
(1965) 08 MAD CK 0047

In the Madras High Court

Case No : Civil Revision Petition No. 2466 of 1961

Veerappa Thevar

APPELLANT

Vs

Kathaswami Chettiar

RESPONDENT

Date of Decision : 10-08-1965

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 28, 38

Citation : AIR 1967 Mad 318 : (1966) ILR (Mad) 546 : (1966) 79 LW 163

Hon'ble Judges : Natesan, J

Bench : Single Bench

Judgement

(1) This revision has been preferred by a creditor whose two mortgage debts have been held to be completely discharged on a petition filed by the debtor under Rule 2 of the rules framed for scaling down of non-decreed debts, in exercise of the powers conferred by section 28 of the Madras Agriculturists Relief Act 1V of 1938. The two debts in question are post-Act debts, one for Rs. 5000 incurred on 15-10-1947 and the other for Rs. 2000 incurred on 4-1-1948. The contention of the creditor, who is the petitioner before me in this revision, is that the learned Subordinate Judge of Coimbatore had no jurisdiction to scale down or apply the provisions of Act 1V of 1938 to the debts in question, on an application by the debtor under the said Rule 2 of the rules, When the debt was not sought to be enforced by the creditor by any process in a Court of law. That the debt is not being enforced by any process in Court is clearly beyond doubt. It may also be stated that it has been held by this Court on more than one occasion that the provision of Section 13 of the Act giving relief to the agriculturist comes into play only when the creditor seeks to enforce the debt. Sec. 13 is precise and does not admit of any doubt. Under the marginal heading rate of interest payable by the agriculturist on loans, it runs thus:

"In any proceedings for recovery of a debt the Court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6 1/4 per cent per annum, simple

interest, that is to say, one pie per rupee per mensem simple interest or one anna per rupee per annum simple interest"

(2) A Full Bench decision of this Court in Chellammal Vs. Abdul Gaffoor Sahib and Another, , holds that Section 13 of the Act does not render the payment of or a contract to pay interest on a debt incurred after the commencement of the Act at a rate higher than that prescribed therein, illegal. It is observed that such excessive interest is only made irrecoverable if the creditor seeks to enforce the debt in a Court of law and that the machinery provided for by Section 13 does not extend to the reopening of payments already made. In Pappathi Ammal alias Nallammal Vs. Nallu Pillai, , it is observed:

"The terms of the section show that unlike Section 7, there is no automatic discharge of the debt; the scaling down to the statutory rate of interest. is to be done only by Court when proceedings for recovery of the debt come up before it".

(3) Again it is observed at page 597 thus: "It is therefore clear from the terms of the section that in order to entitle a debtor to claim relief u/s 13, he must be an agriculturist as defined in the Act on two crucial dates (1) on the date of the loan, as otherwise it will not be a debt incurred by an agriculturist and (2) on the date of recovery thereof through the process of Court, as otherwise there would be no proceeding for recovery of a debt as defined by the Act".

It is clear from the above observations that the Courts have no jurisdiction to reduce the rate of interest in respect of a post Act debt unless there was a proceeding before the Courts for recovery of the debt. It is in these circumstances, that the learned counsel for the petitioner-creditor contends that the order in this case is without jurisdiction and that the rules framed u/s 28 will not apply to post-Act debts where only relief u/s 13 of the Act is sought.

(4) The rule making power is to be found in Section 28 of the Act. It runs thus:

"1. The State Government may make rules for carrying into effect the purposes of the Act.....

3. All rules made under this section shall be consistent with the provisions of this Act....."

As the rule-making power is limited for carrying out the purpose of the Act and has to be consistent with the provisions of the Act, it does not admit of any doubt that the rules cannot provide for scaling down of interest u/s 13 of the Act, when there is no proceeding for the recovery of the debt. But it is not that R. 2 of the rules relating to the scaling down of a non-decree debt is itself invalid; Rule 2 has been held to be valid. The question is, whether, under the rules, the Court has jurisdiction to scale down a post-Act debt u/s 13. The rules must be so read as to make them intra vires. So read, it follows that the Court cannot under R. 2 entertain an application for scaling down the post-Act debt for relief u/s 13 of the Act.

