KERALA HIGH COURT

Md. Khan

Vs

State Bank of Travancore

M.F.A. No. 53 of 1977

(V.P. Gopalan Nambiyar, C.J., P. Subramonian Poti, and Kumari P. Janaki Amma, JJ.)

01.01.1978

JUDGMENT

Subramonian Poti, J.

1. This appeal was referred by a Division Bench of this court to the Full Bench since two important questions arise for decision in this appeal and the Division Bench considered that it was desirable that the matter be examined and pronounced upon by a larger Bench.

2. When the State Bank of Travancore, a subsidiary Bank within the meaning of Clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 took out execution of the decree in O.S. No. 28 of 1963 in the Sub Court of Kottayam as decree-holder the judgment-debtor filed a petition under Section 8 of the Kerala Agriculturists' Debt Relief Act 11 of 1970 seeking amendment of the decree in terms of the provisions of the said Act. The judgment-debtor claimed to be an agriculturist entitled to the benefit of the provisions of the Act relating to the scaling down of the debt. The subordinate Judge assumed that the petitioner was an agriculturist. He found that the decree-holder State Bank of Travancore was a Banking Company. Since any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of Act 11 of 1970 to any banking company was excluded from the definition of the term 'debt' under Section 2 (4) (1) of the Act, but the proviso to Section 2 (4) (1) enabled such a debt to be repaid in 8 equal half yearly installments, the learned Judge found that the judgment-debtor was entitled only to that benefit. He was found not entitled to the benefit of Section 5 of the Act relating to the restriction on interest payable under the provisions of the Act. The learned Judge found that no question of scaling down arose and consequently he dismissed the petition by the judgment-debtor. That is the order challenged in the appeal to this Court.

3. Whether an appeal would lie against such an order was one of the two questions urged in the case. Section 21 of the Kerala Agriculturists' Debt Relief Act 11 of 1970 is the provision concerning appeals. That section provides that an appeal shall lie against any order passed under sub section (i) of Section 7 or Section 9 or Section 11 or Section 13 or Section 14 or Section 16 or Section 20 to the court to which appeals ordinarily lie from the decisions of the court which has passed the order. An order under Section 8 is not one of the orders against which an appeal is

provided for under Section 21. Whether, nevertheless, an appeal could be taken against such an order is the question. The second contention arose out of the plea by the appellant that it was wrong to treat the State Bank of Travancore as a Company. The finding of the court below that it is a Banking company is said to be incorrect. If that be the case, it is said, Section 2 (4) (1) would not apply and the decree-debt would not be a debt excluded from the definition of the term 'debt' in Section 2 (4). The Act must, therefore, operate to enable the petitioner to seek scaling down of the debt in the execution proceedings.

4. Let us first examine the question whether this appeal is maintainable. Velu Pillai J., in *Varkey Mathew v. Velayudhan Pillai*[1] held that an order refusing to amend a decree under corresponding provision in Section 7 of the Kerala Agriculturists' Debt Relief Act 31 of 1958 was appealable under Section 96 of the Civil P. C. since the order amounted to a decree. In reaching this decision the learned Judge purported to follow the dictum of the Privy Council in *Adaikappa Chettiar v. Chandrasekhara Thevar*[2], A Full Bench of the Travancore-Cochin High Court had occasion to consider a similar question in *Itty Sankaran v. Ittiyathi Kochukutty*[3] The question arose in connection with a right of appeal against an order under Section 16 of the Travancore Debt Relief Act 2 of 1116. That was a provision enabling a debtor who was unable to pay his debts to seek settlement of his debts in the manner provided in the section. There was no provision in that Act for an appeal against an order under Section 16 of the Act. After exhaustively examining the authorities on the question the majority of the Full Bench held that the provisions of the Debt Relief Act were self- contained and in the absence of provision for an appeal in the Act in regard to any order no right of appeal could be assumed. On the question whether an appeal would lie because of the nature of the order though reference was made to the following oft-quoted dictum of the Privy Council in *Adaikappa Chettiar v. Chandrasekhara Thevar*[4], the order in question was found not to fall within the definition of decree.

> "The true rule is that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorized by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal."

