(1942) 02 MAD CK 0037

In the Madras High Court

Variath Krishna Warriar APPELLANT

Vs

Malayalee Bank Ltd., Managing Director T. Kadungi Nedungadi and Another RESPONDENT

Date of Decision : 16-02-1942

Acts Referred:

Citation : AIR 1942 Mad 449 : (1942) 55 LW 238 : (1942) 1 MLJ 466

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner was the first defendant in a suit on a promissory note and he claimed relief under Madras Act IV of 1938. He admitted, however, in the lower Court that he had been paying profession-tax to the District Board for the last seven or eight years and on this admission the suit was decreed in full against him. It is contended in revision that the petitioner is not disqualified under proviso B to Section 3 (2) of Ac* IV of 1938 because he has been paying profession-tax not on the income derived from the actual exercise of a profession other than agriculture, but on his pension as a retired police officer.

2. The words of the proviso are:

has within two years immediately preceding the 1st October, 1937, been assessed to profession-tax on a half-yearly income of more than Rs. 300 derived from a profession other than agriculture, etc.

3. If the words ''derived from a profession other than agriculture'' are read in their strictest sense, the effect would be to confine the disqualification under this proviso to persons paying profession-tax on income derived from what are usually called the learned professions and it would not exclude persons paying profession-tax in respect of income derived from business. But having regard to the very wide use of the word profession in the term ''profession-tax'' it seems doubtful whether the Legislature intended to use the word in its most restricted sense in this phrase ''derived from a profession other than agriculture'' more

especially as agriculture itself would not ordinarily be treated as a profession in the strictest sense of the word. The argument that ''income derived from a profession'' must be confined to income derived from the present exercise of a profession seems however to find no justification in the words of the proviso. We have no difficulty in holding that the present petitioner when he pays profession-tax on his pension as a retired police officer does in fact pay profession-tax on an income derived from a profession. We do not wish to say anything which can be interpreted as an expression of opinion to the effect that income derived from a source not falling within the strictest definition of a profession would fall outside the scope of this proviso. On the facts of the present case, we are clear that, even giving the word ''profession'' its strictest interpretation, the pension in question must be deemed to be income derived from a profession.

4. An attempt has been made to argue that the profession-tax in question was not levied by a Panchayat which was a Union before the 26th August, 1930. There are no materials in the record to support this argument and we do not think it proper to allow such a contention to be raised for the first time in revision. It has no basis in the facts put into evidence. The result therefore is the revision petition is dismissed with costs.

