**(1975) 07 KL CK 0018**

**In the High Court Of Kerala**

**Case No :** C.R.P. No. 557 of 1975

Vaniamkulam Service Co-operative Bank Ltd. APPELLANT

Vs

Raman Nair and Others RESPONDENT

**Date of Decision :** 02-07-1975

**Acts Referred:**

Kerala Agriculturists Debt Relief Act, 1970 — Section 15, 15(5), 2(4)

**Citation :** AIR 1976 Ker 1

**Hon'ble Judges :** N.D.P. Namboodiripad, J

**Bench :** Single Bench

**Advocate :** T.R. Govinda Warrier and K. Rama Kumar, for the Appellant; P.R. Nambiar, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.D.P. Namboodiripad, J.—The question arises under the Kerala Agriculturists'' Debt Relief Act, 1970 (referred to as Act 11 of 1970).

Two agriculturists filed an application as O. P. 188/1970 for a full settlement of their debts in accordance with the provisions of Section 15 of Act

11 of 1970. The creditors were arrayed as respondents 1 to 24; and the 10th respondent is a co-operative society within the meaning of the

Kerala Co-operative Societies Act 1969 (referred to as Act 21/1969). The applicants debtors filed three interlocutory applications as I. A. Nos.

2459/70, 53/71, and 708/73 for prohibiting the concerned creditors from realising their debts from the petitioners. In this revision we are

concerned with I. A. 708/1973 laid against the 10th respondent society. The 10th respondent society had already obtained an award against the

petitioners who are members of that society. In execution of the award the society sold certain agricultural property belonging to the petitioners on

19-4-1973, and what remained was confirmation of the sale and consequential proceedings. It was at that stage that the petitioners debtors prayed

for an order prohibiting the Circle Officer of Co-operative Societies (Administration), Ottappalam, from proceeding with the sale in enforcement of

the award till the disposal of the present petition. It appeal''s that only the 10th respondent opposed the three interlocutory applications referred to

above. According to the society the debt involved in the award is not one capable of being settled u/s 15 of Act 11/1970 and that at any rate, in

view of Section 100 of Act 21/1969 the Civil Court has no jurisdiction to interfere with the sale already conducted. The lower court repelled those

contentions and issued the prohibitory order as prayed for by the petitioners. The 10th respondent has, therefore, preferred this revision.

2. The first contention urged on behalf of the revision petitioner is that the debt in question is not one capable of being settled u/s 15 of Act

11/1970; and in support reliance is placed upon the definition of debt contained in Section 2(4) of Act 11/1970. While defining ''debt'' Section

2(4) of Act 11/1970 enumerates the categories of debts which are excepted from the purview of the definition. Section 2(4)(v) deals with debt due

to any co-operative society including a land mortgage bank registered or deemed to be registered under the Co-operative Societies Act for the

time being in force. That the award in question is a debt due to a society admits of no doubt. But the question is whether the expression ''debts'' as

used in Section 15 of the Act 11/1970 has to be interpreted with the aid of the definition contained in Section 2(4). That question was already

answered in the negative by this court in the decisions reported in Umbichi Ahmed v. Kalyani Amma 1960 Ker LT 865, Meena-kshikutty

Varasiaramma v. Travancore Forward Bank Ltd 1961 Ker LT 377 and Hameed Koya v. Arunachalam Nadar 1963 Ker LT 653. Though these

decisions were concerned with the scope of Sections 15 to 18 of Act 31 of 1958, I do not think that a different principle can apply while

interpreting Section 15 of Act 11/1970 because substantially the concerned provisions in the two statutes are similar. While considering the scope

of Sections 15 to 18 of Act 31 of 1958 this Court took the view that those sections are meant for a full settlement of all liabilities of the

agriculturist, whether such liability be a debt as defined in the Act or not, and for that the word ''debt'' used in those sections has to be understood in its broad grammatical sense to include every liability of an agriculturist. It is, therefore, held that the debt due to the 10th respondent is also a

liability which could be settled u/s 15 of Act 11 of 1970.