5. If an adjudication by a court satisfied the definition of a decree in Section 2 (2) of the Civil P. C. and an appeal is provided for against a decree of such court under Civil P. C. an appeal would lie against such a decision even if there is no specific provision made in that behalf in the relevant statute. The question therefore would be whether the adjudication by the court which is sought to be appealed against satisfies the definition of a decree as the term is defined in Section 2 (2) of the Civil P. C. That definition prior to its amendment by Civil P. C. Amendment Act 104 of 1976 reads thus :

[1](1965 Ker LT 674) [3](1953 Ker LT 883)
[2] AIR 1948 PC 12 [4] AIR 1948 PC 12

> "2(2) "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include :-

(a) any adjudication from which an appeal lies as an appeal from an order; or
(b) any order of dismissal for default.
Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final".

After the amendment the definition reads as follows :

"2 (2) "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-
(a) any adjudication from which an appeal lies as an appeal from an order, or
(b) Any order of dismissal for default.
Explanation : A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

The effect of the amendment is to take away the words "the determination of any question within Section 47" from the scope of the definition of the term 'decree'.
6. In the case before the Privy Council in *Adaikappa Chettiar v. Chandrasekhara Thevar*[5], one of the two orders in regard to which appealability was considered was an order of 9th Feb., 1939 not made in execution proceedings, but made in a suit. Referring to this the Privy Council said thus :

"The order of 9th Feb., 1939 was not made in execution proceedings but it was made in a suit and, in their Lordships' opinion, it amounted to the formal expresssion of an adjudication which so far as regards the court expressing it, conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit, namely, whether the judgment-debtor was an agriculturist and entitled therefore to have his debt discharged or reduced under the Act. In their Lordships' opinion the order was a decree within the meaning of Section 2 (2), Civil P. C., and an appeal lay under Section 96 of the Code."

7. We have already adverted to the fact that the Kerala Agriculturists' Debt Relief Act 11 of 1970 does not provide for an appeal against an order under Section 8 though

[5] AIR 1948 PC 12

there is an enumeration of the orders under some other sections of the Act as appealable. There is also the fact that the order challenged in this appeal is not any adjudication in a suit. It is an adjudication in execution proceedings. Such adjudication would have been appealable as a decree when the definition of 'decree' was wide enough to include an order under Section 47. If it had thus been a decree within the meaning of Section 2 (2) we would have been called upon to consider whether notwithstanding the absence of a provision for appeal in the enactment, the

order of the court below also should be considered as an appealable order. But the express omission of orders under Section 47 of the Civil P. C. from the definition of decree in Section 2 (2) has rendered orders under Section 47 not appealable since the commencement of the Civil P. C. Amendment Act 104 of 1976. The order impugned in this case was passed subsequent to such amendment. Hence we hold that no appeal would lie against the order of the learned Subordinate Judge.

8. We do not find, as we will presently show, any reason to support the finding of the learned Subordinate Judge that the State Bank of Travancore is a Banking Company. Since we find that there is a case for the appellant on this aspect of the controversy and we feel interests of justice permit of such a course we have acceded to the request of counsel to convert the appeal into a civil revision petition. C. M. P. No. 875 of 1978 filed for this purpose is allowed. The appeal is converted into a civil revision petition and is disposed of as such.

9. The assumption of the learned subordinate Judge that the State Bank of Travancore is a Banking Company is erroneous. Rightly counsel for the respondent made no attempt to sustain the finding. A Banking Company is defined in Section 2 (2) of Act 11 of 1970 as meaning a banking company as defined in the Banking Regulations Act, 1949. The definition of a Banking Company in the Banking Regulation Act reads:

> "5 (c) "banking company" means any company which transacts the business of banking in India;
> Explanation : Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause."

The State Bank of Travancore is not a 'Company' much less a Banking Company. It is a subsidiary bank which has been defined in Section 2 (k) of the State Bank of India (Subsidiary Banks) Act as any 'New Bank'. Section 3 of the said Act defines 'New Banks' as banks enumerated thereunder constituted by the Central Government and one of them is the State Bank of Travancore. Thus the respondent bank is one established by the Central Government in accordance with the State Bank of India (Subsidiary Banks) Act, 1959 and it is not a Company.

