

(1977) 03 MAD CK 0013
In the Madras High Court

Venkatavaradan

APPELLANT

Vs

K. Janardanan

RESPONDENT

Date of Decision : 07-03-1977

Acts Referred:

Citation : (1977) ILR (Mad) 113 : (1977) 90 LW 376 : (1977) 2 MLJ 426

Hon'ble Judges : V. Balasubrahmanyam, J

Bench : Division Bench

Judgement

V. Balasubrahmanyam, J.—The appellant in this appeal is an individual by name Vinkatavaradan. The respondent is one Janardanan. A (sic)

was obtained by Janardanan against Venkatavaradan for Rs. 14,413.80. Venkatavaradat, whom, I shall (sic) as the judgment debtor, applied in

E.A. 516 of 1976, for stay of execution of (sic) him clearing that he was an agriculturist entitled to the benefits of the Tamil Nadu Indebted

Agriculturists (Temporary Relief) Act, 1976 (Act XV of 1976). He asserted that he was not assessed either to Central Income Tax or to

agricultural Income Tax or to sales tax either under the state Law or under the Central Law for the years 1971-72 to 1974-75. The application for

stay of execution was opposed by Janardanan, the decree-holder. He urged that the judgment-debtor was not entitled to invoke Tamil Nadu Act

XV of 1976 as an agriculturist. The reason given was that the judgment-debtor was a partner in a firm called "Rajagopal Chetti and Sons" and the

partnership firm was assessed to sales tax under the Tamil Nadu Sales Tax Act 1959. The relevant sales tax assessment orders on the firm were

produced in support.

2. The learned Subordinate Judge upheld the decree-holder's objection. He

rejected the judgment debtor's claim for relief as an agriculturist within the meaning of that expression in Act XV of 1976. While so doing the learned Judge hoisted the judgment-debtor, as it were, on the "horns of a dilemma". The learned Judge considered the judgment-debtor in this regard, both as an individual and as a member of a partnership firm. Considering the position from the view point of the firm, the learned Judge reasoned that the firm was not entitled to invoke the Act, because it expressly excluded partnership firms from the purview of the definition of "agriculturist". On the other hand, if the judgment-debtor were considered as an individual, even then, according to the learned Judge, the judgment-debtor could not shed his character as an individual member of the partnership which, admittedly, had been assessed to sales tax in which case, again, he must stand excluded from the definition of agriculturist. In either case, according to the learned Subordinate Judge, the judgment-debtor was disentitled, from, invoking the benefits of Act XV of 1976.

3. Mr. N.K. Ramaswami, arguing the present civil miscellaneous appeal for the judgment-debtor, urged that the conclusion of the learned

Subordinate Judge was based upon a misconception of the provisions of Act XV of 1976. He pointed out that while the definition of "agriculturist"

u/s 2(b) of the Act excluded partnership firms, it did not thereby exclude from the purview of the Act all persons who happened to be members of

such partnerships. As for the reasoning of the learned Judge that assessments to sales tax on the firm of "Rajagopal Chetty and Sons" would

derogate from the judgment-debtor Venkatavaradan being regarded as an agriculturist. Mr. Ramaswami pointed out that the judgment-debtor, as

an individual, was not himself assessed to sales tax and that the assessments had been made on the firm as a distinct assessable entity in itself.

4. I agree with the submissions made by Mr. Ramaswami. It may be that purists in legal theory may not accept partnership firms as possessing

some juristic personality of their own, distinct from the members composing the partnerships. Indeed the theory is often expressed by saying that a

firm is merely a convenient class-name or description, to denote compendiously the individuals who have agreed to become partners. This view of

partnership is alike opposed to the accountant's conception and the business-man's idea of a partnership firm, which is to regard a firm as an

entity distinct from its members. The Indian Partnership Act, 1932 contains express provisions for expulsion of partners, retirement of partners,

admission of new partners and for continuance of the same firm despite the death or retirement of partners or the introduction of new partners, etc.

