S. Pl. Narayanan Chettiar vs M. Ar. Annamalai Chettiar on 31 October, 1958

Equivalent citations: 1959 AIR 275, 1959 SCR SUPL. (1) 237, AIR 1959 SUPREME COURT 275, 1959 SCJ 788

Author: S.K. Das

Bench: S.K. Das, Syed Jaffer Imam, J.L. Kapur

PETITIONER:
S. PL. NARAYANAN CHETTIAR

Vs.

RESPONDENT:
M. AR. ANNAMALAI CHETTIAR

DATE OF JUDGMENT:
31/10/1958

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
IMAM, SYED JAFFER
KAPUR, J.L.

CITATION:
1959 AIR 275 1959 SCR Supl. (1) 237

ACT:
Debt Relief-Agriculturist-Scaling down of decree debt-Enabling statute coming into force Pending appeal-Application made after appellate decyee-Whether barred, by res judicature-Madyas Agriculturists Relief Act, 1938 (IV of 1938), as amended, S. 1g(2) Madras Agriculturists Relief (Amendment) Act (XXIII Of 1948), S. 16, CIS. (ii), (iii).

HEADNOTE:
In 1944 the respondent instituted a suit for the recovery of money due under an award dated July 31, 1935, whereby the appellant and his brother were directed to pay a certain amount to the respondent. The suit was dismissed by the trial Court
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but on appeal the High Court passed a decree on March 9, 1951. During the pendency of the appeal in the High Court the Madras Agriculturists Relief Act, 1938, was amended by Act XXIII of 1948, which inter alia by adding sub-section (2) to S. 19 of the main Act enabled decrees passed after the commencement of the Act to be scaled down under the provisions of the Act. By cl. (ii) to s. 16 of the amending Act, which came into force on January 25, 1949, it was provided that " that the amendments made by this Act shall apply to..... all suits and proceedings instituted before the commencement of the Act, in which no decree or order has been passed before such commencement ". On October 5, 1951, the appellant made an application to the trial court for scaling down the decremental debt under S. 19(2) Of the Madras Agriculturists Relief Act, 1938, as amended, but the application was dismissed on the ground that the trial court had no jurisdiction to act under that sub-section as the decree sought to be scaled down had been passed by the High Court. The appellant preferred an appeal to the High Court and also made a separate application for scaling down the decretal debt under s. 19(2) Of the Act. The High Court took the view that s. 19(2) was controlled by s. 16 of the amending Act and that cl. (ii) of s. 16 was applicable to the case, but that as the appellant whose appeal was pending at the commencement of the amending Act did not apply for scaling down before the decree was passed although he had the opportunity to do so, his application subsequent to the decree was barred by the principle of Yes judicature.

Held, that the High Court erred in its view that in order to get relief under S. 19(2) Of the Act, read with cl. (ii) of s. 16 of the amending Act, the appellant must have made the application when the appeal was pending and before a decree had been passed.

For the application of cl. (ii) of s. 16 of the amending Act, the true test is whether the suit or proceeding was instituted before January 25, 1949, and whether no decree or order for repayment of a debt had been passed before that date, and it is not necessary that the suit or proceeding should be pending on the date of the application under s. 19(2) Of the Act. In cases covered by that clause a party can ask for relief under the Act at two stages before a decree for repayment of the debt bad been passed, and also after such a decree had been passed, and since s. 19(2) of the Act in express terms enables a debtor to claim a relief under the provisions of the Act after a decree had been passed, the appellant is entitled to the benefit of s. 19(2) of the Act read with s. i6, cl. (ii), of the amending Act.

While cl. (ii) of s. i6 applies to suits and proceedings which were instituted before January 25, 1949, but in which no decree or order had been passed, or the decree or final order passed had not become final, before that date, cl. (iii) applies to decrees or orders, which, though they had

become final before January 25,
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1949, were still in the state of unfinished execution and at the stage at which satisfaction had not been fully received. Venkataratnam v. Seshatnma, 1. L. R. [1952] Mad. 492, approved.
The question whether cl. (ii) refers to decrees and orders of a declaratory nature, which are not executable but which have become final before January 25, 1949, left open.
The opinion expressed in jagannatham Chetty v. Parthasarathy Iyengar, A.I.R. 1953 Mad. 777, that the word 'proceedings' in s. i6 of the amending Act must relate to proceedings instituted for repayment of a debt and not to execution proceedings which are for enforcement of a decree or order, doubted and the question left open.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 117 of 1955. Appeal by special leave from the judgment and order dated the 25th March, 1953, of the Madras High Court, in Civil Misc. Petition No. 6577 of 1952.

