A STATE OF GUJARAT

v.

VORA SAIYEDBHAI KADARBHAI AND ORS.

MARCH 2, 1995

B [N. VENKATACHALA AND S.C. SEN, JJ.]

Gujarat Rural Debtors Relief Act, 1976: Constitutional validity of.

Section 14(2)—Expression 'Or an order reducing his debt is made'—
C *Held not violative of Articles 19(1)(f) and (g).*

Constitution of India, 1950: Article 19(1)(f) and (g)—Fundamental Rights—Restrictions on—Reasonableness of Restrictions—Factors to be taken into account—Debt Relief Act—Provision enabling debtors to get back property given as security to creditors—Held not unreasonable restrictions.

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With a view to protecting weaker sections of the society against exploitation by non-institutional creditors, the State of Gujarat enacted the Gujarat Rural Debtors Relief Act, 1976. Section 14(2) of the Act provides that where a certificate of discharge of any debt is granted to a debtor or an order reducing his debt is made under section 8, every
E **property pledged or mortgaged by such debtor as a security of such debt shall stand released in favour of such debtor and the creditor shall forthwith return such property to the debtor. The Constitutional validity of the Act was challenged by some creditors before the High Court of Gujarat which upheld the same except that the expression 'or an order**
F **reducing his debt is made' used in sub-section (2) of Section 14 was ultra vires Articles 19(1)(f) and 19(1)(g) of the Constitution. In striking down the said expression the High Court held that (i) if the Legislature has thought fit that at least in some cases a part of the debt should be repaid by the debtor to his creditor, that part at least much remain secured until**
G **it is repaid. To deprive a small money-lender of his cover of protection after telling him that he is entitled to recover some amount form his debtor, is, no reasonable restriction within the meaning of Article 19(1)(f) and Article 19(1)(g) of the Constitution; and (ii) it is more reasonable to think that the security given by a debtor to his creditor should remain intact in the hand of his creditor until the debtor pays up his scaled down**
H **debt. To hold otherwise is to render the adjudicated debt of the creditor**

insecure and to expose him, for all intents and purposes, to the danger of losing it over a period of time during which it has been made repayable in instalments. Against the decision of the High Court, State of Gujarat preferred appeals in this Court. A

Allowing the appeals and setting aside the impugned judgment, this Court B

HELD : 1. The High Court was wholly wrong in its view that the provision in sub-section (2) of Section 14 of the Act to the extent it made the creditors who were entitled to get the scaled down debts from certain debtors would have the effect of depriving the creditors of security for the debt, was an unreasonable restriction under Articles 19(1)(f) and 19(1)(g) of the Constitution. [480-H] C

2. The reason given by the High Court for the striking down the expression "or an order reducing his debt is made" in sub-section (2) of Section 14 of the Act, as unconstitutional, as that necessary to help the creditors to realise the scaled down debts of debtors from their properties retained as security, has made this Court think that the High Court has not only overlooked the fact that the Legislation, the constitutional validity of which was questioned before it was intended to help the debtors from the strangle hold of the creditors and not to help the creditors in keeping the debtors under their stranglehold, but also has totally ignored the guidance given to courts by this Court in the approach to be made for meeting the challenge to constitutionality of such legislation intended for the benefit of debtors. [477-F-G] D E

Fatehchand Himmatlal v. *State of Maharashtra,* [1977] 2 SCC 670 and *Pathumma and Ors.* v. *State of Kerala and Ors.,* [1978] 2 SCC 1, relied on. F

Vora Saiyedbhai Kadarbhai v. *Saiyed Intajam Hussen Sedumia and Ors.,* AIR (1981) Guj. 154, partly overruled.

3. The Legislature of Gujarat which had a human problem of saying the poverty stricken debtors from the clutches of non-institutional creditors, relieving them of their debts to the extent found necessary and getting return of their properties from the creditors given as security for their debts to eke out their livelihood it was very much justified in introducing the provision in sub-section (2) of Section 14 of the Act, which G H

A **enabled the debtors to get back their properties given as security, from the creditors for making use of them in their own way to eke out their livelihood, inasmuch as such provision cannot be considered as that not made in social interest by the Legislature for promoting social and moral progress of the community as a whole. [480-F-G]**

B **4. Even if social legislations such as Debt Relief Legislation enacted by a Legislature are to make a few creditors victims of such legislation in one way or the others, the same cannot be regarded as an unreasonable restriction which cannot be imposed in respect of the rights exercisable by the citizens under Article 19(1)(f) and Article 19(1)(g) of the Constitution. [481-B]**

C *Jyoti Pershad* **v.** *The Administrator for the Union Territory of Delhi,* **[1962] 2 SCR 125 and** *Mohd. Hanif Quareshi and Ors.* **v.** *The State of Bihar,* **[1959] SCR 629, referred to.**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8439 of 1983 etc.

