The State Of Kerala vs M.T. Devassia And Anr. on 27 October, 1976

Equivalent citations: AIR1977SC331, 1977(0)KLT273(SC), (1977)1SCC363, AIR 1977 SUPREME COURT 331, 1977 (1) SCC 363, 1977 KER LT 273, 48 COM CAS 19

Author: A.C. Gupta

Bench: A.C. Gupta, P.N. Bhagwati, S. Murtaza Fazal Ali

JUDGMENT

A.C. Gupta, J.

1. This appeal brought on a certificate of fitness granted by the Kerala High Court arises out of a proceeding under the Kerala Agriculturists' Debt Relief Act, 1970.

2. The first respondent had an overdraft account with the Catholic Bank of India Limited since 1954. An order for the winding up of the Bank was made sometime in May, 1957. On a claim being filed by the official liquidator against the first respondent, the High Court of Kerala on January 8, 1963 made an order asking the first respondent to pay a sum of Rs. 5130/10 p. with future interest at the rate of 6 per cent per annum on the principal amount of Rupees 4663/39 p. This order was presumably made under Section 45D(4) of the Banking Regulation Act. 1949 (hereinafter referred to as the Central Act). On May 1, 1970 Rs. 5130/10 p. was recovered from the first respondent leaving a balance of Rs. 2375/80 p. carrying interest at 6 per cent per annum still to be realized. Sometime in July, 1970 the Kerala Agriculturists' Debt Relief Act, 1970 (hereinafter referred to as the Kerala Act) came into force. A few days after the Kerala Act came into operation, the first respondent applied to the High Court under Sections 4 and 5 of that Act praying for a declaration that he has discharged the debt due to the Catholic Bank of India Limited and that no more amount is due from him as per accounts.

The application ultimately came up for hearing before a Division Bench of the High Court 1972 Tax LR 1970 which held that the Central Act must exclusively govern the determination of the question of the amount due from the applicant and that he could not claim any benefit under the Kerala Act. Appellant, State of Kerala, disputes the correctness of the view taken by the High Court.

3. Part III-A of the Central Act containing Sections 45A to 45X prescribes special provisions for the speedy disposal of winding up proceedings. Section 45A lays down inter alia that the provisions of this Part shall have effect notwithstanding anything inconsistent therewith contained in any other

law for the time being in force. Under Section 45D(4) the High Court is authorised to pass an order for payment of the amount due by each debtor of a banking Co. and make such further orders as may be necessary. Sub-section (5) of this section provides that subject to the provisions for appeal, an order made by the High Court under Sub-section (4) shall be final and shall be deemed to be a decree in a suit. In the case before us the High Court took the view that the first respondent's application under the Kerala Act was one for scaling down the debt which the High Court had earlier found due from him and that allowing the prayer made in the application would be contrary to Section 45D(5) of the Central Act. The High Court found it impossible to reconcile the provisions of the Central Act with those of the Kerala Act and held that in this conflict the Central Act should prevail. The High Court was therefore, of opinion that the relief granted by the Kerala Act was not available to the first respondent.

4. The first respondent in his application under Sections 4 and 5 of the Kerala Act asked for a declaration that he had discharged his debt to the Bank and no further amount was due from him. We find owever that neither Section 4 nor Section 5 provides for such a relief. Section 4 lays down that an agriculturist may discharge his debt in instalments. The material part of Section 5 is Sub-section (2) which provides that for determining the amount due to a banking Co. for the purpose of payment under this Act, interest shall be calculated at the rate applicable to the debt under the law or contract or the decree or order of the court under which it arises or at 7 per cent per annum, whichever is less. As stated earlier, the debt due to the Bank from the first respondent was directed to bear interest at the rate of 6 per cent per annum by the order dated January 8, 1963. Thus the only relief that the first respondent could expect under the Kerala Act was an order permitting him to pay the debt in instalments under Section 4. The question therefore, is whether it was open to the first respondent to ask for an order for payment of the debt found due from him by instalments under Section 4 of the Kerala Act.