R. Ganapathy Iyer, for the appellant.

Sardar Bahadur, for the respondent.

1958. October 31. The Judgment of the Court was ,delivered by S.K. DAS, J.-In this appeal, pursuant to special leave against the judgment and order of the High Court of Madras, the question for decision is whether the appellant who claims to be an agriculturist debtor is entitled to apply for scaling down of his decretal debt under the provisions of the Madras Agriculturists' Relief Act (Mad. IV of 1938), hereinafter called the Act, as amended by the Madras Agriculturists' Relief (Amendment) Act (Mad. XXIII of 1948), hereinafter called the amending Act. The facts which have led to this appeal are that a partnership firm, briefly described as M.A.R. Firm, whose partners were Arunachalam Chetty, his two sisters and Subramaniam Chetty, was carrying on the business of money lending. On the death of Arunachalam Chetty on July 6, 1916, Subramaniam Chetty, one of the surviving partners, took over the assets of the dissolved -partnership firm at a valuation of Rs. 25,000 and carried on the business under the name and style of P.L. S. Firm of which the partners were Subramaniam Chetty, Vellachi Achi, and his two daughters, and in 1919 Palaniappa Chetty, father of the appellant, joined the partnership. The amount of Rs. 25,000 was credited in the accounts of the new partnership. On April 19, 1919, the accounts showed a balance of Rs. 16,369-12 as being due to the share of the deceased Arunachalam Chetty which by the year 1935 swelled up to a figure of Rs. 55,933-15. Subramaniam Chetty died in 1924 and the business was carried on after his death by his widow Lakshmi Achi and her daughter and Palaniappa Chetty. In 1930 Palaniappa Chetty died and his sons joined the business in his place. Disputes arose between the partners in 1935 which were referred to arbitration and under an award given on July 31, 1935, Arunachalam

Chetty and his sister were directed to pay to the estate of M.A.R. Rs. 34,958-11-6 and the defendants, now appellant and his brother, a sum of Rs. 20,975-3 and corresponding entries were made in the account books of P.L.S. Firm. In 1944 the plaintiff, now respondent, as the adopted son of Arunacbalam Chetty filed a suit for recovery of the amount which the award had directed the defendants to pay. The defendants were the two sons of Palaniappa Chetty. They denied the adoption of the respondent to Arunachalam Chetty and also pleaded the bar of limitation. The trial Court held the adoption to be invalid and upheld the plea of limitation. The plaintiff took an appeal to the High Court which held the adoption to be valid and also held the suit to be within limitation. It remitted the case to the trial Court for determining certain issues and after the findings were received, the suit was decreed on March 9, 1951, for a sum of Rs. 26,839-15-9. The appellant applied to the High Court for leave to appeal to this Court and also applied for stay. Leave was granted but stay was refused as, no security was furnished under the rules, the High Court later revoked the certificate granting leave. During the pendency of the appeal in the High Court, the Act of 1938 was amended by the amending Act by which new reliefs were given to agriculturist,, debtors. On October 5, 1951, the appellant made an application to the Trial Court for scaling down the decretal debt under s. 19 (2) of the Act which was added by the amending Act. The trial Court held that the decree could be scaled down under s. 19 (2) of the Act, but it had no jurisdiction to grant that relief as, the decree sought to be scaled down had been passed by the High Court. Against this order the appellant took an appeal to the High Court on July 4, 1952, and also made a separate application in the High Court for scaling down the decretal debt under s. 19 (2) of the Act. The High Court dismissed the application on March 25, 1953. The appellant - then applied for leave to appeal under Art. 133 of the Constitution but this was refused on October 6, 1953, and this Court granted special leave on April 19, 1954.

