

(1965) 09 KL CK 0016
In the High Court Of Kerala
Case No : C.R.P. No. 702 of 1964

V.K. Balakrishnan

APPELLANT

Vs

Asoka Bank Ltd., Muttathangadi, Sherlalai

RESPONDENT

Date of Decision : 29-09-1965

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1958 — Section 15(1), 18(1), 2

Citation : AIR 1966 Ker 42

Hon'ble Judges : M.S. Menon, C.J; V.P. Gopalan Nambiyar, J; T.S. Krishnamoorthy Iyer, J

Bench : Full Bench

Advocate : George Vadakkal, M.A. Joseph and Jose T. Manjooran, for the Appellant; P.J. Varghese, K. Raman and C.K. Sivasankara Panicker, for the Respondent

Judgement

T.S. Khishnamoorthy Iyer, J.—The Civil Revision Petition which raises the question whether an agriculturist debtor can claim relief under Sections 15 to 18 of Act 31 of 1958 in respect of debts incurred by him after the commencement of the Act, has been referred to the full Bench by Vaidialingam J. The answer to the question depends primarily on an interpretation of Sections 15 and 18 of the Act.

2. The contention of the learned advocate for the first counter-petitioner is that in view of Section 15 and the definition of "debt" in Section 2(c) of the Act the settlement of "liabilities" by court u/s 18 on an application filed under Sections 15(1) of the Act must be confined to debts incurred before the date of commencement of the Act. In support of this proposition the learned counsel cited the following observation from the decision in Balakrishnan Nair v. Mohammed Kunju 1964 1 Ker LT 12.

"Section 15(3) which provides that "the amount and other particulars of all claims against him (the debtor) at the commencement of this Act, together with the name, address and residence of his creditors" should be included in the petition, seems to indicate that the liabilities incurred after the commencement

of the Ad are to be excluded in proceedings u/s 15 the definition of "debt" in Section 2(c) includes only liability due from or incurred by an agriculturist on or before the commencement of the Act. "

3. But a Division Bench of this Court in *Hameed Koya v. Arunachalam Nair*, 1963 Ker LT 653 following the decisions in *Umbichi Ahmadu v. Kalyaniyamma*, 1960 Ker LT 865 and *Meenakshikutty Varasiaramma, v Travail-core Forward Bank Ltd.*, 1961 Ker LT 377 was of the view that the definition of the word "debt" in Section 2 clause (e) "does not govern the content of that expression occurring in Section 15 of the Act." In view of these decisions and the use of the word "liabilities" in Section 18 it is contended on behalf of the revision petitioner that the agriculturist if competent to file an application u/s 15(1) is entitled to a settlement of all his debts whether incurred prior or subsequent to the Act.

4. A definition clause does not necessarily apply to all possible contexts in which the word may be found in a particular statute. A strict adherence to the definition may lead to an anomaly or even repugnancy. In dealing with statutory definitions, *Craies on Statute Law* (sixth edition) page 101 states:

"It follows from the rule thus variously stated that all statutory definitions or abbreviations must be read subject to the qualification, variously expressed, in the definition clauses which create them, such as: "unless the context otherwise requires": or "unless a contrary intention appears"; or "if not inconsistent with the context or subject matter"."

Their Lordships of the Supreme Court in *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, at pp. 974 and 975 observed:

"It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word denoted is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances."

Even where the definition clause does not contain the qualifying words, the Lord Chancellor in 1940 AC 613 at 621 observed:

"It is perhaps worth pointing out that the words, "unless the context otherwise requires", which we find in the Consolidating Act of 1929, are not to be found in the amending Act of 1928 1 attribute little weight to this fact, for in my opinion some such words are to be implied in all statutes where the expressions which are interpreted by a definition clause are used in a number of sections with meanings sometimes of a wide and sometimes of an obviously limited character."

Section 2 of Act 31 of 1958 contains the following qualifying words:

"III this Act unless the context otherwise requires"

It is in the light of the qualifying words and the principles stated above that the words debts in Section 15(1) have to be interpreted,

5. Sections 15 to 18 provide for bringing about a full settlement of the liabilities of an agriculturist who is unable to pay his debts under the provisions of the Act. They are in the nature of quasi-insolvency proceedings.