(5) Learned Counsel for the respondent-debtor drew my attention to a decision of this Court in *Swayamprabhai Ammal and Others Vs. D. Muthukrishna Padayachi*, , where Rule 2 was held to be not ultra vires of section 28 of the Act. It was held therein:

"All that this procedure under the rules purports to secure is an opportunity for parties to a contract to get an inexpensive, speedy and authoritative decision as to the extent to which the contract is modified by this rather drastic legislation. The procedure is in fact intended to benefit those parties who do not want to file a suit but have difficulty in ascertaining how the new statute affects the pre-existing contract".

(6) But this principle will not help the respondent here. At page 651 (of ILR Mad): (at P. 363 of AIR), it is observed with reference to the procedure under Rule 2:

"But the procedure now under consideration is not a procedure intended to give to either party the power to enforce his rights on a particular cause of action".

In fact the rules provide that no application shall be presented or maintainable under Rule 2 where a suit for the recovery of debt has been filed, and when a suit is filed, while the application is pending the application has to be dismissed. Rule 2 therefore does not authorise the entertaining of an application for relief u/s 13 of the Act.

(7) Learned Counsel for the respondent contended that the object of the legislature in providing for a simple procedure without levy of regular Court fees being the grant of relief to debtors, the rules should be read as empowering the Court to entertain an application for scaling down u/s 13 also. But when the Act itself does not contemplate a relief unless the debt was being enforced, there is no question of granting relief to the debtor under the provisions of Section 13 without a proceeding for enforcement of the debts. Therefore there is no question of a beneficial provision in favour of the agriculturist not being made available to him by excluding the application from the purview of the rules. As observed by the Supreme Court in a recent case in *K. Hutchi Gowder Vs. Richobdas Fathaimull and Company*, .

"The Court in the case of an expropriary measures like the Act cannot rely upon the supposed policy of the legislature to give relief to agriculturists overburdened with debts, and extend the scope of the relief given to agriculturists by analogy. The scope of the relief shall necessarily be confined to that given by the Act, expressly or by necessary implication".

(8) In my opinion, in the light of the foregoing principles, the learned Subordinate Judge had no jurisdiction to grant relief to the debtor on the application under Rule 2 of the rules. But this view does not entitle the petitioner before me to have the revision allowed. My attention has been drawn by the learned counsel for the respondent to Rule 9 of the rules framed for scaling down

of non-decree debts. Rule 9 provides that the order of the Court declaring the amount of the debt under Rule 7 shall be subject to appeal and second appeal as if it were a decree in the original suit. It may be that the Court has no jurisdiction to scale down the post-Act debt but still the order of the Court could be challenged on appeal and by a further second appeal to this Court.

(9) Section 115 C. P. Code is available only when there is no appeal to the High Court. The High Court under that section may call for records of any case which has been decided in any Court subordinate to the High Court only when no appeal lies thereto. It has been held in several decisions that if an appeal does lie to the High Court even by way of second appeal, it could not entertain a revision u/s 115 C. P. Code.

(10) Learned Counsel for the petitioner faintly submitted that Rule 9 was ultra vires. But learned Counsel for the respondent drew my attention in this connection to the decision of this Court in *Perumalla Venkayya Vs. Batchu Pullayya*, , where it has been held that Rule 9 is not ultra vires. The rule providing for appeal and second appeal not being ultra vires, it was held that there can be no revision u/s 115 C.P.C. in that very case. In the above case a preliminary objection was taken to the maintainability of the revision and the preliminary objection was upheld. Learned Counsel for the petitioner submitted that this Court in *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another*, , held that an appeal does not lie as of right but must be conferred by express enactment and that R. 8 made u/s 28 of the Madras Agriculturists Relief Act, providing for appeals was ultra vires. Learned Counsel contended that the reasoning of the Full Bench in that decision would apply equally to non-decree debts. But *Perumalla Venkayya Vs. Batchu Pullayya*, has referred to the Full Bench decision and distinguished the same. I am bound by the decision of the Division Bench of this Court in *Perumalla Venkayya Vs. Batchu Pullayya*, . In the result, for the aforesaid reasons, as to the maintainability of the revision, the revision fails, and is dismissed, but in the circumstances there will be no order as to costs.

(11) Revision dismissed.