The ground on which the High Court refused relief under s. 19 (2) of the Act was that "the retrospective operation of s. 19 (2) was controlled by s. 16 of the Act XXIII of 1948 "

> and that cl. (ii) of s. 16 applied and as the appellant whose appeal was pending at the commencement of the amending Act did not apply for scaling down before the decree was passed although he had the opportunity to do so, his application subsequent to the decree was barred by the principle of res Judicata. The provisions of s. 19 (2) of the Act which gave the right to obtain relief of scaling down notwithstanding the provisions of the Code of Civil Procedure to the contrary were held inapplicable, because a. 19(2) of the Act was itself " limited by the provisions of s. 16 of Act XXIII of 1948 ". The High Court observed that although the appellant had filed an additional written statement claiming relief under the Burma Debt Laws, no prayer was made for any relief under the Act. The High Court said :-
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> " A party who had an opportunity to raise a plea but did not raise the Plea is precluded by principles of res judicata from 'raising the plea over again at a subsequent stage. But it is said that the principle of res judicata has no application to the present case as section 19 (1) which is incorporated by reference in section 19 (2) says that a petitioner would be entitled to the relief given to him under that section order has been passed, or in which the decree or order has not become final, before

such commencement;

(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: Provided that no creditor shall be required to refund any sum which has been paid to or realised by him before the commencement of this Act Unfortunately, the language of s. 16 is not very clear and lends itself to difficulties of interpretation. We agree with the High Court that s. 16 of the amending Act controls the amendments made by that Act in the sense that those amendments apply to the suits and proceedings described in the three clauses of s. 16. Sub-section (2) of s. 19 was one of the amendments which was inserted by the ammending Act and therefore the appellant-debtor must establish that he is entitled to relief under sub s. (2) of s. 19, because his case comes under one of the three clauses of s. 16. The High Court held that cl. (ii) of s. 16 applied in the present case; but the appellant-debtor could and should have raised the plea for relief under the Act when the appeal was pending in the High Court and as he did not do so, he was barred from claiming relief under s. 19(2) on the principle of res judicata. We do not think that this view is correct and our reasons are the following.

The three clauses of s. 16 are independent of each other and el. (i) refers to suits and proceedings instituted after the commencement of the amending Act, the relevant date being January 25, 1949. Clause (1) has no application in the present case and need not be further considered. Clause

(iii), it seems clear to us, applies to suits and proceedings in which the decree or order passed had become final, but had not been executed or satisfied in full

-before January 25, 1949: this means that though a final decree or order for repayment of the debt had been passed before January 25, 1949, yet an agriculturist debtor can claim relief under the Act provided the decree has not been executed or satisfied in full before the aforesaid date. It should be remembered in this connection application to the Trial Court for scaling down the decretal debt under s. 19 (2) of the Act which was added by the amending Act. The trial Court held that the decree could be scaled down under s. 19 (2) of the Act, but it had no jurisdiction to grant that relief as,, the decree sought to be scaled down had been passed by the High Court. Against this order the appellant took an appeal to the High Court on July 4, 1952, and also made a separate application in the High Court for scaling down the decretal debt under s. 19 (2) of the Act. The High Court dismissed the application on March 25, 1953. The appellant then applied for leave to appeal under Art. 133 of the Constitution but this was refused on October 6, 1953, and this Court granted special leave on April 19, 1954.

The ground on which the High Court refused relief under s. 19 (2) of the Act was that "the retrospective operation of s. 19 (2) was controlled by s. 16 of the Act XXIII of 1948 "

and that cl. (ii) of s. 16 applied and as the appellant whose appeal was pending at the commencement of the amending Act did not apply for scaling down before the decree was passed although he had the opportunity to do so, his application subsequent to

the decree was barred by the principle of res judicata. The provisions of s. 19 (2) of the Act which gave the right to obtain relief of scaling down notwithstanding the provisions of the Code of Civil Procedure to the contrary were held inapplicable, because s. 19 (2) of the Act was itself " limited by the provisions of s. 16 of Act XXIII of 1948 ". The High Court observed that although the appellant had filed an additional written statement claiming relief under the Burma Debt Laws, no prayer was made for any relief under the Act. The High Court said :-

" A party who had an opportunity to raise a plea but did not raise the Plea is precluded by principles of res judicata from raising the plea over again at a subsequent stage. But it is said that the principle of res judicata has no application to the present case as section 19 (1) which is incorporated by reference in section 19 (2) says that a petitioner would be entitled to the relief given to him under that section ,order has been passed, or in which the decree or order has not become final, before such commencement;

(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: Provided that no creditor shall be required to refund any sum which has been paid to or realised by him before the commencement of this Act ".