6. Section 15(1) of the Act reads:

"Any agriculturist who is unable to pay his debts under the foregoing provisions of this Act, may present an application to the Court, within whose jurisdiction he resides or ordinarily carries on business for a full settlement of his debts."

Section 18(1) reads:

"The Court shall then settle the liabilities of the debtor in the manner mentioned here-under; namely:

xx xx xx xx While Section 15(1) of the Act prescribes the condition precedent to be satisfied before any agriculturist makes an application for a full settlement of his debts, Section 18 prescribes the scope and ambit of such settlement. Section 15(1) is therefore confined to an agriculturist who is unable to pay under the foregoing provisions of the Act. Payment under such foregoing provisions can be made only in respect of debts defined u/s 2(c) of the Act. Necessarily it follows that the inability to pay contemplated by clause (1) of Section 15 is also in respect of such debts and the existence of any such debt or debts is essential for the maintainability of a petition u/s 15(1). The Act is passed to provide for the relief of indebted agriculturists. The agriculturist is given the right to pay the debt defined u/s 2(c) and calculated under the provisions of the Act in instalments and get a discharge. There may still be some who may not be able to take advantage of those provisions. To them section 15 gives a substantial relief of a different kind. To take advantage of it the agriculturist must show that he has a debt which he is unable to pay under the foregoing provisions of the Act. It therefore follows that debts" in the clause "who is unable to pay his debts under the foregoing provisions of the Act" in Section 15(1) can only mean "debt" denoted in section 2(c) of the Act.

7. In 1900 Ker LT 865 one of the debts included in the application filed u/s 15(1) was a debt u/s 2(c) of the Act. The necessity of a debt u/s 2(c) of the Act for the maintainability of an application u/s 15(1) did not come up for consideration in the same decision. But in 1961 Ker LT 377 it was observed:

"The requirement of one of the debts being within the definition of Section 2(c) to attract the operation of Sections 15 to 18 has no basis in the wording of Sections 15 to 18 of the Act."

We are of the view that the statement of law that no debt as defined in Section 2(c) is necessary to enable an agriculturist to file an application u/s 15(1) is not correct. We therefore disagree with the dictum in 1961 Ker LT 377 when it holds, that no debt defined u/s 2(c) of Act 81 of 1958 is necessary to sustain an application u/s 15(1) of the Act. This decision (1961 Ker LT 377) is relied on in 1963 Ker LT 653 only for the proposition that even debts excluded by Section 2(c) can be included for settlement u/s 18.

8. The next question is whether the expression "liabilities" in Section 18(1) has to "be limited to the debts incurred prior to the Act. Even though one such debt defined in Section 2(e) is necessary for sustaining the application u/s 15(1), all the assets and liabilities of the agriculturist inclusive of those incurred subsequent to the Act will have to be taken into account for a settlement u/s 18.

9. A debtor has to state in an application filed u/s 15(1) among other things (1) the amount and other particulars of all his properly including debts due to him together with a specification of the value of such property and the place or places at which any such property is to be found and details of any mortgage, lien or charges thereon, (2) a statement that he wants a fair settlement of his debts, (3) a statement that he unconditionally leaves all his assets in the control of the court. Section 15(3) (e) read with sub-clause (c) thereof shows that the word "assets" in sub-clause (e) is used in its wider sense meaning all the property of the debtor whether charged or not and simple debts. The assets which a debtor has to surrender to the court are those belonging to him on the date of the application. This can include even assets acquired by an agriculturist after the Act. As was observed in *Kesava Pillai v. Ramakrishna Panicker*, 1961 Ker LT 457 in the case of Section 10(3) (e) of the Travancore Acts II and III of 1116-a provision corresponding to S. 15(3) (e) of Act 31 of 1958-by virtue of the surrender of the assets in the control of the court, the court "gets control of all the assets of the debtor even if there is no actual vesting of property as in insolvency and thereafter the court holds the assets in trust for settling the liabilities of the debtor after allotting his due share" in accordance with Section 18(1)(a). Ordinarily the assets held by an agriculturist are available to be proceeded against for the realisation of all his debts. There is no provision in Act 31 of 1958 preventing the post-enactment creditors of an agriculturist from taking appropriate proceedings against the assets surrendered u/s 15(3) (c) for the realisation of their debts. The benefit of such assets would therefore be available to such creditors also.

