

(1976) 09 MAD CK 0045
In the Madras High Court

V. Ponnammal

APPELLANT

Vs

K. Shanmughasundaran represented by power Agent
Rajamanickam Chettiar

RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Citation : (1977) ILR (Mad) 228 : (1977) 90 LW 169 : (1977) 2 MLJ 10

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—This appeal is directed against an order of the lower Court refusing to stay the execution of the decree in O.S. No. 531 of 1973 on its file on the ground that the appellant is not entitled to the benefit of the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1975 hereinafter referred to as Act X of 1975.

2. The respondent herein obtained a decree against the appellant in O.S. No. 531 of 1973 for recovery of a sum of Rs. 10,001 being the advance paid by him in pursuance of an agreement of sale entered into with the appellant. He thereafter filed E.P. No. 148 of 1975 for the sale of the property which was the subject-matter of the agreement of sale. At that stage, the appellant filed an application E.A. No. 735 of 1975, claiming that as an agriculturist he is entitled to the benefit of Act X of 1975, and, therefore he is entitled to an order of stay of all further proceedings in the execution petition. This application was resisted by the respondent on the ground that the appellant was not an agriculturist as defined in the said Act, as he owned houses whose annual rental value exceeded Rs. 1,200 and that, therefore, he was not entitled to seek an order of stay of the execution under the provisions of the said Act. The Court below, without going into the question as to whether the appellant Was an agriculturist or not, dismissed that application holding that the suit being not one to recover a debt as defined in the Act, the applicant is not entitled to invoke the provisions of that Act. According to the lower Court, the suit being one to recover the advance paid

by the respondent to the appellant in pursuance of an agreement of sale under which the appellant agreed to sell her property to the plaintiff for a sum of Rs. 1,55,000 and odd on the ground that the appellant in breach of the agreement of sale refused to convey the property to the respondent-plaintiff and, therefore, he is entitled to get a refund of the advance paid, the claim made in the suit cannot be said to be to recover a debt due by the appellant-defendant, as defined in the Act. The view taken by the lower Court that the execution proceeding is not in relation to a suit to recover a debt as defined in the Act, and, therefore, the appellant is not entitled to have it stayed invoking the provisions of Act X of 1975 has been questioned in this appeal.

3. According to the learned Counsel for the appellant even a suit to recover the advance paid in pursuance of an agreement of sale will be a suit to recover a debt and the lower Court has given a very restricted meaning to the definition of debt found in the Act. The question is whether this contention of the learned Counsel is sustainable.

4. The appellant filed an application for stay of the execution proceedings levied against her by the respondent u/s 4 of Act X of 1975. Section 4 of that Act says that all further proceedings in suits and applications of the nature mentioned in Section 3 in which relief is claimed against an agriculturist, shall stand stayed until the expiry of a year from the date of the commencement of that Act. Section 4 refers to the suits and applications of the nature mentioned in Section 3. We have to see what are the suits and applications which are mentioned in Section 4. Section 3 refers to a suit for recovery of a debt or an application for execution of a decree for payment of money passed in a suit for the recovery of a debt. A conjoint reading of Sections 3 and 4 clearly indicates that the proceedings which can be stayed u/s 4 should be suits for recovery of a debt and applications for the execution of a decree for payment of money passed in a suit for the recovery of a debt. Therefore, the appellant can have the execution stayed only if the execution is of a decree of payment of money passed in a suit for the recovery of a debt. Thus, the question arises as to whether the suit filed by the respondent against the appellant in O.S. No. 531 of 1973 for the recovery of a sum of Rs. 10,001 paid as advance by him in pursuance of an agreement of sale under which the appellant agreed to sell his property for a sum of Rs. 1,55,000 and odd will fall within the scope of the expression "suit for the recovery of a debt" as contemplated by Sections 3 and 4 of the Act.