Unfortunately, the language of s. 16 is not very clear and lends itself to difficulties of interpretation. We agree with the High Court that s. 16 of the amending Act controls the amendments made by that Act in the sense that those amendments apply to the suits and proceedings described in the three clauses of s. 16. Sub-section (2) of s. 19 was one of the amendments which was inserted by the ammending Act and therefore the appellant-debtor must establish that be is entitled to relief under sub-s. (2) of s. 19, because his case comes under one of the three clauses of s. 16. The High Court held that cl. (ii) of s. 16 applied in the present case; but the appellant-debtor could and should have raised the plea for relief under the Act when the appeal was pending in the High Court and as he did not do so, he was barred from claiming relief under s. 19(2) on the principle of res judicata. We do not think that this view is correct and our reasons are the following.

The three clauses of s. 16 are independent of each other and cl. (1) refers to suits and proceedings instituted after the commencement of the amending Act, the relevant date being January 25, 1949. Clause (1) has no application in the present case and need not be further considered. Clause

(iii), it seems clear to us, applies to suits and proceedings in which the decree or order passed had become final, but had not been executed or satisfied in full before January 25, 1949: this means that though a final decree or order for repayment of the debt, had been passed before January 25, 1949, yet an agriculturist debtor can claim relief under the Act provided the decree has not been executed or satisfied in full before the aforesaid date. It should be remembered in this connection that the word I debt' in the Act has a very comprehensive connotation. It means 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 etc. It is, therefore, clear that the word I debt' includes a

decretal debt. On the view that cl. (iii) applies in those cases only where a final decree or order for repayment of the debt had been made before January 25, 1949, it has no application. in the present case; because the decree for repayment of the debt was passed on March 9, 1951 - which was after January 25, 1949.

We then go to el. (ii). This clause is in two parts and talks of two different situations; one is when no decree or order has been passed and the other is when the decree or order passed has not become final. There is, however, a common element, and the common element is that el. (ii) refers to suits and proceedings instituted before January 25, 1949. Now, the argument which learned counsel for the appellant has presented is this. He says that the common element referred to above is satisfied in the present case, because the suit was instituted long before January 25, 1949. He then says that no decree or order for repayment of the debt having been passed before March 9, 1951, the first situation envisaged by el. (ii) arose in the present case and the appellant-debtor was entitled to avail himself of all or any of the amendments made by the amending Act, including the amendment made in s. 19 by the insertion of sub-s. (2) thereof. In the alternative, he says that if, the word 'decree or 'order' means any decree or any order, even then cl. (ii) applies, because the decree of dismissal passed in the suit had not become final on January 25, 1949, for an appeal was then pending. We do not think it necessary to consider the alternative argument of learnd counsel for the appellant; because we are of the view that having regard to the other provisions of the Act, the words " decree or order occurring in el. (ii) must mean decree or order for repayment of a debt. What then is the position before passed, but did not do so. The legislature may not have realised that this would be so; but as the amendments stand, it is clear that in cases covered by cl. (ii) of s. 16 of the amending Act, a party is entitled to ask for relief under the Act at two stages, before a decree for repayment of the debt has been passed and also after such a decree has been passed. Different considerations will, however, arise if a party asks for relief under the Act at the pre-decree stage and that relief is refused on the ground that the Act does not entitle him to any relief under it. If a party, even after such refusal, makes a second application, then the principle laid down in Narayanan Chettiar v. Rathinaswami Padayachi (1), will apply and the second application must fail on the ground that it has already been decided in his presence that he is not entitled to any relief under the Act.

