

Gopalakrishna Pillai

Vs

K. M. Mani

Civil Appeal No. 6767 of 1983

(A. N. Sen, D. P. Madon JJ)

21.11.1983

JUDGMENT

MADON, J. -

1. The question which falls for determination in this appeal by special leave from the judgment and order of the Kerala High Court is whether the amount claimed by the appellant in a suit filed by him against the respondent was a "debt" within the meaning of that expression as defined in clause (3) of Section 2 of the Kerala Debt Relief Act, 1977, (hereinafter referred to as "the said Act") and was, therefore, deemed to be discharged.

2. The appellant's case as founded in the plaint was that the respondent sold a cow and a calf to him for a sum of Rs. 1600 and that the cow did not yield the quantity of milk which the respondent had stated it would yield and was suffering from an incurable disease which was concealed from the appellant by the respondent. For this reason, the appellant asked the respondent to buy back the said cow and the calf for the same price which had been paid by the appellant to the respondent and thereupon the respondent agreed to buy back the said cow and calf for a sum of Rs. 1600. In pursuance of this agreement, the said cow and calf were returned by the appellant to the respondent. By his letter dated October 27, 1976, the respondent acknowledged that he had received back the said cow and calf and assured the appellant that he would pay the price as early as possible. In spite of repeated demands made by the appellant, including by his advocate's letter dated September 17, 1977, the respondent failed and neglected to pay to the appellant the said sum of Rs. 1600 or any part thereof though he went on promising to do so by his letters dated November 25, 1976, December 30, 1976, and May 19, 1977. The appellant thereupon filed the suit out of which the present appeal arises, being Original Suit No. 242 of 1977, in the Court of the Munsiff, Taliparamba. In the plaint it was stated that though there was no agreement to pay any interest, the appellant was entitled to interest by way of damages, and interest at the rate of 6 per cent per annum was claimed on the said sum of Rs. 1600 from October 27, 1976. The appellant expressly averred in the plaint that the amount claimed by him was excluded from the definition of "debt" in the said Act.

3. By his written statement the respondent contended that he had only sold a pregnant cow to the appellant for a sum of Rs. 1500 and not Rs. 1600 and that the cow did not suffer from any disease but by reason of the negligent manner in which the appellant handled the cow, it gave premature birth to a calf and that the appellant brought back the cow and the calf and left them in front of his house. The respondent further denied his liability to pay any amount to the appellant and alleged that he had "agreed to pay to pay Rs. 1500 to the plaintiff (appellant) by his letters for nothing". He further alleged that he had paid a sum of Rs. 750 to the appellant. He also contended that he was a

"debtor" and the amount claimed from him in the said suit was a "debt" within the meaning of those expressions in the said Act and that he was entitled to the benefit of the said Act and suit was, therefore, not maintainable.

4. In order to understand the controversy between the parties it will be convenient to refer now to the relevant statutory provisions. The Kerala Debtors Temporary (Relief) Act, 1975, provided for a moratorium on the recovery of debts due from certain categories of persons, such as, indigent agriculturists, landless labourers, artisans and kudikidappukars, for a period of one year from October 14, 1975, or for such longer period as might be specified by the Government by notification in the Gazette. The period of operation of the said temporary legislation was extended until January 14, 1977, by S.R.O. No. 1031/76 dated October 7, 1976, published in the Kerala Government Gazette No. 559 dated October 8, 1976. This said temporary legislation had been enacted pending the passing of a legislation to give permanent relief to certain classes of debtors. Such permanent piece of legislation had, therefore, to come into force before the expire of the extended period of the said Kerala Debtors Temporary (Relief) Act, 1975. As the Legislative Assembly was not in session, the Kerala Debt Relief Ordinance, 1977 (Ordinance No. 1 of 1977), was promulgated by the Governor on January 13, 1977. As a bill to replace the said ordinance could not be introduced and passed in time, in order to keep alive the provisions of the said ordinance another ordinance containing identical provisions, namely, the Kerala Debt Relief Ordinance, 1977 (ordinance No. 9 of 1977) was promulgated by the Governor on May 6, 1977. The said Act, namely, the Kerala Debt Relief Act, 1977, repealed and replaced the said ordinance. The said Act came into force with retrospective effect from January 13, 1977, namely, the date on which the first Kerala Debt Relief Ordinance, 1977, was promulgated.