From the Judgment and Order dated 16.12.80 & 17.12.80 of the Gujarat High Court in S.C.A. No. 2279 of 1979.

E Anip Sachthey, and Ms. Meenakshi Arora for the Appellants.

G. Vishwanath Iyer for the Respondent.

The Judgment of the Court was delivered by

F **VENKATACHALA, J.** Was the High Court of Gujarat justified in striking down the expression "or an order reducing his debt is made" used in sub-section (2) of Section 14 of the Gujarat Rural Debtors Relief Act, 1976 - "the Act" on the ground that it is *ultra vires* Article 19 (1)(f) and Article 19(1)(g) of the Constitution by its judgment in *Vora Saiyedbhai Kadarbhai* v. *Saiyed Intajam Hussen Sedumiya and Ors.,* AIR (1980) Guj. G 154, is the only question which arises for our consideration and decision in these Civil Appeals, by special leave since the special leave in them is granted by this Court confined to that question.

The striking down of the said expression in sub-section (2) of Section 14 of the Act as unconstitutional by the High Court, enables a creditor to H retain the property pledged or mortgaged with him by the debtor as

security for his debt where such debt is merely scaled down and not fully wiped off, under the provision of the Act. But, the said expression, if had not been struck down by the High Court, a property pleadged or mortgaged with the creditor as security by the debtor for his debt, would have stood released from the security and returned by the creditor to the debtor forthwith, notwithstanding the fact that the debt payable by the debtor to the creditor stood merely scaled down or reduced and did not stand fully discharged or wiped off, as becomes obvious from a reading of sub-section (2) of Section 14 of the Act, which runs thus :

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S.14. (1) .....

(2). Where a certificate of discharge of any debt is granted to a debtor *or an order reducing his debt is made* under section 8, every property pleadged or mortgaged by such debtor as a security of such debt shall stand released in favour of such debtor and the creditor shall forthwith return such property to the debtor."

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(underlining is ours)

No doubt, the Act where the above sub-section finds its place, was, as a whole, challenged before the High Court, as that which was *ultra vires* the Constitution. However, the High Court, as seen from its judgment adverted to at the outset, relying upon the judgments of the Constitution Benches of this Court in *Fatehchand Himmatlal* v. *State of Maharashtra,* [1977] 2 S.C.C. 670, and *Pathumma and Ors.* v. *State of Kerala and Ors.,* [1978] 2 SCC 11, where Debtors Relief Acts similar to the Act had been found to be constitutional, upheld the constitutionality of the Act, as such, but for its view that the aforesaid expression in sub-section (2) of Section 14 of the Act, was *ultra vires* Articles 19(1)(f) and 19(1)(g) of the Constitution and of striking down the same as stated earlier.

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None of the creditors who had impugned the provisions of the Act as unconstitutional before the High Court, have come to this Court questioning the correctness of the judgment of the High Court, upholding the provisions as a whole as constitutional. The debtors who will not get back their properties pledged or mortgaged as security for the debts, because of the striking down of the expression "or an order reducing his debt is made" in sub- section (2) of Section 14 of the Act by the High Court, though could have questioned the correctness of such striking down in this

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A Court, it is obvious that their financial inability has prevented them from doing so. Be that as it may, the State has questioned the correctness of the said striking down by the High Court by filing the present appeals against the judgment of the High Court and, very rightly.

We heard Shri Anip Sachthey, learned counsel appearing for the B appellants and Shri G. Vishwanatha Iyer, learned senior counsel, who was requested by us to appear on behalf of the respondents herein who were unrepresented.

Sub-section (2) of Section 14 which we have already reproduced, as C is seen, was intended to release the debtors' properties with the creditors as security for their debts and make the creditors return those properties to the debtors whether they are debtors whose debts had stood fully discharged or they are debtors whose debts were scaled down, enabling them to pay the same in small instalments spread-over a period of 10 years or more, without interest.