10. But according to counsel for the respondent this does not settle the controversy in this case. It is pointed out by counsel Sri K. C. John that what is excluded in Section 2 (4) (1) from the scope of the debt is only "any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company" and that, though at the commencement of the Act the debt was due to the State Bank of Travancore which was not a banking company, it was at one time due to a Banking Company, the Kottayam Orient Bank whose assets and liabilities were taken over by the State Bank of Travancore and hence the debt was due to a Banking Company some point of time prior to the commencement of the Act. This according to counsel would be sufficient to apply Section 2 (4) (1) and he seeks to sustain the order of the subordinate Judge on this approach. This calls for an examination of the scope of exclusion of debts under Section 2 (4) (a) as well as (1). Section 2 (4) defines 'debt' to mean any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist

on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, but excludes items enumerated as (a) to (n). An item so excluded is Item (a) :

> " "(a) any sum payable to-
> (i) the Government of Kerala or the Government of India or the Government of any other State or Union territory or any local authority; or
> (i) the Government of Kerala or the State Bank of India or any subsidiary bank within the meaning of Clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 or the Travancore Credit Bank (in liquidation) constituted under the Travancore Credit Bank Act, IV of 1113 :
> Provided that the right of the bank to recover the sum did not arise by reason of :-
> (A) any assignment made or
> (B) any transfer effected by operation of law, subsequent to the 1st day of July, 1957, or
> (iii) a corporation owned or controlled by the Government of Kerala; or the Government of any other State or the Government of India or a Government company as defined in the Companies Act, 1956; or
> (iv) the Tea Board constituted under the Tea Act, 1953, or the Coffee Board constituted under the Coffee Act, 1942, or the Rubber Board constituted under the Rubber Act, 1947, or the Cardamom Board constituted under the Cardamom Act, 1964; or
> (v) any co-operative society, including a Land Mortgage Bank, registered or deemed to be registered under the Co-operative Societies Act for the time being in force";
> and item (1) so excluded is :
> "any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company.
> Provided that in the case of any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company any agriculturist debtor shall be entitled to repay such debt in eight equal half-yearly installments as provided in sub section (3) of Section 4, but the provisions of Section 5 shall not apply to such debt;"

Therefore any sum payable to the State Bank of Travancore which is a subsidiary Bank would not be taken in by the definition of debt provided it does not fall within Clause (A) or (B) of the proviso. If it falls within either of these clauses even if it is a sum due to the State Bank of Travancore it would be a debt. Clause (A) of the proviso concerns any assignment made and clause (B) to any transfer effected by operation of law, subsequent to the first day of July, 1957. It is by operation of law subsequent to first day of July, 1957 that the right of the State Bank of Travancore to recover the sum arose. That is because of the take-over of the assets of a Banking Company subsequent to 1st July, 1957. In the case of right to recover arising by reason of take-over of the assets and liabilities of other banks subsequent to 1st July, 1957 the sums due to the State Bank of Travancore thereunder would not be excluded from the scope of 'debt'. The debtors would be entitled to claim the benefit of the Act in such cases notwithstanding the fact that the creditor is the State Bank of Travancore. Therefore clause (a) of Section 4 of the Act does not operate to exclude the debt from the purview of the Act. Even a debt not so excluded may be

excluded by the further clauses (b) to (n). If clause (1) applies the debt in question will be excluded from the definition of the debt under the Act for that reason, though a limited benefit contemplated by the proviso to clause (1) may be available even in such a case. That is how the question of scope of sub-section 2 (4) (1) becomes relevant in this case.

11. If the words 'any debt due before the commencement of the Act to any Banking Company' in Section 2 (4) (1) refer to any debt which was at one point of time due to a Banking Company but was no longer due to such company on the date of commencement of the Kerala Act 11 of 1970 the respondent succeeds. That according to counsel is the plain meaning of the section. "Before the commencement of this Act," it is said, cannot be read to mean at the commencement of this Act and therefore it is pointed out that to construe this sub-section as referring to a debt due at the commencement of the Act to a Banking Company would be erroneous.

