

Rajasthan High Court

Ram Swaroop And Anr. vs Sua Lal on 13 October, 1971

Equivalent citations: AIR 1972 Raj 98, 1971 (4) WLN 448

Author: C Lodha

Bench: C Lodha

JUDGMENT C.M. Lodha, J.

1. This second appeal by the plaintiffs raises a question of interpretation of Section 52 of the Bombay Agricultural Debtor's Relief Act, 1947 (Act No. XXVIII of 1947), which will hereinafter be referred to as "the Act". The facts giving rise to this question may be briefly narrated in the following manner.

2. Defendant-respondent Sualal executed a 'khata' for Rs. 355/9/9 on 21-11-50 in favour of the plaintiffs. On 14th January, 1952, plaintiff Ram Swaroop made an application under Section 4 (1) of the Act, as extended to the erstwhile State of Aimer, in the Court of the Debt Settlement Officer, Tehsil Aimer, for adjustment of the suit debt, it appears that ultimately the case came up for disposal before the Extra Debt Settlement Officer, Katri, who determined the amount of debt in the manner provided in the Act and made an award on 24-7-59. Dissatisfied with the order of the Debt Settlement Officer the debtor Sualal filed appeal in the Court of the District Judge, Aimer, who by his Judgment dated 29th September, 1961, allowed the appeal and set aside the award made by the Debt Settlement Officer. Thereafter the plaintiffs filed the present suit on 22-2-62 in the Court of Munsif, Kakri, on the basis of the 'Khata' dated 21st November, 1950 for Rs. 736/13/9 and claimed exclusion of the period from 14-1-52 to 29-9-61 during which proceedings had been prosecuted under the Act. The suit was resisted by the defendant inter alia on the ground that it was barred by limitation, as under Section 52 of the Act. the plaintiff was not entitled to exclusion of the period during which the proceedings in respect of the suit debt were prosecuted under the Act. The defendant's plea found favour with the trial court, which dismissed the suit Aggrieved by the judgment and decree of the trial court the plaintiffs filed appeal, but the same was dismissed by the learned Senior Civil and Additional Sessions Judge, Ajmer, by his judgment dated 30th April, 1965. Consequently, the plaintiffs have come in second appeal to this Court.

3. The plaintiffs' plea for exclusion of that period during which the proceeding in respect of the suit debt were prosecuted under the Act has been negated by the courts below on two grounds (1) that Ram Swaroop, who had made the application under Section 4 of the Act before the Debt Settlement Officer, was a minor on the date the application was filed and consequently it will be deemed to be no application in the eye of law; (2) that the application under the Act was dismissed in appeal not on the ground that Sualal was not a debtor within the meaning of the term given in the Act, but because the debt in question was incurred after coming into force of the Act and, therefore, the provisions of the Act had no application to it. In this view of the matter the plaintiff's suit has been dismissed as barred by limitation.

4. Learned counsel for the appellants urges that there is nothing on the record to show that Ram Swaroop was a minor throughout the period the proceedings were prosecuted under the Act and the fact that Ram Kumar, the other plaintiff, was not a party to the proceedings would not disentitle the plaintiffs to claim exclusion of the period. This contention is correct. In the reply filed by the debtor

Sualal before the Debt Settlement Court, it has been stated that on the date of the application. Ram Swaroop was not more than 17 years and one month old. The point regarding the alleged minority of Ram Swaroop was, however not pressed before that Court nor before the appellate Court. The application remained pending in the Court of the Debt Settlement Officer up to 13th October, 1959, and was decided by the appellate court on 29-9-61. Thus, it is clear that even if Ram Swaroop was minor at the time of the filing of the application he became major during the pendency of the same and, therefore, the application cannot be treated as incompetent. Moreover the fact of Ram Swaroop's minority was not pressed during the proceedings of the Act nor there is any convincing proof on the record in support of this allegation. In such circumstances the finding of the learned senior Civil Judge that Ram Swaroop had no locus standi to file the claim, is clearly erroneous and cannot be sustained. It further appears to me that the question whether Ram Swaroop was minor at the time of filing of the claim under the Act cannot affect the question of extension of the limitation under Section 52. In this view of the matter I set aside the finding of the learned Senior Civil Judge that the plaintiffs are not entitled to exclude the period taken in the Debt Settlement Proceedings on the alleged ground that Ram Swaroop was a minor at the time of filing of the application.

5. I would now take up the question of interpretation of Section 52, which reads as under,--

"52. Period of proceeding before Courts under this Act to be excluded.-- in computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal [or an application relating to which has been dismissed by the Court or the Court in appeal, the period during which the proceedings in respect of such debt were prosecuted before the Court or the Court in appeal shall be excluded]"

It may be observed that this section was originally differently worded before amendment of 1948 and the section as it originally stood reads as below,--

"52. Period of proceeding before courts under this Act to be excluded.-- in computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal the period during which the proceedings were pending before the Court in respect of such debt shall be excluded."

6. A comparison of this section as it originally stood and as it stands now after amendment would clearly show that the scope of Section 52 has been extended. Under the section as it originally stood the period during which the proceedings remained pending before the Court could be excluded only if the application was dismissed by the court or the court in appeal on the ground that the person from whom the debt was alleged to be due was held not to be a debtor. But according to the amended section a creditor would be entitled to the benefit of this section even if an application relating to such debt is dismissed on any other ground.

