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(1978) 09 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No. 20 of 1976

Yashwantlal Dhirajlal Chotai — APPELLANT

Vs

Jagannath Maruti Bhusari — RESPONDENT

Date of Decision : 19-09-1978

Acts Referred:
Limitation Act, 1963 — Section 27

Citation : (1979) 81 BOMLR 525 : (1979) MhLj 153

Hon'ble Judges : Kambli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kambli, J.—This revision application is directed against the order dated November 28, 1975 holding that the present applicant-defendant No. 2 was not a debtor of the plaintiff (non-applicant No. 1), within the meaning of that expression in the Maharashtra Debt. Relief Act, 1975, and rejecting his application praying for his discharge from the liability said to be outstanding against him and for releasing the mortgaged property.

2. Non-applicant No. 1 (hereinafter referred to as the plaintiff) had filed a suit for recovery of the amount due on the basis of the two mortgage-deeds from the present applicant and non-applicant No. 2 who was defendant No. 1 in the trial Court and in default praying that the mortgaged property be foreclosed.

3. Non-applicant No. 2 (defendant No. 1) was the mortgagor. It appears that on August 20, 1969 he executed a sale-deed of the mortgaged-property in favour of the present applicant for Rs. 12,000. This property was already mortgaged to the plaintiff. By the sale-deed obtained by defendant No. 2, he undertook to pay the mortgage debt due to the plaintiff under the two mortgages. The plaintiff, therefore, prayed for a decree against the original mortgagor as well as defendant No, 2 (the present applicant) who purchased the equity of redemption.

4. The applicant moved an application before the trial Court alleging that he was

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entitled to have a declaration that the debt outstanding against him on the appointed day, under the Debt Relief Act, for which the plaintiff had filed the suit was discharged. He prayed that it should be declared that debt was discharged and that the mortgaged property stood released in consequence of the discharge of the debt. In substance, he prayed that the suit of the plaintiff against him be dismissed.

5. The trial Court observed that there was no privity of contract between the plaintiff and this applicant. Hence the learned Judge dismissed the applicant''s application.

6. The only question that arises for my consideration in this application is whether the applicant is entitled to any relief under the provisions of the Maharashtra Debt Relief Act, 1975 (hereinafter referred to as the Debt Relief Act). It may be noted that this Act which came into force on August 22, 1975 repealed the earlier Maharashtra Debt Relief Ordinance, 1975. Section 3 of the Act provides that

Notwithstanding anything contained in the Maharashtra Debt Relief Ordinance, 1975, all debts of a debtor which stood discharged on the appointed day under the provisions of that Ordinance shall, on the commencement of this Act, stand revived...

7. It will thus be seen that the debt, if any, stood revived on the commencement of the Debt Relief Act which came into force on August 22, 1975. The question for consideration is whether the present applicant is a debtor entitled to get a relief under the provisions of the Debt Relief Act.

8. The first contention raised by Mr. Thakur, the learned counsel for the applicant, is that if there was any dispute on this point, the matter should have been referred to the Tahsildar for decision as provided in the Ordinance instead of the Court deciding it itself. Section 2 of the Ordinance which was in force when the impugned order was made provided that if a question arises whether a person is a marginal or small farmer, or a rural labourer, or a rural artisan, or a worker, the question shall be referred to an officer not below the rank of a Tahsildar duly appointed by the State Government in that behalf, and the decision of such officer on the question shall be final and conclusive and shall not be called in question in any civil Court. Corresponding section in the Debt Relief Act is Section 7. Obviously, by the time, this revision application is being decided, the Ordinance is no longer in force, as the same is replaced by the Act. A single Judge of this Court in Pramod M. Jhaveri and Another Vs. Sukhdeo Ramratan and Another, had an occasion to consider the scope and ambit of Section 7 of the Maharashtra Debt Relief Act. From the detailed analysis of Section 7 of the Act, the learned Judge came to the conclusion that the only claims which relate to the release and delivery of possession of the pledged or mortgaged property fell within the scope of authorised officers contemplated by Section 7 of the Act. The rest of the claims arising under the Act, according to the learned single Judge

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were the matters which should be settled, decided or dealt with by the civil Court. In coming to this conclusion, the learned Judge considered the scheme of the Act with special reference to the provisions in Section 7 itself and in particular to Sub-section (2) and (3) thereof. With respect, I am in agreement with what has been held by the learned Judge.

9. The first and the foremost question that is to be decided is whether the applicant is the debtor entitled to claim relief under the provisions of the Ordinance or the Act. The term "the debt" was defined in the Ordinance by Section 2(e) thereof as follows:

''debt'', with its grammatical variations and cognate expressions, means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise;

The term ''debt'' has been defined in Section 2(e) of the Act as follows:

''debt'' means any liability, in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest if the loan is taken by a worker, and with or without interest, in any other case), whether secured or unsecured, due from a debtor whether payable under a decree or order of any court or otherwise;

It will be seen from the above definitions that the term ''debt'' was defined in the Ordinance as meaning liability in cash or kind whether secured or unsecured due from a debtor. Similarly, the term ''debt'' has been denned in the Act as meaning any liability in cash or kind being a liability arising out of a loan and outstanding on the appointed day whether secured or unsecured and due from a debtor,