12. The Kerala Agriculturists' Debt Relief Act 11 of 1970, just as its predecessor, is a measure intended to relieve agriculturist debtors from the rigour of enforcement of their debts. Provisions are made in the Act for reducing the interest of the debt recoverable by the creditors and also for repayment of the debt over a long period of time. Though normally one should assume that such benefit must be extended to all debtors irrespective of the question who the creditors are that may work hardship in some instances. That explains the need for exemption. Exclusion of any debt or debts due to a widow subject to certain conditions and limitations, exclusion of debts which represent the price of goods purchased for the purpose of trade, and exclusion of any liability in respect of wages or remuneration due as salary or otherwise for services rendered are some of the clauses which indicate the purpose behind the exclusion. Similar is the purpose of excluding debts due to Banking Companies. The economy of this country depends to a large extent upon the soundness of our Banking system. Banks, it may be remembered, are dealing with customers' money and reduction of the liability of debtors of Banks would have direct impact upon the soundness of such Banking system. Therefore in the larger interests of the economy of the country amounts due to Banking companies are excluded from the operation of the Act except to the extent that the debtor could take advantage of the payment in installments. Even here it is only a debt exceeding Rs. 3000/- borrowed under a single transaction that is excluded. Smaller amounts borrowed by debtors who belong to the poorer classes are still within the purview of 'debt' in the Act. We are referring to this to furnish the background for the construction of the term 'debt' due before the commencement of the Act'. It may be that at one time a debt was due to a banking company, but on the date of commencement of the Act and thereafter the creditor is not a Banking company. The right to recover the debt might have passed on to the hands of individuals by assignment made by the company or it may be that the banking company has ceased to exist before the commencement of the Act. Consistent with the purpose could it have been intended that nevertheless such a debt was taken to be a debt liable to be scaled down under the Act ? We think not. In the background of the scheme of the Act we feel that the benefit of the provisions of the Act was not intended to be denied to a debtor unless it be that in the process of scaling down it is the Banking company which will be affected. Merely because the debt was due to a banking company at one point of time but such Banking Company was no longer the creditor on the date of commencement of the Act the provision as to scaling down would not be affected. Therefore the exclusion by Section 2 (4) (1) is of any debt due to any Banking company at the time the Act commenced its operation. That appears to us to be the clear meaning of this provision. We find support for this view in earlier decision of this court and we may now advert to it.

13. Section 2 (c) of the Kerala Debt Relief Act 31 of 1958 defined 'debt' and Clauses 1 to 11 of Section 2 (c) excluded certain categories from the definition of debt. Clause 11 of Section 2 (c) exempted any debt exceeding Rs. 1500/- borrowed under a single transaction "and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949." A case arose where a decree-holder though a Banking company at the time the debt was originally incurred ceased to be a Banking company before the commencement of Act 31 of 1958. The question whether the debt was due before the commencement of Act to a Banking company arose for decision in C. R. P. No. 940 of 1963 (Ker). Referring to this Vaidyalingam, J., said thus :

> "In my opinion the view expressed by the learned Subordinate Judge that in order to claim exemption the creditor must be able to establish that the amount is due to a banking company on the date of the commencement of the Act, is perfectly justified. Otherwise the position will be very anomalous; because it may be that the debt may have been incurred in favour of a banking company 20 years back and the debt may have been assigned to several persons, and on the date when the Act came into force no debt will be due to the banking company but an individual may be entitled to recover the debt, even in such a case also, if the contention of the petitioner is accepted, inasmuch as the debt originated as a debt due to a banking company 20 years ago, nontheless the individual who becomes entitled to the debt, originally due to the banking company, on the date of the commencement of the Act will be entitled to payment of the amount, not in 17 equal half yearly installments as provided in Section 4 of the Act, but as per the special installments provided for in the proviso to Clause (xi) of Section 2 (c). I am not inclined to accept this contention of the learned counsel for the petitioner."

A similar question arose in the decision in *Little Flower Co. Ltd. v. Paulose*[6] That was

[6](1966 Ker LT 253)

a case where the debt was due to a banking company and the banking company ceased to be such banking company on 24-5-1958, before the commencement of the Kerala Act 31 of 1958. The question was whether Clause 11 of Section 2 (c) would apply. A Division Bench of this court considering this question said thus :-

> "Reading the definition of the term "debt" in Section 2 (c) of the Act, and the provisions of the exemption enacted by Clause (xi) thereof, we are of the opinion, that in order to fall within the definition of the term 'debt' it is necessary to show not only that the debt was due from or incurred by an agriculturist before the commencement of the Act, but also that it subsisted on the date of the commencement of the Act. Otherwise no relief can be had under the Act. Even so, we are further of the opinion that in order to attract the exemption provided by Clause (xi) of Section 2 (c) of the Act, it is necessary to show that the creditor had the status postulated of him in the clause at the commencement of the Act. In other words, in the present case, it is necessary to show that the creditor was a Banking Company on the date of the commencement of the Act. As admittedly, the petitioner before us had ceased to be a Banking Company on the date of the

commencement of the Act, the exemption provided by Section 2 (c) (xi) of the Act is unavailable."