5. According to the learned Counsel for the appellant, even a suit for recovery of an advance paid under an agreement of sale will be a suit for recovery of a debt, as the definition of a debt in Section 2(c) of that Act is very wide in its amplitude, and it will cover any claim for money against an agriculturist arising out of a contract and a suit to recover a debt need not necessarily be a suit to recover the money borrowed by an agriculturist. The learned Counsel for the respondent, however, submits that the scope of the definition of a debt u/s 2(c) has to be understood in the light of the object sought to be achieved and the mischief

sought to be remedied by the statute, that the object of the Act being to give reliefs to indebted agriculturists, the definition of debt can only refer to the amounts borrowed by the agriculturists from his creditors, and that it will not include the liability of an agriculturist arising out of a breach of contract as in this case.

6. This takes is to the scope and ambit of the definition of "debt" in Section 2(c) Section 2(c) runs as follows:

2(c) "debt" means any sum of money which a person is liable to pay under a contract (express or implied) for consideration received and includes rent in cash or kind which a person is liable to pay or deliver in respect of the lawful use and occupation of agricultural land.

Then follows the exception clause which excludes certain categories of liabilities from the definition of debt. The liability by way of rent or compensation for the use and occupation of the house property is excluded from the definition of a debt. The rent or compensation for the use and occupation of an Immovable property accrued due after the commencement of the Act is also excluded. Any liability arising out of a breach of trust and any liability in respect of maintenance have also been excluded. The liability to pay any sum to the State or Central Government or to any local authority, whether by way of revenue, tax, cess or loan or otherwise is also excluded. Similarly amounts payable to any co-operative society, land mortgage bank, land development bank etc., and certain banks and financial institutions are also excluded.

7. The learned Counsel for the appellant submits that specific exclusion of the, various liabilities from the definition of "debt" shows that but for that specific, exclusion it would be a debt within the definition and that, therefore, the definition of a debt should be taken to include any liability enforceable against an agriculturist. It is true that under the exception clause the liability arising out of a breach of trust and liability in respect of maintenance etc., have been excluded from the definition of debt. But merely from such exclusions one cannot say that but for that exclusion, it will fall within the definition of a debt. It may be that the Legislature wanted to provide for these exceptions by way of abundant caution. If the definition of the debt is comprehensive and wide enough to include all liabilities of an agriculturist, then the category of liabilities excluded, from the definition would fall under definition of "debt", but for the exclusion. In my view, the definition of debt is not so wide as to include all liabilities enumerated in the exception clause. Take for instance the liability arising out of a breach of, trust, which has been excluded from the definition of debt. It is not a liability arising under a contract for consideration received, as contemplated by the definition of a debt. Similarly, the liability in respect of maintenance, which is also excluded from the definition of a debt, cannot be said to be a liability arising out of a contract for consideration received as contemplated by the definition of a debt. This indicates that the scope of the definition of a debt cannot be ascertained or determined with reference to enumerated exceptions. Therefore, we, have to find

out the scope and ambit of the definition of a debt with reference to the language used in the definition.

8. The learned Counsel for the appellant points out that when the language used, in the definition of a debt is quite clear and unambiguous, it is neither necessary nor possible to go to the objects of the; Act and take it as an aid in the interpretation of the definition. I am not able to agree with the said submission of the learned Counsel that the scope of the definition of a debt has to be gathered only from the language used in the definition without reference to the objects of and the preamble contained in the Act.

9. It is well established that a provision of a statute shall be considered and interpreted in such a way as to accord with the intention of the Legislature that enacted it. If the statutory provision is clear, *prima facie*, that should be taken as intention and no other aid can be resorted to for the purpose of ascertaining the intention. But if the statutory provision is not so clear, resort has necessarily to be had to other matters for arriving at the true construction. In *Thomson v. Advocate-General* (1845) 12 C.L. & F. 1 : 8 E.R. 1294, a question arose as to whether the words of a statute which levied an estate duty on every legacy given by a person by his will, would apply to the case of a legacy tendered by a will executed by a person who was domiciled and died abroad.

Answering that question in the negative the Court observed as follows:

The very general words of the statutes must of necessity receive some limitation of their application for they cannot in reason extend to every person everywhere whether subjects of their kingdom or foreigners or at the time of their death domiciled within the realm or abroad

Maxwell on interpretation of Statutes, Twelfth edition, at page 40 also says that to arrive at the true meaning of a provision in a statute it is always necessary to get an exact conception of the aim, scope, and object of the whole Act and to consider (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy.

