P. S. L. Ramanathan Chettiar & Others

Vs

O. Rm. P. Rm. Ramanathan Chettiar

Civil Appeal No. 462 of 1965

(J. C. Shah, V. Ramaswami – I, G. K. Mitter JJ)

04.03.1968

JUDGMENT

MITTER, J.-

This is an appeal by special leave against an order of the High Court of Madras dated August 8, 1959 reversing an order of the Subordinate Judge, Devakottai scaling down the decree passed in O.S. No. 33 of 1945.

The facts necessary for the disposal of the appeal are as follows. The respondent's father made a deposit of Rs. 5,000/- with the appellants' father in 1926 repayable with interest at Rangoon Nadappu rate. A demand was made for re-payment on 1944 and a suit for recovery of the amount was fixed on March 16, 1945. The trial court decreed the suit in the year 1946 for Rs. 11,459-14-0. The appellants' father preferred an appeal therefrom to the High Court and pending disposal of the same deposited Rs. 3,500/- in court on April 16, 1947. The High Court confirmed the decree on September 14, 1951. There is some dispute about the actual date but there is no contest that the appellants' father deposited Rs. 11,098-10-2 to obtain stay of execution of the decree. On August 20, 1947 the court passed an order to the effect that the decree holder would be allowed to draw out the amount on furnishing security. Although an Act styled. The Madras Agriculturists Relief Act, 1938 was passed on 22nd of March of that year wherein provision was made for giving relief to agriculturist debtors, interalia, by scaling down decrees passed against them, no attempt was made by the defendants to take advantage thereof either in the trial court or before the court of appeal. On execution proceedings being commenced, the judgment-debtors filed an application under the aforesaid Act for scaling down the decree under s. 19(2) thereof. The decree holder raised various objections thereto. The Subordinate Judge who heard the application in the first instance turned down the contentions of the decree-holder and modified the decree. An appeal therefrom was preferred by the decree-holder to the Madras High Court. There being conflicting decisions in the High Court as to whether a judgment-debtor who had not claimed relief under the Act before the passing of the decree, could do so subsequently thereto, the appeal was directed to be heard by a Full Bench. An appeal from another decision of the same High Court embracing the identical question was disposed of by this Court in Narayanan Chettiar v. Annamalai Chettiar [[1959] Supp. 1 S.C.R. 237]. There after referring to the Act of 1938 as also to s. 16 of Madras Act XXIII of 1948 amending the Act of 1938, it was held that "the appellant was entitled to the benefit of s. 19(2) of the Act read with s. 16 cl. (ii), of the Amending Act."

The Full Bench of the Madras High Court constituted for the purpose of hearing the appeal from the order of the Subordinate Judge held that the lower court was competent to give relief under s. 19(2) of the Act by way of scaling down the decree passed by the High Court, and referred the matter

back for decision by a bench. The Bench decided inter alia that the application was properly presented before the Subordinate Judge i.e., the court which passed the decree. It refused to go into the question as to whether the plaintiff was an agriculturist in view of the concession before the Full Bench. It further negatived the plea that the decree had become satisfied by payment of money into court on July 24, 1947. It however reversed the order of the Subordinate Judge by holding that the money entrusted to the plaintiff's father being a deposit with a banker was not payable until there was a demand for it : the money became payable only on 2nd October, 1944 i.e. after the coming into force of Act IV of 1938 and consequently the provisions of s. 19(2) of the Act were not applicable and that the decree was not liable to be scaled down. The present appeal is against this order.

Section 19 of the Act which we have to consider is set forth below :

> "(1) Where before the commencement of this Act, a court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family debt, on the application of any member of the family whether of not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be :
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> Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.
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> (2) The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a court has passed a decree for the repayment of a debt payable at such commencement".
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> 'Debt' has been defined in s. 3(iii) of the Act as meaning "any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue court or otherwise, but does not include rent as defined in clause (iv), or 'kanartham' as defined in section 3(1)(1) of the Malabar Tenancy Act, 1929."

It will be noted that the definition is of a very wide import and would include any liability due from an agriculturist with the exceptions specified. Section 4 takes out of the ambit of the definition various liabilities and impositions on the agriculturist expressly specified therein. If therefore there is a liability of an agriculturist not in terms excepted by Sec. 3(iii) or Sec. 4 of the Act it would be a 'debt' within the meaning of the definition given in s. 3(iii).