The decision of Vaidyalingam J., was also noticed by the Division Bench. We respectfully agree with the view taken by Vaidyalingam J., and later by the Division Bench. We are also of the view that the creditor should have the status postulated of him in the clause at the commencement of the Act.

14. Our attention has been drawn by learned counsel for the respondent to a decision of a Division Bench in *Ouseph v. Orient Union Bank Ltd.*[7], where the Division Bench considered more or leas a similar question. We notice from the decision of the Division Bench that the attention of the court was not drawn either to the decision of Vaidyalingam J.. or to the decision of the Division Bench which had been reported. There again the question concerned the scope of Section 2 (c) (11) of Act 31 of 1958. In that case a mortgage debt had ripened into a decree and the mortgagee-decree-holder assigned his decree to a Banking company. When the Bank sought to execute the decree the judgment- debtors raised the plea that they were entitled to relief under Act 31 of 1958 and the decree was liable to be scaled down under the provision of the Act. It is evident that that was a case where at its inception the debt was not due to a Banking company but on the date of commencement of the Act, the debt had become due to a Banking company. The court found that notwithstanding the fact that the debt was one due to a Banking company at the commencement of the Act it would not be excluded from the definition of debt in Section 2 (c) (11) because the debt was not one originally borrowed from a Banking company. In reaching this conclusion the Division Bench noticed certain observations of a Full Bench of this Court in *Catholic Bank of India Ltd v. Jacob*[8], That was a case where the vires of Section 2 (c) (11) of the Act was challenged on the ground that the provision was discriminatory and was violative of Article 14 of the Constitution. While repelling that contention the classification was upheld by the Full Bench mainly on the ground that a Banking

[7](1968 Ker LT 973)
[8]1967 Ker LT 416

company in advancing money to a person would not ordinarily take advantage of the borrower's dire need for money and exploit such situation with a view to impose extortionate terms with regard to interest, that an agriculturist who borrows money from a Banking company, especially one who borrows more than Rs. 1500 under a single transaction would be richer than an ordinary agriculturist and the transaction would savour more of a commercial borrowing. In the light of the observations of the Full Bench the Division Bench took the view that unless the debt is that borrowed from a Banking company Section 2 (c) (11) would have no application.

15. It may be noticed that irrespective of the rate of interest agreed to under a contract Section 5 relieves a debtor from the obligation to pay any amount in excess of one half of the principal till the date of commencement of the Act. If any excess amount had been paid or credited towards interest such amount was to be credited towards the principal and the balance and future interest alone was recoverable. Thus the scheme of Section 5 is not only to reduce the rate of interest where the rate of interest is high but to relieve the debtor from his obligations to pay more than half the principal as interest irrespective of the rate of interest. It is therefore evident that the Act is really an ameliorative measure limiting the total liability and spreading repayment over a fairly long period. We have already indicated the social purpose behind excluding Banking companies

from the category of creditors to some extent under the Act. Consistent with that object it will not be possible to say that even if the debt was due to a Banking company at the commencement of the Act such debt would not fall within Section 2 (4) (1) of the Act if the debt was not one borrowed from a Banking Company. We should, therefore, with great respect, disagree with the decision of the Division Bench in *Ouseph v. Orient Union Bank Ltd*[9]. We overrule the said decision.

16. We are therefore of the view that merely because the debt was due to the Kottayam Orient Bank Limited at one time though not due to a Banking company on the date of the commencement of the Act it cannot be said that Section 2 (4) (1) would apply. That would mean that the debtor is entitled to the benefit of Section 5 of the Kerala Agriculturists Debt Relief Act 11 of 1970. We hold so. We allow the Civil Revision Petition setting aside the order of the court below and directing the court to pass appropriate orders in accordance with our finding that the judgment-debtor is entitled to the benefit of Act 11 of 1970 as he is a debtor under the Act. The Civil Revision petition is allowed. No costs.

Revision allowed.

[9](1968 Ker LT 973)