5. Clause (3) of Section 2 of the said Act defines the expression "debt". The material provisions of the said definition are :

(3) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by a debtor on or before the date of commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, and subsisting on that date, but does not include -

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(f) any debt which represents the price of goods purchased; or

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6. Clause (4) of the said Act defines the expression "debtor" as meaning "any person whose annual income does not exceed three thousand rupees from whom any debt is due". There are two exceptions to this definition. We are concerned only with the first of these exceptions. Under it any person from whom debt or debts exceeding three thousand rupees (excluding interest) is or are due is excluded from the definition of the expression "debtor". Section 3 of the said Act, omitting the proviso with which we are not concerned, provides as follows :

3. Discharge of debt. - Notwithstanding anything contained in any other law for the time being in force, or in any contract or other instrument having force by virtue of any such law, or in decree or order of court, with effect on and from the commencement of this Act -

(a) every debt and the interest thereon payable by a debtor to a creditor shall be deemed to be wholly discharged;

(b) no civil court shall entertain any suit or other proceeding against a debtor for the recovery of any debt or part of a debt or any interest thereon;

(c) all suits and other proceedings (including appeals, revision petitions, applications for review, proceedings for attachment and execution proceedings) pending at such commencement against any debtor for the recovery of any debt shall abate.

7. Thus, if the respondent's annual income as also his total debts, excluding interest, did not exceed Rs. 3000, he would be a debtor for the purposes of the said Act. In such eventuality, the amount due by him to the appellant together with interest, if any, thereon would be deemed to be wholly discharged on the date of the commencement of the said Act, namely, January 13, 1977, and the Court would have no jurisdiction to entertain the appellant's suit inasmuch as the transaction in respect of which the claim was made in the suit took place prior to that date, unless the claim made in the suit was a debt which represented the price of goods purchased by the respondent.

8. Bearing the above position in mind, we now turn to the findings given at different stages of this litigation in order to examine which court took the correct view.

9. At the trial of the suit, the respondent gave up all the contentions raised by him except two, namely, that he was a debtor entitled to the benefit of the said Act and that he had made a part payment of Rs. 750. The appellant in his turn restricted his claim to Rs. 1500. Accordingly the trial court framed only two issues, namely, with respect to the applicability of the said Act and the part payment pleaded by the respondent. The respondent's case of part payment was disbelieved by the trial court. The trial court found that the respondent's annual income did not exceed Rs. 3000 and that he was a debtor within the meaning of clause (4) of Section 2 of the said Act. It was argued on behalf of the respondent that the subject-matter of sale were a cow and a calf and they could not be said of be 'goods' for the purposes of the Sale of Goods Act, 1930. This contention was rejected by the trial court and it held that the amount claimed by the appellant in the suit was a debt which represented the price of goods purchased by the respondent and, therefore, fall within execution (f) to clause (3) of Section 2 of the said Act. The trial court accordingly passed a decree in favour of the appellant for a sum of Rs. 1500 with interest thereon at the rate of six per cent per annum from October 27, 1976, and ordered the respondent to pay the costs of the suits. The respondent filed an appeal in the district Court, Tellicherry, namely, Appeal Suit No. 356 of 1978, which appeal was dismissed and the parties were ordered to bear and pay their own costs of the appeal. Though in the memorandum of appeal it had been contended that there was no transaction of sale of goods between the parties as the sale of livestock was not a sale of goods this contention was given up at the hearing of the said appeal. The respondent then took the matter by way of revision to the Kerala High Court. The said revision, namely, Civil Revision Petition No. 1990 of 1979 (C), was allowed by the High Court. The High Court held that the amount claimed by the appellant did not fall within exception (f) to clause (3) of Section 2 of the said Act and that the appellant's claim, therefore, stood discharged. The High Court made no order as to costs throughout. The reasons which induced the High Court to arrive at this decision may be reproduced in its own words :

Irrespective of whether the defendant is bound to take back the cow or not the defendant may agree to take it back. If he takes back the cow and agrees to pay the amount he has received, the amount payable by him is not a debt which represents

the price of goods purchased. If is equivalent to the price of goods purchased, but it does not represent the price of goods purchased. Therefore, it is not excluded from the purview on goods as envisaged in Section 2(3) of the Kerala Debt Relief Act 17 of 1977.

It is against this judgment and order of the High Court that the present appeal is directed.