These provisions in the statute are inconsistent with the puristic conception of a partnership firm as a non-person. As pointed out by the Privy

Council in AIR 1948 100 (Privy Council) our law is more in line with Scots law than with English law when it sees in a partnership firm a limited

personality or gives it some kind of a quasi-corporate status. So far as, Tamil Nadu Act XV of 1976 is concerned which is presently under

discussion, while the interpretation clause in Section 2(b) defines an agriculturist as a "person" who owns an interest in law and is in possession

thereof by virtue of that interest there is a saving Clause (i) under which a partnership firm registered under the Indian Partnership Act, 1932, is not

to be regarded as an agriculturist. This way of defining an agriculturist as a "person" and at the same breath, excluding a firm from the ambit of that

definition evidence, in my view, a legislative intention to regard the firm itself as a person or entity, quite apart from the partners constituting it. From

this, it must follow that the judgment-debtor cannot be denied his statutory position as an agriculturist for no other reason than that he is a partner

of the firm of "Rajagopal Chetti and Sons".

5. The distinction between the judgment-debtor and his firm is even more marked In the matter of tax assessments. The evidence on record does

not show that sales tax was levied on the judgment-debtor as an individual. It is true that the firm of "Rajagopal Chetty and Sons" was assessed to

sales tax for 1971-72, onwards but that is quite a different matter, For the tax liability of the firm cannot be treated, to any extent and under any

ratio as the tax liability of the judgment-debtor or any of his partners in the firm. It may be observed that, in the realm of taxation, the tendency of

the law is to accept business realities as the foundation of liability rather than go by precise juristic conceptions. It is no wonder, therefore, that tax

laws in our country, as elsewhere should regard partnership firms as separate assessable entities for purposes of tax treatment, It has been held, on

high authority, that a partnership firm is recognisable under the tax laws as a distinct and separate assessable entity and that the tax assessed on the

firm's income or the firm's sale or purchase turnover cannot, per se be treated as the liability of the individual partners recoverable as such from

them, unless it be under a special machinery set up therefore in the relevant statutory provisions, vide *Sardar Indra Singh and Sons Ltd. Vs.*

Commissioner of Income Tax, West Bengal, , State of Punjab Vs. Jullunder Vegetables Syndicate, .

6. Section 2(b) of Act XV of 1976 excludes from the definition of agriculturist any person who was assessed to sales tax under the Tamil Nadu

Sales Tax Act, 1959 in any of the years 1971-72 to 1974-75. Vide saving Clause (ii) of Section 2(b). The learned Subordinate Judge entertained

the view that the sales tax assessments for these years on the firm of "Rajagopal Chetti and Sons" would bring the judgment-debtor within the

mischief of this saving clause in the Act. For arriving at this conclusion, however, the learned. Judge did not consider the position under the Tamil

Nadu Sales Tax Act, 1956, of partners vis-a-vis assessments made on their firms. I have earlier referred to the decision of the Supreme Court

reported in *State of Punjab Vs. Jullunder Vegetables Syndicate, .* In that case, it was held that under the taxing statute, which the Court was

considering in that case, the firm itself was the taxable entity for an assessment on its turnover and, once the firm was dissolved, the entity itself

disappeared from the scene and no assessment or levy of sales tax can thereafter be made on the quondam partners by invoking the general legal

theory of joint and several liability of the partners. This decision of the Supreme Court, which dealt with the position under the East Punjab General

Sales Tax Act, 1948, actually impelled the Tamil Nadu legislature to introduce into the Tamil Nadu General Sake Tax Act, 1959, a new provision,

Section 19-A, under which express power was conferred on the Assessing Authority to assess and realise from the individual partners the sales tax

leviable on the turnover of dissolved firms. These considerations not only establish the precise tax status of partnerships as laid down by judicial

precedents, but also the acceptance by the legislature of the correctness of the judicial enunciation of the law.