10. In *Arunachalam Chettiar v. Annamalai Chettiar* (1961) 2 M.L.J. 587 a Division Bench of this Court pointed out that though it may be accepted as a general rule that the words occurring in an Act should be interpreted in terms of the definition contained therein, if the scope of the enactments itself is limited the terms of the definition cannot enlarge it and, therefore, it is competent for the Court to ascertain what the meaning of the general words employed in the statute, is, in the context of the enactment and with due regard to the subject-matter dealt with by the statute. In that case the Court was considering the scope of the definition of "agriculturist" contained in the Madras Act IV of 1938. The question arose as to whether a person having no property in the State of Madras could claim the benefit of Sections 3 and 4 on the ground that he was an agriculturist. The Division Bench held that the benefits conferred by the Act should be confined

to those persons holding property within the State, after rejecting the contention advanced by the person who claimed the benefits under the Act that it was not open to the Court to restrict the meaning of the term "agriculturist" which did not contemplate any limitation. The view taken by the Bench in that case was that the definition like any other word in the statute had to be read in the context, having regard to the scheme of the Act and the intention of the Legislature, and that this was clear from the section containing the definition itself which stated that the definition given by the Act would apply only "if the context does not otherwise require". In that case for ascertaining the scope of the definition of the term "agriculturist" the Court considered the preamble to the Act. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, the Supreme Court also observed as follows:

The Preamble of a statute was a key to the understanding of it and it might legitimately be consulted to solve any ambiguity or to fix the meaning of words which might have more than one or to keep the effect of the statute within its scope whenever the enacting part is in any of those respects open to doubt.

Act X of 1975 is an Act to provide temporary relief to indebted agriculturists. Therefore, the Act is taken to benefit only these agriculturists who are indebted. The preamble to the Act runs as follows:

Whereas there has been widespread drought: And whereas the agriculturists have borrowed debts and may, if freed for a time from the pressure of creditors, be enabled to rehabilitate themselves; And whereas it is in the interests of the general public that, at the present time, agriculturists be spared the distractions and expenditure involved in litigation launched by their creditors, in order that the maximum possible advantage may result to the State in the matter of production of food crops.

A close reading of the preamble indicates the anxiety of the Legislature to rehabilitate the agriculturists, who have borrowed debts and who are under the pressure of creditors by providing temporary relief to them by way of postponement of the recovery of the debts due by the creditors for a certain time. With that object in view the Legislature has barred u/s 3 the institution of a suit for the recovery of a debt or the filing of an application for execution of a decree for payment of money passed in a suit for the recovery of a debt, before the expiry of a year from the date of the commencement of the Act and by Section 4 stayed all further proceedings in suits and applications of the nature mentioned in Section 3 which have been initiated before the commencement of the Act until after the expiry of a year from the date of the commencement of the Act. If we have the said object of the Act as ascertained from the preamble in mind, the definition of a debt can only refer to debts borrowed by the agriculturists from their creditors, and it is not wide enough to include all amounts due by an agriculturist as contended for by the learned Counsel for the appellant. I am not inclined to agree with the learned Counsel that the definition of a debt is wide enough to include each and every bind of liability due by an

agriculturist and that unless a liability falls within the enumerated exceptions, it has to be taken as a debt contemplated by the Act. The relevant portion of the definition of a debt is "any sum of money which a person is liable to pay under a contract (express or implied) for consideration received". If this definition of a debt is understood in the light of the preamble to the Act, then the words referred to in the definition "a contract (express or implied) for consideration received" can only refer to a transaction of borrowing and it cannot refer to any contract.