10. We find ourselves unable to agree with the conclusion reached by the High Court or the reasoning upon which it is based.

11. In our opinion, the High Court has not appreciated the true nature of the transaction between the parties. It has overlooked the pleadings of the parties, what transpired at the hearing of the suit, and the issues on which the parties went to trial. The claim made by the appellant in his plaint was for the price of goods sold and delivered by him to the respondent. It was not a claim for refund of price. Whether the amount due by way of refund of price would be a debt representing the price of goods sold is not a question with which we are concerned for the appellant had expressly pleaded in his plaint that the respondent had agreed to buy back the said cow and calf and had agreed to pay to him a sum of Rs. 1600 as price and that he had failed to pay the said amount or any part thereof. The respondent in his written statement had denied this contract of sale. As set out earlier, at the trial of the suit the respondent abandoned this defence and the appellant restricted his claim to Rs. 1500. As a result of this, the agreed and undisputed position was that there was an agreement between the appellant and the respondent under which the appellant had agreed to sell to the respondent the said cow and calf purchased by him from the respondent for a sum of Rs. 1500 and had delivered the said cow and calf to the respondent in performance of his part of the contract. The High Court overlooked the fact that at the trial, the respondent had given up his contention with respect to the transaction in question resting content with contesting the suit only on the grounds of part payment and discharge of the debt by reason of clause (3) of Section 2 read with Section 3 of the said Act, and that those were the only issues on which the parties went to trial. It is also pertinent to note that it was not the case of the appellant that it was a condition of the contract that the cow would yield a particular quantity of milk and that such condition not having been fulfilled, he was entitled to reject the goods, namely, the cow and the calf, and get a refund of the price. Even if such a statement on the part of the respondent were to be treated as a warranty, a breach of warranty does not entitle a buyer to reject the goods and his only remedies would be those provided in Section 59 of the Sale of Goods Act, 1930, namely, to set up against the seller the breach of warranty in diminution or extinction of the price or to sue the seller for damages for breach of warranty. The case of the appellant was also not founded upon any breach of warranty. His case as expressly pleaded in the plaint was that he took back the cow and the calf to the respondent and that the respondent agreed to buy them back for the same price. This was, therefore, a case of a resale by the buyer to the seller, the sale price being the very same amount which the buyer had paid to the seller. Clause (10) of Section 2 of the Sale of Goods Act defines 'price' as meaning "the money consideration for a sale of goods". A resale of goods is also a sale of goods and the money consideration for such resale is the price payable in respect of such resale. When a person purchases goods, he may sell them in his turn. Such second sale is generally referred to as a resale. A resale may be to a third person or to the original seller. In either case, the money consideration for such second sale would be the price of goods resold. It is, therefore, difficult to understand how the High Court could have come to the conclusion that such money consideration would be equivalent to the price of goods purchased but would not represent the price of goods purchased. The High Court was clearly wrong in the view which it took. The amount due from the respondent to the appellant was a debt which represented the price of goods purchased by the respondent from the appellant and was

by reason of exception (f) to clause (3) of the said Section 2 of the said Act clearly excluded from the definition of "debt".

12. It was also submitted before us on behalf of the respondent that there being admittedly no agreement as to any payment of interest, the trial court was not justified in awarding interest to the appellant. The amount of interest claimed by the appellant in his plaint was not based on an agreement but was claimed by way of damages. Section 61 of the Sale of Goods Act provides for interest by way of damages and special damages. The relevant provisions of sub-Section (2) of that section are as follows :

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price -

(a) to the seller in a suit by him for the amount of the price - from the date of the render or goods or from the date on which the price was payable;

13. According to the averments in the plaint it was by his letter dated October 26, 1976, that the respondent had agreed to pay the amount of the price. The appellant had accordingly made a claim for interest from the said date. Under the provisions of Section 61(2) of the Sale of Goods Act, the appellant was clearly entitled to such interest by way of damages.

14. In the result, this appeal must be allowed and is allowed and the judgment and order of the Kerala High Court are set aside except as regards the order for costs and the Civil Revision Petition No. 1990 of 1979(C) filed by the respondent in the said High Court is dismissed and the judgment and decree of the District Court of Tellicherry in Appeal Suit No. 356 of 1978 and, except with respect to the order of costs, the decree of the Court of the Munsiff of Taliparamba in Original Suit No. 242 of 1977 are restored.

15. The respondent will pay to the appellant the costs of this court.

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