Shikmidars" the amounts which they were liable to pay to the plaintiff and the 5th defendant, who became thereby entitled to damages. The suit was laid for plaintiffs half share of the claim as aforesaid.

6. Inasmuch as the suit was decreed by the lower Court only for a part of the claim, each side has preferred an appeal. "When the appeals came up for hearing before Ansari and Kumarayya JJ., a preliminary objection was raised by the debtor which, if upheld, would result in the debtor''s appeals being allowed and the creditor''s, cross-appeal dismissed.

7. The point urged by the debtor was this. The 1st defendant is a Jagir governed by the Hyderabad Jagirdars Debt Settlement Act (No. XII of 1952). After the abolition of the Jagirs in the Hyderabad State under the Jagir, Abolition Regulation, this Act was passed with a view to effect a conciliation of the debts of Jagirdars. Under S. 11 of the Act, either the debtor or the creditor could make an application to a Board" constituted under the Act for settlement of the debts. The application should be in a prescribed form signed, verified and presented in the prescribed manner. Under S. 22 (1) a drastic sanction for non-submission of the application aforesaid has been provided. The debt becomes extinguished altogether.

8. But where the debt is the subject-matter of a pending suit, appeal or execution or other proceeding, an exception has been made. S. 25(1) comes into operation and the suit or the appeal or the execution and other proceeding has to be transferred by the Court concerned to the Debt Settlement Board under the conditions or circumstances set out in S. 25 (1). It is on the interpretation of Ss. 25 (1) and 22 (1) that the parties to the present appeals are at variance..

9. In F. A. 20/1 of 1953-54 (Andh-Pra) (A), (not reported) a Division Bench of this Court construed S. 25 (1) as enabling the Court to consider the two questions whether the defendant is a debtor and whether the debt is more than Rs. 5,000/-. The claim decreed having been more than Rs. 5,000/-, the case was transferred to the Board.

10. In the present appeals, which came up before Ansari and Kumarayya JJ., their Lordships doubted the correctness of the aforesaid interpretation of S. 25 (1) in view of the wording of S. 22 (1) and have referred the two questions set out below for consideration by the Full Bench:

(1) Does S. 25 (1) of the Jagirdars Debt Settlement Act authorise Courts to transfer pending suits, appeals or applications, where the total amount of the debts involved in the pending cases is more than Rs. 5,000/-?

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-…

(2) If the answer to the first question be in the affirmative, do the provisions in S. 22 (1) bar exercise of the powers under S. 25 (1) because of the failure of the creditor or debtor to apply to the Board within time?

In the Division Bench case referred to above, their Lordships Manohar Pershad and Srinivasachari JJ. observed:

The only other provision in the Act is S. 25 which refers to the powers of the Court to transfer the case to the Board, provided the Court is satisfied that the debt claimed is more than Rs. 5.000/- and the person from whom the debt is claimed is a debtor... Section 25 (1) refers to all pending proceedings.

Admittedly, this suit was not pending when the Act came into force. As a matter of fact when the Court was considering the matter, the case was pending before, it. We are therefore of the opinion that the court below ought to have transferred the suit under S. 25 (1) of the Act. In the present case, the debt is admittedly more than Rs. 5.000/-. So, the first condition that the debt is more than Rs. 5,000/- is fulfilled. As regards the other condition whether the defendants are debtors or not, that is a matter which has to be determined under S. 24 (1) (a).

The question is whether the interpretation of 6. 25 (1) is correct. Before analysing the relevant provisions of the Act, certain broad features of the Debt Settlement Act have to be noticed. The object, of course, is that the jagirdars, who find themselves in embarrassed circumstances financially as a result of the abolition of their Jagirs, should be enabled to effect a settlement with their creditors, if possible, failing which the Board Itself will effect an equitable adjustment. If the settlement is arrived at, the debtor, i e., the Jagirdar or any of his creditors within 30 days from the date of the settlement, can make an application to the Board for recording it, under S. 15 (1) of the Act. If the Board is satisfied that the settlement is bona fide, voluntary and not fraudulent, it would be recorded and certified. The settlement thus declared is binding upon both the parties and can be enforced.

11. If no settlement is arrived at, the debtor or his creditor may file an application under S. 11 in the prescribed manner. The Board is empowered under S. 18 to deal only with cases where the total indebtedness of the Jagirdar is not less than Rs. 5,000/-.

12. When the application under S. 11 come up for hearing, the Board has to decide, as preliminary issues, two points under S. 24:

(a) whether the person for the settlement o(sic) whose debts the application has been made is a(sic) debtor; and

(b) whether the total amount of debts du(sic) from such person on the date of the application is or exceeds Rs. 5,000/-.

The words "is or exceeds" have the same meaning and significance as "not less than." Some times the Act uses the positive form as in S. 2 and at other times

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-…

the negative expression 8 in Ss. 18, 25 and 26. The above is the procedure on a regular application under S. 11 being file for settlement of "debts" which include decree debts as well under the definition in S. 2 (e(sic) What then is the position when a suit or a appeal is pending? Section 25 provides for the procedure thus:

25. (1) All suits, appeals, applications f(sic) execution and proceedings other than revision in respect of any debt pending in any civil revenue court shall, if they involve the question whether the person from whom such debt due is a debtor and whether the total amount of debts, due from him on the date of the application is less than Rs. 5,000/- be transferred the Board.

(2) When an application for adjustment debts made to a Board under S. 11 or a statement submitted to a Board under S. 21 include a debt in respect of which a suit, appeal, application for execution or proceeding other the revisional is pending before a civil or reven(sic) court, the Board shall give notice thereof to su(sic) other court. On receipt of such notice, su(sic) other court shall transfer the suit, appeal, a(sic) plication or proceeding, as the case may be the Board.