11. In *K. Viswanathan v. Nanakchand Gupta and Anr.* AIR 1955 NUC Mad. 318. Ramaswami, J., while dealing with the scope of Section 3 of Madras Act V of 1954, which is analogous to Section 3 of Madras Act X of 1975 held that to bar an execution petition u/s 3 it is necessary that the decree should have been passed in a suit for the recovery of a debt and that it is the character of the suit that determines the applicability of Section 3, and that the definition of a debt in the present Act is the same as in that Act. In that case a suit was filed for a declaration that the partnership formed by A with B for running a theatre was void "ab initio". The Court passed a decree on condition that all moneys received by A from B should be restored to him with interest and also created for the said sum a lien over all the assets of the partnership. When that decree was sought to be executed, a stay was applied for u/s 3 of; Madras Act V of 1954. The Court expressed the view that the amount advanced by B for the partnership was not a borrowing by A, nor a debt repayable by A, and consequently, it was not a suit for recovery of a debt and the decree did not amount to a decree passed for recovery of a debt as contemplated in Section 2(b) defining "debt" and, therefore, the application for stay under the Act was incompetent.

12. In *Chacko, In re* (1954) 2 M.L.J. 737, a question arose as to whether a liability by way of mesne profits in respect of a vacant site will amount to a "debt" as defined in Section 2(b) of Madras Act V of 1954. The Court expressed the view that in order to find out the scope of the term "debt", regard must be had to the title and preamble of the Act which are intrinsic aids in the interpretation of the statute, that as the title of the Act indicates, the scope of the Act is limited to agriculturists who are indebted and for affording temporary relief for a limited period, that, the term "debt", which is defined to include rent in cash or kind which a person is liable to pay in respect of the lawful use and occupation of a land can only mean a debt arising out of a contract relating to the lawful use and occupation of land used for agricultural or horticultural purposes and, therefore the liability by way of a damages for use and occupation of vacant site by an agriculturist cannot be brought within the term "debt" as defined in the Act.

13. In *re Mohammad Allar Sahib and Ors.* AIR 1958 Mad. 217, a question arose as to whether the owelty payable by one sharer to another for equalising the shares under a deed of partition will come within the definition of "debt", u/s 2(b) of the Madras Act I of 1955. The Court held that owelty being a pecuniary

compensation given so as to prevent injustice or avoidable inequality and to have a more convenient and perfect partition of immovable property, it cannot be scaled down treating it as a debt within the meaning of Section 2(1) of the Act, and therefore, a coparcener who has been asked to make good what he was not entitled to cannot get the amount scaled down under the provisions of the Madras Act IV of 1938.

14. In *Govindaraj v. Alamelu Ammal* (1976) T.L.N.J. 174, it has been held by this Court that the liability by way of mesne profits has been held to be not a debt as defined in Section 2(c) of the Madras Act X of 1975.

15. In *Syed Abban Sahib v. Minor Musthi Begum by next friend* (1976) T.L.N.J. 319, it has been held that a suit for recovery of a dower amount is not a suit for recovery of a debt within the scope of Section 2 (c) read with Section 3 of the Madras Act X of 1975.

16. The decisions above referred to clearly indicate that the definition of a debt can only refer to the liability of a person, to an amount borrowed or payable under a contract "express or implied" and that it will not cover the amounts due by him in respect of other transactions.

17. The learned Counsel for the appellant would, however, place strong reliance on the following decision. *Madhavan Pillai v. Sivarama Pillai* (1966) K.L.R. 35, was a case where the scope of the definition of "debt" in Section 2(c) of the Kerala Agriculturists Debt Relief Act, 1958, came up for consideration. In that case a decree was passed for recovery of an advance paid under a contract of sale. When the decree was put into execution, the judgment-debtor claimed benefits under the provisions of the said Act. It was held that the liability to refund the advance paid under a contract of sale of a land which did not materialise is a liability arising out of a breach of contract and, as such it cannot be taken to be liability arising out of a breach of trust, which is one of the enumerated exceptions contained in Section 2(c), and, therefore, that liability has to be treated as coming within the definition of a debt in Section 2(c). A perusal of the decision shows that the scope of the definition of a debt was not specifically considered. The attempt of the decree-holder was only to bring the liability to refund the advance paid under a contract of sale of a land, which did not materialise.