5. The High Court came to the conclusion that the first respondent was not entitled to any relief under the Kerala Act on the following steps of reasoning. The Kerala Act provides for the relief of indebted agriculturists in that State. This Act in pith and substance falls with in Entry 30 of List II in the Seventh Schedule to the Constitution. The Central Act relates to Entry 43 of List I in the Seventh Schedule. A statute which is in pith and substance within the competence of a State legislature may incidentally encroach on subjects reserved for Parliament under List. I of the Seventh Schedule. Such encroachments are permissible so long as there is no conflict between the law passed by Parliament and, that enacted by the State legislature but in the case of a conflict between the two statutes, the Central legislation must prevail. Once the High Court makes an order under Section 45D(4) of the Central Act for the payment of any sum found by it as due from a debtor to the bank, under Sub-section (5) of Section 45D such order, subject to the provision for appeal, becomes final and binding for all purposes as between the banking Co. and the person against whom the order has been passed. There is no provision in the Central Act for scaling down the debt after it has been determined by the High Court under Section 45D(4), and any provision of the Kerala Act permitting such a course would be clearly in conflict with Sub-sections (4) and (5) of Section 45D of the Central Act. As in this case the order under the Central Act had become final against the first respondent, the relief provided by the Kerala Act could not be extended to him.

6. We may refer to two more sections of the Central Act here, Sections 2 and 45A. Section 2 states that the provisions of the Act shall be in addition to, and not, except as expressly provided under the Act, in derogation of any other law for the time being in force. Section 45A occurring in Part III-A of the Central Act also states that the provisions of this Part shall have overriding effect but any other law for the time being in force, in so far as it is not inconsistent with the provisions of this Part, shall apply to the proceedings under this Part. The High Court has recorded a finding that the provisions of the Kerala Act are inconsistent with Sub-sections (4) and (5) of Section 45D of the Central Act. It is contended before us on behalf of the appellant, State of Kerala, that Section 4 permitting the debtor to repay the debt in instalments does not really touch the determination by the High Court under Section 45D(4) of the Central Act of the amount of debt. It is argued that Section 4 of the Kerala Act which relates only to the manner of recovery of the debt contemplates a stage subsequent to and distinct from the determination of its quantum and, therefore, does not affect the finality of the determination under Sub-section (5) of Section 45D of the Central Act. Put that way there will be no inconsistency between Section 4 of the Kerala Act and Sub-sections (4) and (5) of Section 45D of the Central Act. It is not, clear from the judgment of the High Court in what way Section 4 or 5 affects the finality of an order under Section 45D(4); the High Court has not examined the provisions of Sections 4 and 5 of the Kerala Act and found that there is something in them that has the effect of scaling down the amount held under the Central Act as due from the debtor. We do not find anything to disagree with the proposition that the manner of payment of the debt and the determination of the amount of debt are two distinct matters and, without anything more, there is no question of conflict between them. The other provisions of the Kerala Act which the High Court found inconsistent with the Central Act are not material for the purpose of this case As the High Court does not hold that Section 4 of the Kerala Act is anything more than a provision for the payment of debt in instalments, it should have allowed the first respondent to repay the debt in the manner permitted by that section and was in error in not doing so, even if some other sections of the Kerala Act were inconsistent with the Central Act. It has not been found that Sections 4 and 5 are so placed in the scheme of the Act that they cannot be availed of without in some way giving effect to the offending sections of the Act,.

7. The appeal is therefore allowed. We would have directed the High Court to dispose of the application under Section 4 of the Kerala Act according to law but a subsequent event makes this unnecessary. It appears that after the High Court pave its decision on October 22, 1971, the official liquidator on January 25, 1972 applied to the High Court for an order according sanction to settle the debt by writing off Rupees 1000/- out of the amount due from the first respondent and accepting Rs. 1379/50 p. in full settlement of the debt, and the High Court accorded sanction as prayed for. Nothing further therefore, remains to be done in the matter There will be no order as to costs.