One other point has to be referred to in this connection. On behalf of the respondent-creditor it has been pointed out to as that on the date the application for relief under s. 19(2) was made in the High Court, no suit or proceeding was actually pending, the High Court having passed a decree much earlier, namely, on March 9, 1951. Asa matter of fact, the application for relief under s. 19(2) for scaling down the decree was made in the High Court sometime in 1952. We are of the view that cl. (ii) of s. 16 describes the nature of suits or proceedings in which the amendments shall apply and the pendency of a suit or proceeding on a particular date after January 25, 1949, is not the true test. The true test is whether the suit or proceeding was instituted before January 25, 1949, and whether in that suit or proceeding no decree or order for repayment of a debt had been passed before that date. That test having been fulfilled in the present case, el. (ii) of s. 16 of the amending Act did not stand in the way of the appellant when he asked for relief under s. 19(2) of the Act.

We now turn to such authorities as have been placed before us. The authorities are not all consistent, and the language of cls. (ii) and (iii) of s. 16 of the amending (1) A.I.R. 1953 Mad. 421.

that the word I debt' in the Act has a very comprehensive connotation. It means 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 etc. It is, A, therefore, clear that the word I debt' includes a decretal debt. On the view that cl. (iii) applies in those cases only where a final decree or order for repayment of the debt had been made before January 25, 1949, it has no application in the present case; because the decree for repayment of the debt was passed on March 9, 1951, which was after January 25, 1949.

We then go to cl. (ii). This clause is in two parts and talks of two different situations; one is when no decree or order has been passed and the other is when the decree or order passed has not become final. There is, however, a common element, and the common element is that cl. (ii) refers to suits and proceedings instituted before January 25, 1949. Now, the argument which learned counsel for the appellant has presented is this. He says that the common element referred to above is satisfied in the present case, because the suit was instituted long before January 25, 1949. He then says that no decree or order for repayment of the debt having been passed before March 9, 1951, the first situation envisaged by cl. (ii) arose in the present case and the appellant-debtor was entitled to avail himself of all or any of the amendments made by the amending Act, including the amendment made in s. 19 by the insertion of sub-s. (2) thereof. In the alternative, he says that if the word 'decree' or 'order' means any decree or any order, even then cl. (ii) applies, because the decree of dismissal passed in the suit had not become final on January 25, 1949, for an appeal was then pending. We do not think it necessary to consider the alternative argument of learned counsel for the appellant; because we are of the view that having regard to the other provisions of the Act, the words " decree or order occurring in cl. (ii) must I mean decree or order for repayment of a debt. What then is the position before passed, but did not do So. The legislature 'may not have realized that this would be so; but as the amendments stand, it. is clear that in cases covered by cl. (ii) of a. 16 of the amending Act, a party is entitled to ask ,,for relief under the Act at two stages, before a decree for repayment of the debt has been passed and also after such a decree has been passed. Different considerations will, however, arise if a party asks for relief under the Act at the pre-decree stage and that relief is refused on the ground that the Act does not entitle him to any relief under it. If a party, even after such refusal, makes a second application, then the principle laid down in Narayanan Chettiar v. Rathinaswami Padayachi (1), *ill apply and the second application must fail on the ground that it has already been decided in his presence that he is not entitled to any relief under the Act.

One other point has to be referred to in this connection. On behalf of the respondent-creditor it has been pointed out to. as that on the date the application for relief under s. 19(2) was made in the High Court, no suit or proceeding was actually pending, the High Court having passed a decree much earlier, namely, on March 9, 1951. As a matter of fact, the application for relief under s. 19(2) for scaling down the decree was made in the High Court some time in 1952. We are of the view that el. (ii) of s. 16 describes the nature of suits or proceedings in which the amendments shall apply and the pendency of a suit or proceeding on a particular date after January 25, 1949, is not the true test. The true test is whether the suit or proceeding was instituted before January 25, 1949, and whether in that ,suit or proceeding no decree or order for repayment of a debt had been passed before that date. That test having been fulfilled in tile present case, cl. (ii) of s. 16 of the amending Act did not stand in the way of the appellant when he asked for relief under s. 19(2) of the Act.