In Kesoram Industries v. Commissioner of Wealth Tax [[1966] 2 S.C.R. 688] this Court had to consider the meaning of the expression "debts owed by the assessee" which had to be taken into account in computing his net wealth in terms of s. 2(m) of the Wealth Tax Act. One of the questions there raised was, whether the amount of the provision for payment of income-tax and super-tax in respect of a particular year of account was a debt owed within the meaning of s. 2(m) and as such deductible in computing the net wealth of the assessee. It was held by this Court that even though the Finance Act may be passed later "the tax liability at the latest will arise on the last day of the

accounting year". The Court went elaborately into the question as to the meaning of the word 'debt' and held that it could be defined as a liability to pay in presenti or in futuro an ascertainable sum of money. As regards the meaning of the word 'owed' it was observed that "it did not really add to the meaning of the word 'debt'".

In the light of this decision there can be no doubt that on a deposit being made, the depositee incurred a liability although the time for repayment would come only when a demand was made and the cause of action for the suit would arise on such a demand.

On behalf of the respondent, it was argued that the word 'debt' implied a pre-existing loan and as such it could not apply to a deposit. The definition in s. 3(iii) clearly negatives such a proposition. If loans alone were meant to be covered by the use of the word 'debt', there was no reason to exclude rent from the purview of the expression. In that case there would have been no need to mention expressly revenue tax or cess or liability arising out of a breach of trust or in respect of "maintenance under a decree of court or otherwise" in s. 4.

The plea of the decree-holder which succeeded before the High Court cannot therefore be accepted.

It was however argued that the decree had been satisfied already and as such s. 16 cl. (iii) of Madras Act XXIII of 1948 was applicable. That section for our purpose runs as follows :

> "The amendments made by this Act shall apply to the following suits and proceedings, namely :-
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> #(i) . . . . . .(ii) . . . . . .##
>
> (iii) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act :
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> # . . . . . ."##

It was argued that as the full amount of the decree had been put in court before 1948, the judgment-debtors could not apply for scaling down thereafter. In this connection, reliance was placed on a decision of the Calcutta High Court in Chowthmull Maganmull v. The Calcutta Wheat and Seeds Association [I.L.R. 51 Cal. 1010]. There the defendant-appellant had appealed from a decree for Rs. 21,850/- with interest and costs passed against it and on the respondents taking steps to execute the decree had obtained an order for stay of execution thereof on depositing the said sum in court as security to the credit of the suit. Thereafter an order was made adjudicating the appellants as insolvents. The Official Assignee did not proceed with the appeal and the respondent applied for the appeal being dismissed and the money being paid over to them. The Official Assignee claimed the money as belonging to the insolvents' estate and for the benefit of the general body of creditors. It was held that the effect of the order of August 29, 1923 directing stay of execution on terms of a deposit being made was that "the money was paid into Court to give security to the plaintiff that in the event of their succeeding in the appeal they should obtain the fruits of their success," and the "money which was paid into court belonged to the party who might be eventually found entitled to the sum." On the other hand, there is a decision of the Bombay High Court in Keshavlal v. Chandulal [37 B.L.R. 200] where a judgment-debtor had obtained an order for stay of execution of the decree on his depositing the decretal amount in court. Later on the application of the judgment-debtor the deposit was invested in Government promissory notes which appreciated in value by the time the appeal was heard. The appeal resulted in a small sum being disallowed from the decree

whereupon the judgment-debtor applied for a return of the investment to him on his paying into court the amount due under the decree. But the decree-holder claimed the securities which represented the decretal amount at the time the deposit was made. On behalf of the decree-holder reference was made to the above judgment of the Calcutta High Court. There distinguishing the Calcutta judgment, Macklin, J. said that the amount in court "was primarily a deposit of security rather than a deposit of the decretal debt, and the decree-holder cannot claim it as his own unless the judgment-debtor fails to satisfy the decree by the payment of the money due under the decree."

On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

The observations in Chowthmull's case [I.L.R. 51 Cal. 1010] do not help the respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree-holder could not be deprived of the money which had been put into court to obtain stay of execution of the decree as but for the order, the decree-holder could have levied execution and obtained satisfaction of the decree even before the disposal of the appeal.

The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 rule 1 C.P.C. and as such, there is no question of the stoppage of interest after the deposit.

In the result, the appeal is allowed, the order of the High Court set aside and that of the Subordinate Judge restored. The respondent will pay the costs of this appeal.

Appeal allowed.##

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