10. Mr. Thakur, the learned counsel for the applicant, pointed out to the recitals in the plaint from which it would be seen that the plaintiff, before he had instituted the suit had sent a notice to this applicant also demanding the mortgage amount. The notice was sent because this applicant had undertaken to pay all the amount due to the plaintiff. By the prayer clause in the plaint, the plaintiff asked for a decree against this applicant also along with defendant No. 1 in the suit i.e. the original mortgagor. Relying upon this position, Mr. Thakur contends that the applicant is a debtor of the plaintiff. Mr. Deo, the learned counsel for the respondent No. 1, submits that the plaintiff had brought a suit for foreclosure and, therefore, the present applicant was made a party. However, the plaintiff had prayed that a decree be passed against this applicant also directing him to pay the mortgage amount. The crucial question, however, is whether on these facts, the applicant could be said to be a debtor of the plaintiff. I have already quoted the definition of the term ''debt'' both from the Ordinance as well as the Act. As pointed out earlier under the Ordinance ''debt'' meant any liability due from a debtor and under the Act ''debt'' means any liability outstanding on the appointed day being a liability arising out of a loan due from a debtor.

11. Now, in this case, it appears that defendant No. 1 sold the mortgaged

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property to defendant No. 2 and defendant No. 2 i.e. the present applicant undertook to pay all the mortgage amount to the plaintiff. The question however is whether this will make the present applicant a debtor of the plaintiff. In other-words, whether the amount is due to the plaintiff from this applicant. If this amount is legally recoverable by the plaintiff from this applicant, it could be said that the amount was due to the plaintiff from the applicant. The amount could be said to be legally recoverable from the applicant if inspite of his objection to pay the same, the plaintiff could obtain a money decree against the present applicant from a Court of law. That takes us to the question whether the plaintiff can obtain a money decree against the assignee of the mortgaged property. Of course, if the property happens to be in the hands of the assignee, the plaintiff would be able to reach it on the strength of the mortgage-deed in his favour. The question, however, is whether the plaintiff will be able to obtain a money decree against the assignee if the assignee objects to the same. Obviously, there being no privity of contract between the plaintiff and the assignee, the plaintiff will not be entitled to obtain a money decree against the assignee. Merely because the assignee has undertaken to pay the mortgage amount to the mortgagee that will not make him legally liable to pay the mortgage amount to the plaintiff. Of course, he may pay the amount if he wants to save the property. However, if the assignee refused to pay will the plaintiff be entitled to a money decree against the assignee? I think the plaintiff will not be able to obtain a money decree against the assignee, if the latter chooses to resist a prayer for the same. What is contemplated by the definition of the expression ''debt'' in the Act as well as in the Ordinance, in my view, is that the liability must be due from a debtor. There is nothing in this definition or in the Act to suggest that the debtor includes the assignee of the original debtor. If the assignees of the original debtors are included in the term ''debtor'' startling results will follow. The original debtor who himself may not be entitled to the benefits of the legislation may choose such person who would easily answer the description of the terms "marginal farmer, rural labourer, rural artisan or a worker etc.," assign his debt to him and would be able to claim the discharge of the debt and as well as the return of the pledged or the mortgaged property. This position, in my view, does not appear to have been contemplated by the provisions of Act. The term ''debtor'' in the Act must in my view be construed as a person from whom the debt was due to the creditor and from whom the creditor can recover it legally, by process of law. In this view of the matter, I think, the present applicant is not entitled to any relief under the provisions of the Debt Relief Act. His application, therefore, was rightly rejected by the learned trial Judge.

12. Mr. Thakur, the learned counsel for the applicant places reliance upon the decision reported in Shivgonda v. Chandrakant [1978] Mh. L.J. 169 : 80 Bom. L.R. 371. It was observed there:

A debtor who has executed a mortgage of Immovable property and has failed to redeem the mortgage within the period of limitation as provided by Article 148 of the Indian Limitation Act, 1908, is not entitled to claim possession or return of

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the Immovable property mortgaged by him, under the provisions of the Maharashtra Debt Relief Act inasmuch as the provisions of section 4(e) read with section 4(c) of the said Act have no applicability as the title of the mortgagor in respect of the mortgaged property stood extinguished on the expiry of the prescribed period of limitation in view of the provisions of section 28 of the Limitation Act, 1908 equivalent to section 27 of the Limitation Act of 1963.

The debtor was not entitled to relief under the provisions of the Act in the above case as his title to the mortgaged property had already stood extinguished on the expiry of the prescribed period of limitation. Mr. Thakur, the learned counsel for the applicant, contends that that is not the position in this case and the claim of the mortgagor or his assignee is not time-barred in the instant case. Really speaking, we are not concerned with the aspect of limitation in this matter. The decision relied upon by Mr. Thakur, therefore, is not applicable to the facts of this case. What we are concerned with in the instant case is whether the definition of the term, ''debt'' takes in the liability which the present applicant i.e. defendant No. 2 took upon himself to pay the mortgage amount to the plaintiff. That arrangement to pay the amount to the plaintiff obviously was an arrangement between the original mortgagor and the present applicant. Merely because on coming to know about that arrangement, the plaintiff demanded the amount from defendant No. 2, it cannot be said that defendant No. 2 i.e. the present applicant is legally liable to pay the amount to the plaintiff. The applicant i.e. defendant No. 2 can very well tell the plaintiff that inspite of his arrangement with the original mortgagor, he is not liable to pay the amount to the plaintiff. The case, therefore, sought to be relied upon by Mr. Thakur is of no assistance to him.

13. In the result, I see no merit in this revision application. The revision application stands dismissed. Rule discharged. In the peculiar circumstances of the case, no order as to costs.

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