We now turn to such authorities as have been placed before us. The authorities are not all consistent, and the language of cls. (ii) and (iii) of S. 16 of the amending (1) A.I.R. 1953 Mad. 421.

Act has perhaps led to some of the difficulties of inter- pretation referred to therein. The earliest decision brought to our notice is the decision in Velagala Sriramareddi and others v. Karri Sriramareddi (1). This is a full bench decision of the Madras High Court. to which we have already referred in an earlier part of this judgment. The next decision is that of Venkataratnam v. Sesharma (2), which is also a Full Bench decision of the Madras High Court. It deals with the construction of clauses (ii) and

(iii) of s. 16 of the amending Act with particular reference to the view expressed in certain earlier cases of the same High Court with regard to cl. (iii) of s. 16. The view expressed in the earlier cases, to which the learned Judges who decided the case out of which the present appeal has arisen were parties, was that el. (iii) of s. 16 had no application to proceedings in which the decrees and orders had become final before January 25, 1949. The Full Bench did not accept that view as correct. Satyanarayana Rao, J., who delivered the judgment of the Court said:

> ,It cannot be doubted that the two clauses (ii) and (iii) are entirely independent and are intended to provide for different situations.....
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> "The view taken by the learned Judges in the Civil Miscellaneous Appeals, already referred to, was that, while the two clauses are independent, clause (iii) has no application to proceedings in which the decrees and orders have become final before the commencement of the Act. It is this view which is also pressed now before us by the learned Advocate for the respondent. While we agree with the learned Judges in holding that the two clauses are independent, we are unable, with great respect, to accept the view that clause (iii) applied only to cases in which the decrees and orders have not become final. If the decree or order has not become final before the commencement of this Act, clause (iii), in our opinion, seems to be un- necessary and as such the case would be covered by clause
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> (ii). Further, it would be difficult to imagine (1) I.L R. [1042] Mad. 346.
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> (2) I.L.R. [1952] Mad. 402, 498. 499.

that a decree or order which has not become final can ,be finally executed or can be finally satisfied. No doubt it is true that, even when an appeal is pending, a decree may be executed and satisfaction may be entered. But all that is only subject to the result of the appeal. If the appeal succeeds or the amount due by the defendant to the plaintiff is increased by the Appellate Court, fresh execution has to be started, the satisfaction must be reopened and the execution must proceed. The Legislature, in our opinion, when it enacted these two provisions, must have intended that, even in the case of decrees or orders which have become final, having regard_ to the provisions of the new Act, relief should be had by the judgment-debtor so long as the decree or order was not executed or was not satisfied in full before the commencement of the Act. If, however, a decree was executed in part and,

before it was fully satisfied, the debt was scaled down under the provisions of the Act, as a result of which the creditor was found to have received more than what he was entitled to, the proviso enacts that, in such a situation, the creditor should not be required to refund any sum which has been paid to or realised by him before the commencement of this Act. The question is asked, and legitimately, as to which are the kinds of decrees or orders which have become final and which are sought to be excluded by implication in clause (ii) of section 16. It is of course not easy to grive an exhaustive list of such decrees and orders. It may be that the legislature contemplated that decrees and orders of a declaratory nature, and which are not executable and which have become final before the commencement of the Act, need not be reopened. A reading of the two clauses together would suggest that clause (iii) would apply exclusively to executable decrees or orders which, though they have become final before the commencement of the Act, are still in the stage of unfinished execution and at the stage at which satisfaction was not fully received. The view which we take, in our opinion, reconciles both the clauses and does not make any of the clauses unnecessary.

We concur in the view expressed above that cl. (iii) of s. 16 applies to decrees or orders which, though they had become final before January 25, 1949, are still in the stage of unfinished execution and at the stage at which satisfaction has not been fully received, and cl. (ii) applies to suits and proceedings which were instituted before January 25, 1949, but in which no decree or order had been passed or the decree or order passed had not become final before that date. We consider it unnecessary in the present case to go into the further question whether cl.