7. Turning now to the language of the saving Clause (ii) in Section 2(b) of Act XV of 1976 it would, be noticed that it speaks of any person being

"assessed to sales tax under the Tamil Nadu Sales Tax Act, 1959". If the true position under the Taxing Act, as I have shown above is that a

firm's sales tax assessment on its turnover is quite distinct from assessments made on the individual turnovers of the various members of the

partnership, then that distinction must be rigorously maintained even for purposes of Act XV of 1976 in view of the language of the exclusory

provision found in the interpretation clause.

8. For all the reasons aforesaid, I must hold that the judgment-debtor, in this case, fits in with the definition of an agriculturist u/s 2(b) of the Act,

and nonetheless so for the fact that the partnership firm, of which he is a member, I was assessed to sales tax during the years, 1971-72 to 1974-

75.

9. Mr. T.V. Balakrishnan, for the decree-holder, then, urged what was clearly a new point, not urged before in the lower Court. I permitted him to

raise it, because it merely involved the interpretation and application of another provision of Act XV of 1976. Mr. Balakrishnan's new submission

was based on a comparison and contrast of the provisions of Act XV of 1976, and another debt relief enactment enacted by the President for this

State, called the Tamil Nadu Indebted Persons (Temporary Relief; Act XVI of 1976," Learned Counsel pointed out that the definition of a debt

u/s 2(c)(i) of Act XV of 1976, with which the present case is concerned, does not, in terms, include a decree debt. Learned Counsel asked me to

mark this omission in the statutory definition. He then asked me to turn my attention from Act XV of 1976 and note the express including of a

decree debt in the comparable definition of the same expression found in Act XVI of 1976. From this study in contrast, he urged me to draw the

inference that a decree debt is not eligible for protection under Act XV of 1976. I do not accept the mode of contraction urged by Mr.

Balakrishnan either as legitimate or as correct, I agree with him, however, in one respect. Textually speaking, the two definitions of the expression

"debt" in the two enactments are different. The one includes a decree debt and the other does not. But this difference in the definition does not

make any material difference in the application and affect the operative provisions of the two statutes. In Act XV of 1976 the operative provision is

to be found enacted in Section 4. That section deals with "bar of suits and applications" as the marginal note itself indicates. A look at the subject-

matter of the section would show that the reference to applications is a reference

to applications for execution of a money decree. That section enacts that for the duration of one year from the commencement of the Act, no suit for the recovery of a debt shall be instituted in a civil or revenue Court. The section, further, provides that for the same duration, no application for the executor of a decree for payment of money passed in a suit for the recovery of a debt shall be made in a civil or revenue Court. This latter provision clearly shows that decree debts are also entitled to the benefits of stay under Act XV of 1976. Explanation I to Section 3 seeks to explain the expression "suit", Explanation III to the same section contains another explanation as to what kinds of suit shall be regarded, for the purposes of this section, as suits for the recovery of a debt. These provisions show, beyond, a shadow of doubt, that the coverage of Act XV of 1976 includes not only money debts but also decree debts under the terms of which money is payable. When the operative Section in, the Act is so clear on the subject, the omission to include a decree debt in the statutory definition cannot be given any weight or significance. In my view, for the question whether Act XV of 1976 protects decree debts against execution, the answer has to be found in the Act read as one whole, and not in isolated bits and parts. Reading Section 2(e) of the Act in association with Section 3, which is the only way of reading and understanding the provisions, I am satisfied that the benefit of stay of recovery granted under the Act extends to decree debts as well and it is not confined in its application nearly to debts other than decree debts.