18. In *Lekshmikutty Amma Vs. Bathu Kudimi Mathu*, A Full Bench of the Kerala High Court had to consider the question whether a liability of the vendee to pay the unpaid portion of the purchase-money in respect of a transaction of sale of immovable property will be a debt as defined in Section 2(c) of the Kerala Agriculturists Debt Relief Act, 1958, The Full Bench held that the definition of a debt under the Act was wide enough to include the liability in question, that it was not open to restrict the scope of the definition on the ground of hardship or anomaly, and that when the words of the statute were clear and unambiguous, it was the plain duty of the Court to give effect to them whatever, might be the

consequences. However, a perusal of the definition of a debt, in that Act shows that it is considerably wide in its amplitude. The debt is defined to mean any liability in cash or kind whether secured or unsecured due from or incurred by an agriculturist on or before the commencement of the Act, whether payable under a contract or under adverse order of any Court or otherwise. The Full Bench in that case refused to have resort to the preamble to the Act for interpreting the definition as in their view the language used in the definition of debt was clear and unambiguous and there was no difficulty in its interpretation.

19. In Harihara Iyer Vs. Augusthi Devasia, , the same Full Bench of the Kerala High Court again reiterated that the liability for unpaid purchase money will not fall within the scope of the exemption contained in Section 2(c) (vii) and, therefore, it will constitute a debt as defined in the said Kerala Act. As already stated, the definition of debt is wider in the Kerala Act and it covers any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of the Act, whether payable under a contract or under a decree or order of any Court, or otherwise and the decisions of the Full Bench of the Kerala High Court in the above two cases are based purely on the interpretation of the provisions for exemption contained in that Act and therefore, those decisions may not be of much help in the interpretation of the term "debt" occurring in Madras Act X of 1975.

20. The learned Counsel for the appellant then refers to the decision is P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar, In that case the scope of the definition of "debt" occurring in the Madras Agriculturists Relief Act (Madras Act IV of 1938) came up for consideration. The debt has been defined in Section 3(iii) of that Act as meaning any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue Court or otherwise. This definition was taken to be of a very wide import so as to include any liability due from an agriculturist except those specified in the exception. The learned Counsel relies on this decision in support of his plea that if a liability does not come within the specific exception provided under the definition of debt, it should be taken to be included in the definition of "debt". But, as pointed out already, the mere exclusion of a liability will not come under the definition of debt. It is true the exception is called for and necessary only when the debt as defined is wide in its import and includes all liabilities. But where the scope of the definition of debt is such as to cover only a limited class of liabilities the exclusion clause cannot be taken to add to the definition of the debt. It may be that the Legislature has introduced this exception clause by way of abundant caution.

21. Even assuming that the definition of the debt contained in Section 2(c) of the Act should be given a liberal interpretation without reference to the scheme and object of the Act, and the preamble thereto, still it is not possible to interpret the definition so as to include the liability for the return of the advance paid under an agreement of sale. The definition of the debt refers to a liability under "a contract

for consideration received". That means the liability must arise under the contract which has been entered into by a person with another for consideration received. In this case the amount claimed in the suit is the advance that was paid under an agreement of sale. That liability cannot be said to arise under the agreement of sale as it has not become due on it. It is not possible to agree with the learned Counsel for the appellant that as the advance amount was paid in pursuance of the agreement of sale the liability to refund the same arises under a contract. The liability of the vendor to execute the sale deed will arise under a contract of sale but not the liability to refund the advance which arises out of its breach by the vendor. In this case the contract is for the sale of the property for a particular sum, and it is because of the breach of the contract by the appellant, the respondent has chosen to claim as damages, the advance paid for the purchase of the property under the agreement of sale. Therefore, even on a liberal interpretation of the language used in the definition of debt, the claim made in the suit cannot be said to be a debt.

22. Thus, in any view of the matter, the appellant's claim that the execution of the decree in O.S. No. 531 of 1973 should be stayed under the provisions of Section 4 of Madras Act X of 1975 cannot be upheld.

23. The appeal, therefore, fails and it is dismissed. There will be no order as to costs.