(ii) refers to decrees and orders of a declaratory nature, which are not executable but which have become final before January 25, 1949. That is a question which does not fall for decision in the present case and we express no opinion thereon. In Kanakammal v. Muhammad Kathija Beevi (1) it was observed:

> " The mere fact that the judgment-debtor raised an objection to the executability of the whole decree on the ground that it has to be scaled down is no ground for scaling down the decree and the court will not be justified in so scaling down without a separate application. This is also another ground for holding that the judgment-debtor is not barred from filing the application to scale down the decree even though he had not raised the question at an earlier stage of the execution proceedings. We are therefore definitely of opinion that an application under s. 19 of the Act is not one which comes under s. 47, Civil Procedure Code, and therefore the principle of res judicata in execution cannot apply to the facts of the present case."

The decision in Narayanan Chettiar v. Rathinasami Padayachi (2), related to a different point altogether, namely, successive applications under s. 19 or s. 20 of the Act. In that case the question was whether the judgment-debtor not having filed an application under s. 19 within the prescribed time from the date of the stay order under s. 20 passed on his prior application was precluded from again filing another application under s. 20 followed by an appli- cation under s. 19. It was held that he was not so entitled. In Jagannatham Chetty v. Parthasarathy (1) A.I.R. 1953 Mad. 188, 189.

(2) A.I.R. 1953 Mad. 421.

Iyengar(1) the question as to the meaning of the word proceedings' in s. 16 ",as considered and it was observed that the word I proceedings' ins. 16 must relate to proceedings instituted for repayment of a debt and not to execution proceedings which are for enforcement of a decree or order. We greatly doubt whether that is the correct view to take, particularly when the expression 'debt' includes a decretal debt; but as the question does Dot arise in the present case we refrain from making any final pronouncement. In Hemavathi v. Padmavathi (2) it was held that the amending Act was retrospective so as even to apply to a debt which had already been scaled down once by the application of the Act and even where the rights of the parties had been finally adjudicated by decree or order of a court, provided that the decree or order had not been executed or fully satisfied. That was held to be the effect of el. (iii) of s. 16 of the amending Act. In Lingappa Chettiar v. Chinnaswami Naidu (3), the view taken by Subba Rao and Somasundaram, JJ. (the same Judges who decided the present case) in an earlier decision that a party who had an opportunity of getting the beneficent provisions of the Act applied to him before the amendment, but did not avail him- self of the same, is disentitled to invoke the provisions of sub-s. (2) of s. 19, ",as dissented from and Govinda Menon,

-J., who gave the judgment of the Court, said:

> " We do not find any difficulty in holding that sub-s. (2) of section 19 is applicable to cases like the present, and the retrospective nature of that sub-section as contemplated by clause (iii) of section 16 of Act XXIII of 1948 cannot be restricted or circumscribed by any other clause in that section."

In T. N. Krishna Iyer v. Nallathambi Mudaliar and others (4) Krishnaswami Nayudu, J., said that the object of s. 16 of the amending Act was to render the application of the amendments to a wide range of suits, both to suits instituted before and after the commencement of the amending Act and to such suits in which the decrees have not only become final but have (1) A.I.R. 1953 Mad. 777.

(3) (1955) i M.L.J. i, 5.

(2) I.L.R. [1954] Mad. 89i.

(4) (1955) i M.L.J. 215.

not been executed or satisfied and so loin(, as something remains to be done out of the decree, the Act could be made applicable. It seems to us that both on authority and principle, the correct view is that the appeallant was entitled to the benefit of s. 19(2) of the Act,, read with s. 16, cl. (ii) of the amending Act.

These are our reasons for holding that the view taken by the High Court is not correct and the appeal must, therefore, be allowed and the case sent back to the High Court for consideration on merits in accordance with law. The appellant will get his costs of this Court ; costs incurred in the High Court before and hereafter will be dealt with by the High Court at the time of the final decision. There were two applications filed by the appellant debtor for the relief which be claimed. One AN-as filed in the trial court and the other in the High Court. The trial court dismissed the application on the ground

that the High Court alone had jurisdiction to give such relief The appellant preferred an appeal to the High Court and also filed an application there. The question which is the proper court to give relief to the appellant is a matter on which we are making no pronouncement. That is a matter which will be dealt with by the High Court.

Appeal allowed. Case remanded.