10. I think, I may incidentally remark on the fallacy involved in the method of statutory interpretation advanced by Mr. Balakrishnan while seeking to construe the expression "debt". His methodology as I had earlier mentioned, was one of "compare and contrast" instituted between two provisions in two separate enactments. In my view, this approach to statutory construction involves a misdirection. To construe a particular expression employed in a given enactment by turning one's case to a different statute would be to engage oneself in a mere word-game. Words and phrases are statutorily defined, not for purposes of comparative study, but as internal aids to the construction of individual statutes. It was said that Tamil Nadu Acts XV and XVI of 1976 were fit subjects for comparison because they had a similar aim of debt relief, that they employed

similar words and were enacted at about the same time. These considerations, however, do not, in my view, justify the use of the one enactment as an external aid to the construction of the other. A survey of the two Acts, no doubt, makes one wonder why on earth the legislative draftsman had brought out two slightly different definitions of "debt" in the two contemporaneous enactments. But, that is only an incidental reflection we can permit ourselves. Statutory construction really is not concerned with psychoanalysis of the mind of the legislative draftsman. Our job is to take any given piece of legislation as we find it, accept its individuality and understand it on its own terms, unless of course, the legislature itself says that any of the provisions should be read in terms of another statute. Hence, despite the textual differentiation in the definitions of debt in the two enactments under discussion. I base my conclusion, strictly on the terms of Section 3 of the Act XV of 1976. Under this provision, (sic) I have earlier shown decree debts are equally eligible for stay along with other debts. As it turns out, it is precisely the result which Act XVI of 1976 also brings about by means of another drafting device, namely, by defining a debt in a manner wide enough to include decree debts as well.

11. Mr. Balakrishnan invited my attention in this connection to a contrary view expressed by Ramaprasada Rao, J., on the subject. I was shown a brief report of it appearing in *Govindaswami v. Balakrishna Reddi* (1977) T.L.N.J. 41. This journal's version shows that the learned Judge was impressed by the circumstances that both Acts XV and XVI of 1976 were enacted by the President on one and the same day, they came into force on one and the same day, and both Acts set out to define "debts" in the context of debt relief. According to the learned Judge, these were considerations which demanded that the definition of "debt" occurring in Section 2(b) of Act XV of 1976 must be construed, in juxtaposition with the definition of "debt" occurring in Section 2(i) of Act XVI of 1976. Having compared the two definitions in the two statutes, the learned Judge expressed, the view that the relief to indebted agriculturist in Act XV of 1976 does not apply to a liability payable under a decree of a civil Court.

With great respect, I do not accept the learned Judge's conclusion nor the reason ship that led him upto it. Presumably, Ramaprasada Rao, J's

attention had not been invited, to the wording of the operative provision of Section 6 of Act XV of 1976. Had that been done, I an quite sure the

conclusion of the learned Judge would have been different. As it happened, however, the judgment had been rendered without reference to the effect and even to the existence of Section 3 of Act XV of 1976, I must accordingly regard the judgment of Ramaprasada Rao, J., as having been rendered per incuriam, I am satisfied, in my own mind that, on the clear terms of Section 3 of Act XV of 1976, agriculturists against whom there are money decrees, are also entitled to invoke, and obtain the benefits of Section 3 of Act XV of 1976. In the result, this Civil Miscellaneous appeal must be allowed. I do so accordingly, but, in the circumstances without costs.

12. The application for stay before the learned Subordinate Judge was made u/s 3 of the Act, as originally enacted. The stay granted by the Act was for a period of one year from the date of commencement of the Act. The Act commenced on 15th January, 1976. Hence, the period of stay would ordinarily have expired on 15th January, 1977. However, Section 3 was subsequently amended, and the period of stay was extended, by another six months beginning from 15th January, 1977. In view of this extension to the period of stay and the way in which the statute had brought it about, I think the extension would get automatically incorporated in all subsisting proceedings. In this view of the matter, I hold that it is not necessary for the judgment-debtor to file, a fresh application for taking advantage of the extension of stay of suits from 15th January, 1977. There will accordingly be a stay of execution of the decree, in this case, till 15th July, 1977.