(3) When any suit, appeal, application proceeding is transferred to the Board under si(sic) section (1) or sub-section (2) the Board shall proceed as if an application under S. 11 had be made to it."

Thus, in regard to all pending legal proceedings a transfer to the Board is inevitable, if they volve:

(a) a question whether the person fr(sic) whom the debt is claimed is really a debtor; a(sic)

(b) a question whether the total amount debts due on the date of the application un(sic) S. 11 is less than Rs. 5,000/-.

The Courts are not called upon, nor do they h(sic) the power, to decide any of the questions. (sic) two questions have to be left over for decision the Board as preliminary issues under S. 24. The function of the Court is limited merely the ascertainment whether the two questions involved or arise in the suits, appeals or ot(sic) proceedings pending before them.

Their Lordships Manohar Pershad and (sic)nivasachari JJ.. in F. A. 20/1 of 1953-54 (Andhra Pra.) (A), (unreported) cited before us, h(sic) taken the view that it is the Court that has satisfy itself, i. e., to decide the 2nd quest before transferring. With great respect, I unable to subscribe to this view. I am cles(sic) of the opinion that there is no error in the of the expression "is less than Rs. 5,000/-" occurring in S. 25(1).

It is simply the counterpart of the other excision used in S. 24, ''is or exceeds Rs. 5,000/-''. (sic)e meaning and connotation are the same (sic)ugh uniformity in the wording would have (sic)de the Act more elegant.

13. On the first question referred to us. therefore, I hold that S. 25 (1) authorises Civil Revenue Courts to transfer to the Board pending suits, appeals,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-…

execution applications proceedings other than revisional in which two questions arise (a) whether the person (sic)n whom the debt is claimed is a debtor; and whether the total amount of debts due from is less than Rs. 5,000/- or Rs. 5,000/- or more. It is not for the court concerned to decide (sic)er of the questions. It has merely to trans(sic) the proceedings leaving the decision of the aforesaid questions to the Board under S. 24 (1).

14. The next question referred to us turns the interpretation of S. 22 (1), the relevant on of which stands thus:

Even debt due from a debtor in respect of (sic)h no application has been made under S. within the period specified in the said S. 11 be extinguished.

Jagirdars Debt Settlement Act, 1952, (No. of 1952) came into force on 18-3-1952. Under notification dated 2-10-1952, six months time allowed for filing a petition under S. 11. subsequent notifications extended the time upto 1953. In the appeals under consideration (sic)er party filed an application under S. 11 the debtor, as the appellant, urged before Division Bench that by operation of the im(sic)ive provision of S. 22 (1) the entire debt has the extinguished.

He asked for his own appeal being allowed the cross-appeal by the creditor dismissed, have given our careful consideration to this (sic)on and hold that there is no force in the applicant''s contention.

15. Section 22 (1) deals with the effect of it in filing a formal petition for the settlement of debts under S. 11. What is dealt with the said S. 11 is simply debts which are the subject-matter of pending legal proceed suits. appeals or execution proceedings. The category is covered by S. 25.

The learned advocate for the appellant main that the ambit of the annihilating provision 22 (1) is all embracing irrespective of the (sic)n whether the debts have been sued for (sic). According to. him, all that matters is (sic)er a formal application tinder S. 11 has made. But what is overlooked is the ex(sic)wording of CI. 3 of S. 25 which dispenses the need for an overt application under S. treats the very pendency of the proceeding the Court as tantamount to an application under S. 11. CI. (3) stands thus:

When any suit, appeal, application or pro(sic) is transferred to the Board under Sub-s. sub-s. (2). the Board shall proceed as if application under S. 11 had been made to it." words "as if" simply mean "as the Board have proceeded if an application under (sic) had in fact been made to it. The position the parties in pending legal proceedings (sic)en equated to those who make a direction under S. 11. S. 22 (1) should be read in (sic)ction with S. 25 (3) and construed as refer(sic)it only to the actual and overt act of filing (sic)on under S. 11 but to the virtual and con structive act Implied in resorting to the Civil and revenue courts for the recovery of the debt.

I feel no doubt that the contention, of extinction of the debt urged by the debtor cannot stand. I have in this connection to observe that the drafting of some of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-…

the provisions of the Act leaves much to be desired. Our notice has been drawn, in particular, to the wording of Ss. 25 (2), and 25 (3) and an incongruity is pointed out. S. 25 (2) reads:

When an application for adjustment of debts made to a Board under S. 11... includes a debt in respect of which a suit, appeal, application for execution... is pending before a civil or revenue Court, the Board shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, appeal, application or proceeding, as the case may be, to the Board." Section 25 (3) is worded:

When any suit, appeal, application or proceeding is transferred to the Board under, sub-section (1) or sub-s. (2), the Board shall proceed as if an application under S. 11 had been made to it.

It would be observed that S. 25 (2) comes into play only when an application under S. 11 has been actually made to the Board. Where then is the need to provide for constructive presentation of such a petition by the use of the words "as if an application under S. 11 had been made to it" occurring in S. 25 (3)? An inadvertent error seems to have crept into the drafting of the Act; but nothing turns on it so far as the present appeals are concerned. My answer to the second question referred to us is in the negative. The provisions of S. 22 (1) do not bar the exercise of powers under S. 25 (1).

(Note:- After the opinion of the Full Bench was received, the judgment of the Division Bench consisting of M. A. Ansari and Kumarayya JJ., was delivered by M. A. Ansari J., and it was held that the cross-appeals should be transferred to the Board.)

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/trimbak-lal-appellant-hash-chatrik-...