10. Section 18 deals with the settlement of liabilities of the debtor by court. The scheme of distribution of the assets of the debtor for settling his liabilities seems to us to indicate that the expression "liabilities" in Section 18(1) is used in an unrestricted sense and will include all the debts of the agriculturist even those incurred after the commencement of the Act. Section 18, for settling the liabilities of the debtor, provides that after allotment of one-fourth of the entire assets (not exceeding Rs. 6,500 in value) subject to the terms of Section 18(2) (a) and after payment of all liabilities by way of public revenue due on land as defined in the Revenue Recovery Act for the time being in force or any tax, cess, fee, rent, jenmikaram or such other dues chargeable by virtue of any enactment for the time being in force, all the remaining assets shall be distributed and made over to the creditors. There is a proviso to Section 18(1) (b) of the Act as to priority in the matter of payment to the creditors as follows: (a) debts due to secured creditors, (b) debts due to the Government or to any local authority, (c) unsecured creditors in proportion to their debts. It is not argued -and in our opinion rightly too--that the debts by way of public revenue due on land etc debts due to secured creditors and the unsecured simple money debts that may be payable to the Government or any local authority referred to in Section 18(1) (b) can only be debts incurred prior to the date of the commencement of the Act. This obviously shows that the expression "liabilities" cannot be given the same meaning as the word "debt" defined in Section 2(c). If the contention of the first counter-petitioner is accepted, only those unsecured creditors whose debts were incurred subsequent to the Act would stand outside the purview of Section 18(1). These unsecured creditors are also entitled to proceed against the assets of the agriculturist for the recovery of their debts in other appropriate proceedings. Thus there will be a scramble over the assets of the agriculturist among his unsecured creditors whose debts were incurred both before and after the Act. The result will be that an agriculturist who files an application u/s 15(1) will be deprived of the benefit of allotment u/s 18(1) at the instance of unsecured creditors whose debts were incurred after the Act. We find it difficult to attribute this intention to the Legislature when it directed the settlement of the liabilities of an agriculturist and allotment of one-fourth of the entire assets (not exceeding Rs. 6,500 in value) to him subject only to such liabilities by way of public revenue due on land as defined in the Revenue Recovery Act for the time being in force, or any tax, cess, fee, rent, jenmikaram or such other dues chargeable thereon by virtue of any enactment for the time being in force. It therefore follows that we cannot accept the contention on behalf of the first counter-petitioner to give a narrow interpretation to the expression "liabilities" in Section 18(1) as denoting only those incurred prior to the commencement of the Act. In coming to the conclusion that the liabilities incurred after the commencement of the Act are to be excluded from proceedings in Section 15, the learned Judges in 1964 Ker LT 12 have relied on Section 15(3)(h) of the Act which provides for the inclusion of "the amount and other particulars of all claims against him (the debtor) at the commencement of this Act together with the name and address and residence of his creditors" in the application to be filed u/s 15(1). The

scheme of Section 18, the scope of the expression "liabilities" occurring therein and the effect of sub clauses (c) and (e) of clause 3 of Section 15 have not been considered in the above decision. We feel that the meaning of the expression "liabilities" in Section 18(1) cannot in any way be controlled by clause 1 or sub-clause (b) of clause 8 of Section 15. We are therefore of the view that the decision in 1964 Ker LT 12 in so far as it lays down that debts incurred after the commencement of the Act are to be excluded in proceedings u/s 15(1) of the Act does not lay down the correct law and has to be overruled to that extent. We also approve of the dictum laid down in 1961 Ker LT 377 that the liabilities to be settled u/s 18 of the Act include every liability of an agriculturist whether incurred before or after the commencement of the Act. It therefore follows that the order of the court below has to be set aside and the order staying the execution of the decrees of the first counter-petitioner has to be restored. The civil revision petition is thus allowed and we make no order as to costs. In the view we have taken, we point out the necessity to make suitable amendments for the inclusion of post-enactment creditors and the particulars of their claims in an application u/s 15(1) and for the issue of notice u/s 18(2) to such creditors of the agriculturist.

11. Since we have held that the debts due to the first counter-petitioner also come in for settlement u/s 18 of the Act, it is open to the first counter-petitioner to get himself impleaded in the petition for settlement of liabilities pending in the court below and any order already passed removing him from the party array, though at his instance will not operate as a bar.