3. If the debt in question could be settled u/s 15 of Act 11/1970 it is only logical to hold that all the relevant provisions of Section 15 and allied

sections of the Act could be invoked by the petitioners as against the debt due to the 10th respondent. Sub-section (5) of Section 15 of Act

11/1970 enjoins that during the pendency of an application u/s 15 the court may stay the trial of any suit or the execution of any decree against the

applicant or his properties. It follows, therefore, that when once the debt in dispute is a liability that could be settled u/s 15, the court trying the

relevant application has the jurisdiction to stay the trial of any suit or the execution of any decree against the applicant or his properties. In this

sense perhaps no other question survives for decision

4. The revision petitioner seeks avoidance of Section 15(5) of Act 11/1970 on the strength of Section 100 read with Sections 69, 70, 75 and 76

of Act 21 of 1969. Section 100 of Act 21/1969 provides that no civil or revenue court shall have any jurisdiction in respect of any matter for

which provision is made in Act 21/1969. Section 69 of that Act provides that disputes referred to thereunder are to be referred to the Registrar,

and, Section 70 deals with the decision and award on disputes referred u/s 69. As far as the award obtained by the 10th respondent against the

petitioners is concerned it is clear that the stage as contemplated by Sections 69 and 70 is already over; and the Civil Court in considering the

present application is not dealing with any matter provided for in Sections 69 and 70 of Act 21/1969. The further question is whether Sections 7

and 76 have any bearing on the matter in dispute. Here also I may state that Section 75 has not much relevance, and it is Section 76 that assumes

importance. Section 76 of Act 21/1969 deals with the execution of orders, decisions and awards referred to in Sections 68, 73, 75 etc. The

utmost that could be gathered from Section 75 read with Section 100 is that Act 21/1969 itself provides the machinery for executing orders and

awards passed under that Act and that the Civil Court cannot exercise that jurisdiction. By passing an order under Sub-section (5) of Section 15

of Act 11/1970 the Civil Court is not assuming powers as to the manner of execution of the award obtained by the 10th respondent. Sub-section

(7) of Section 15 of Act 11/1970 provides that the procedure prescribed in the Insolvency Act 1955 shall mutatis mutandis be applicable to the

proceedings u/s 15. Section 16 of Act 11/1970 sets out the manner of settlement of liability of the agriculturist by Court. It is to facilitate the

working out of the remedies provided for in Sections 15 and 16 that the court is clothed with the powers of staying the trial as well as execution by

Sub-section (5) of Section 15, While trying a petition u/s 15 of Act 11/1970 the court in this case is not apparently dealing with any dispute as

between the 10th respondent society and its members, the two petitioners, within the meaning of Sections 69, 70 and 75 of Act 21/1969.

5. Yet another alternative contention urged on behalf of the revision petitioner is that even if the Civil Court has jurisdiction to stay proceedings by

virtue of Section IS(5) of Act 11/1970, in the instant case there is no ''decree'', the execution of which could be stayed by the court. It is true that

u/s 15(5) of Act 11/1970 what a court may stay is ""the execution of any decree against the applicant or his properties"". According to the revision

petitioner the award is not a decree within the meaning of Section 15(5). But I think, the answer to that contention is contained in Section 78 of

Act 21 of 1969. Section reads as follows:

76(a)

76. Every order may under Sub-section (2) of Section 68 or u/s 75, every decision or award made u/s 70 every order made by the liquidator u/s

73 and every order made by the Tribunal u/s 82, Section 84, Section 85 or Section 86 and every order made u/s 83 shall, if not carried out,--

(a) on a certificate signed by the Registrar or any person authorised by him in this behalf, be deemed to be a decree of a Civil Court and shall be

executed in the same manner as a decree of such court; or"" It is clear from that provision that as far as executability is concerned the various

orders, decisions or awards referred to in the opening portion of Section 76 are to be deemed as decree of a Civil Court.

I hold that the lower court had jurisdiction to pass the order that is challenged before me.

I confirm the decision of the lower court and dismiss the revision. No costs.

 