7. Learned counsel for the respondent, however, argued that the amendment was made in Section 52 with a view to give benefit of this section in those cases also where even though the person from whom the debt is alleged to be due is a debtor but the total amount of debts due from such person at

the date of the application exceeds Rs. 15,000/-. In support of his contention he has referred to the definitions of "debt" and "debtor" given in the Act in Section 2 and also Sections 11 and 17. He has further relied upon *Bil Ukadia Umedia v. Bai Gajrabai Bhulabhai*, (1963) 4 Guj LR 381.

8. Under Section 2 (4), a "debt" means liability in cash or kind, due from a debtor whether payable under a decree or order of any civil Court or otherwise. The definition of the word "debt" is thus irrespective of the quantum and, therefore, a debt does not necessarily mean a debt which is not in excess of Rs. 15,000/-. Under Clause (5) of Section 2, a "debtor" means an individual who is indebted and who holds lands used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January, 1940 and who has been cultivating land personally for the cultivating seasons in the two years immediately proceeding the date of the coming into operation of the Act and whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent of his total annual income or does not exceed Rs. 500/, whichever is greater. Thus the definition of the word "debtor" is again irrespective of the quantum of debt due and payable by him. Section 11 provides that no application under Section 4 or 8 shall be entertained by the Court on behalf of or in respect of any debtor, unless the total amount of debts due from him on the date of the application is not more than Rupees 15,000/-. Section 17 lays down that it is incumbent upon the Court to raise on the date fixed for hearing of the application under Section 4 two preliminary issues,--

(1). whether the person for the adjustment of whose debts the application is made is a debtor; and
(2) whether the total amount of debts due from such person at the date of the application exceeds Rs. 15,000/--Under Sub-section (2), if the Court finds either that such a person is not a 'debtor' meaning thereby a 'debtor' within the meaning of Section 2 (5) or if it finds that the total amount of debts due from such a person on the date of the application was more than Rs. 15,000/-, the Court has to dismiss the application forthwith.

9. Mr. H. P. Gupta contended that under Section 52 the exclusion of time spent in prosecuting a proceeding under the Act is provided for only in those cases where the Court has held under Section 17 that the person for the adjustment of whose debts, the application was made under Section 4 was either not a debtor or the total amount of debts due from such person on the date of the application exceeded Rupees 15,000/-. In other words his contention is that Section 52 cannot apply to any other case.

10. In my opinion the interpretation which the learned counsel for the respondent seeks to put does not follow from the language of Section 52. Under the first clause of Section 52 the benefit of this section is available if the person from whom the debt is due is held not to be a debtor by the Court or the Court in appeal and under the second clause (which was introduced by amendment) if the application has been dismissed by the Court or the Court in appeal, for reasons other than the one mentioned in the first clause, even then the period during which the proceedings in respect of such debt were prosecuted before the Court or the Court in appeal shall be excluded. The second clause, in my opinion, makes provision for those cases where the application is dismissed for reasons other than that given in the first clause, namely, where the person is held to be a debtor, but for certain other reasons the application is dismissed. In other words the second clause applies to those cases

where the application is dismissed even though the person from whom debt is due is held to be a debtor. If the contention advanced by the learned counsel for the respondent is accepted the result would be startling inasmuch as the benefit of this section would be available where the person from whom any debt is alleged to be due is held not to be a debtor.

but it would not be available in those cases where the person is held to be a debtor and consequently the claim is rightly made in the Debtor's Relief Court, but the application is dismissed for some other reason as it has happened in the present case. I am, therefore, unable to accept the interpretation put forward by the learned counsel for the respondent, so far as the interpretation put by the learned Senior Civil Judge is concerned that the benefit of Section 52 is available only in those cases where the person from whom the debt is alleged to be due is held not to be a debtor is erroneous on the face of it as it fails to take notice of the second clause of Section 52 altogether inserted by amendment.

11. The case relied upon by the learned counsel (1963) 4 Guj LR 381 does not support the interpretation put by him on Section 52. That case only laid down that Section 52 would also apply to a case where the application is dismissed under Section 17 (2) on the preliminary issue on the ground that the total amount of debts due from such person on the date of the application exceeds Rs. 15,000/-. The learned Judge nowhere laid down that Section 52 would not apply in any other contingency.

12. For the reasons aforesaid the courts below were, in my opinion, wrong in not giving benefit of Section 52 of the Act to the plaintiffs and thereby dismissing the suit on the ground that it was barred by limitation.

13. In the result I allow the appeal, set aside the judgments and decrees of the courts below and hold the plaintiff's suit to be within limitation. The trial court has given its finding on merits also. However, the first appellate court has not decided the plaintiffs' claim on merits, but has upheld the judgment and decree of the trial court only on the question of limitation. Consequently I remand the case to the Court of the District Judge, Ajmer, for decision of the appeal on merits. It will be open to the learned District Judge to retain the case on his file or to transfer to it any other competent court for disposal according to law. Costs of this appeal will abide the final result.