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As to who are those debtors whose debts are scaled down to Rs. 1400 or a lesser amount and how such amounts were payable by them to the creditors without interest in easy instalments, is stated by the High Court, thus:

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"Section 9 which provides for payment of the debt determined by the Debt Settlement Officer lays down that a debt found due by the Debt Settlement Officer shall be paid by the debtor to the creditor in ten equal annual instalments without any interest. Therefore, where the debt of a "small farmer" or a "rural artisan" F is scaled down to Rs. 1,400, it is not going to bear interest for the next ten years. Secondly, its recovery has been spread over a period of ten years. It has been made payable in very easy instalments. Added to it is the provision made by Section 10. The liability to pay the scaled down debt in ten annual instalments is also not absolute. Section 10 provides that whenever the State Government G suspends or remits the payment of one-half or more of the land-revenue, the payment of whole of the instalment due for that year and the full amount of instalment due for each subsequent year under Section 9 shall be postponed for one year. In other words, if, during a period of ten years, there is a suspension or remission H of one-half or more of the land-revenue payable to the State, the

annual instalments otherwise payable over a period of ten years under Section 9 become payable over a period of eleven years. If the payment of one-half or more of the land-revenue is suspended or remitted more than once during the period of ten years contemplated by Section 9, then, as many years are added for payment of annual instalments under Section 9. Section 10 further provides that in case the State Government suspends or remits less than one-half of the land-revenue during any particular year, one-half of the amount of instalment for that year and full amount during subsequent year under Section 9 shall be postponed for a period of one year."

As seen from the judgment of the High Court, an examination made by it of the scheme of debt reduction and payment of the reduced debt as above, has made it conclude, thus" :

"33. The analysis of the scheme of debt reduction and its payment which we have made clearly shows that whilst a large number of debtors are wholly discharged, others are required to pay only a small amount in a very easy manner. Its payability has been spread over a period of time and may be interrupted by the circumstances contemplated by Section 10. This scheme, in our opinion, makes little difference between those money-lenders whose debts have been fully wiped off and those whose debts have been partially wiped off. The later class is unlikely to recover substantial amount of capital advanced by them to their debtors".

Again, an examination made by the High Court of the objects intended to be achieved by the Act, has made it reach its conclusion in that regard, thus:

"The Legislature wants to protect weaker sections of our society against exploitation by non-institutional creditors who behave in such manner as they think fit. The impugned provisions of the Act have, therefore, reasonable nexus with the object of relieving weaker sections of our society from the clutches of non-institutional creditors which the impugned Act seeks to achieve."

In the course of its judgment the High Court referring to the debtors including the small farmers and rural artisans who are sought to be relieved

A of the indebtedness under the Act has concluded, thus:

> "The debtors under the provisions of the impugned Act comprising four categories are constituted into a class by itself and it is that class which is sought to be relieved of its indebtedness. They are poor rural agriculturists or poor persons living in the rural areas
B of the State."

Despite the aforesaid conclusions reached by the High Court as regards—(1) poverty striken debtors who had to be relieved of their indebtedness under the Act; (2) the exploitation of such debtors by the non-in-
C stitutional creditors; (3) relief required for such debtors from the clutches of such creditors; it has found that the small farmers and rural artisans who had to repay their debts scaled down to an amount not exceeding Rs. 1,400 without interest and in easy instalments, as those who are not entitled to obtain release of their properties from the creditors given to them as
D security and seek return of them from them unless they discharge their debts, for, according to it, a provision which gives such relief to the debtors would go against the rights of the creditors conferred under Articles 19(1)(f) and 19(1)(g) of the Constitution, inasmuch as such provision would impose an unreasonable restriction. What the High Court has stated in this regard to put in its own words, is the following :

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> "In the first instance, what a money-lender gets, in a case in which there is an order to pay him the scaled down debt, is a very small amount of his debt and the repayability of that small amount has been spread over at least a period of 10 years. Thirdly, sub-section
F (2) of Section 14 renders the repayability of such a scaled down amount spread over such a long period of time, very uncertain and insecure. If the Legislature has thought fit that at least in some cases a part of the debt should be repaid by the debtor to his creditor, that part at least must remain secured until it is repaid. To deprive a small money-lender of his cover of protection after
G telling him that he is entitled to recover some amount from his debtor, is, in our opinion, no reasonable restriction within the meaning of Article 19(1)(f) and Article 19(1)(g) of the Constitution. If the security remains with the money-lender, he cannot do anything with it because sub-section (1) of Sec. 14 requires him
H not to damage, destroy or tamper with it. Therefore, in our opinion,

it is more, reasonable to think that the security given by a debtor to his creditor should remain intact in the hands of his creditor until the debtor pays up his scaled down debt. To hold otherwise is to render the adjudicated debt of the creditor insecure and to expose him, for all intents and purposes, to the danger of losing it over a period of time during which it has been made repayable in instalments." A B

The aforesaid reasons putforth by the High Court to hold that a small farmer or a rural artisan who is made liable by the Legislature to pay scaled down debt up to Rs. 1,400 without interest during a period of ten years and more, if is allowed the return of the property given as security for his debt, would make the creditor lose such security for payment of such debt unreasonably and, therefore, such restriction would be no reasonable restriction within the meaning of Article 19(1)(f) and Article 19(1)(g) of the Constitution, is to say the least, would defeat and nullify the very objects of the Act of relieving poor debtors from their indebtedness and of relieving them from the clutches of the creditors which the High Court itself had, as pointed out by us earlier, regarded as a reasonable restriction not offending Article 19(1)(f) and Article 19(1)(g) of the Constitution. Moreover, the reason given by the High Court for striking down the expression "or an order reducing his debt is made" in sub-section (2) of Section 14 of the Act as unconstitutional, as that necessary to help the creditors to realise the scaled down debts of debtors from their properties retained as security, has made us think that the High Court has not only overlooked the fact that the Legislation, the constitutional validity of which was questioned before it was intended to help the debtors from the stranglehold of the creditors and not to help the creditors in keeping the debtors under their stranglehold, but also has totally ignored the guidance given to courts by this Court in the approach to be made for meeting the challenge to constitutionality of such legislation intended for the benefit of debtors which was very much found in the observations in *Fatehchand* (supra) and *Pathumma* (supra). Material observations of this Court in *Fatehchand* (supra) which, according to us, were ignored by the High Court were these: C D E F G

"The subject-matter of the impugned legislation is indebtedness, the beneficiaries are petty farmers, manual workers and allied categories steeped in debt, and bonded to the money-lending tribe. H

A So, in passing on its constitutionality, the principles of Development Jurisprudence must come into play ....

A meaningful, yet minimal, analysis of the Debt Act, read in the light of the times and circumstances which compelled its enactment, will bring out the humane setting of the statute. The B bulk of the beneficiaries are rural indigents and the rest urban workers. These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them. Money-lending may be ancillary to commercial activity and benignant in its effects, but money-lending may also C be ghastly when it facilitates no flow of trade, no movement of commerce, no promotion of intercourse, no servicing of business, but merely stagnates rural economy, strangulates the borrowing community and turns malignant in its repercussions. The former may surely be trade but the latter - the law may well say - is not D trade. In this view, we are more inclined to the view that this narrow, deleterious pattern of money-lending cannot be classed as 'trade' ....."

The other significant observations of this Court in *Fatehchand* (supra) which the High Court has ignored, were these:

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"A pathetic picture of the money-lender being deprived of his loan assets while being forced to repay his lender was drawn but that cannot affect the reasonableness of the relief to the grass-roots borrower. Nor is it valid to attack the Act on the score that the F whole debt *i.e.,* the very capital of the business, has been dissolved. More often than not, the money-lender would have, over the long-lived debts and repeated renewals, realized more than the principal if economic studies tell the tale truly. The injustice of today is often the hangover of the injustice of yesterday, as spell out by history. The business of money-lending has not been G prohibited. The Act is a temporary measure limited to grimy levels of society. Existing debts of some classes of indigents along have been liquidated. If impossible burdens on huge human numbers are not lifted, social orderliness will be threatened and as a regulatory measure this limited step has been taken by the legis- H lature. Regulation, if the situation is necessitous, may reach the

limit of prohibition. Disorder may break out if the law does not step in to grant some relief. Trade cannot flourish where social orderliness is not secure. If the tensions and unrests and violence spawned by the desperation of debtors are not dissolved by State action, no money-lending trade can survive. It follows that for the the very survival of Trade the regulatory measure of relief of indebtedness is required. What form this relief should take is ordinarily for the legislature to decide. *It is not ordinarily for the Court to play the role of Economic Adviser to the Administration.* Here amelioratory measures have been laid down by the Legislature so that the socio-economic scene may become more contended, just and orderly. Obviously, this is regulatory in the interest of Trade itself. *This policy decision of the house cannot be struck down as perverse by the Court.* The restrictions under the Debt Act are reasonable. Equally clearly, if the steps of liquidation of current debts and moratorium are regulatory, Article 301 does not hit them."

Pathumma (supra) is a seven-Judge Bench judgment of this Court. There, while upholding the constitutionality of the Kerala Agriculturists (Debt. Relief) Act, 1970, which was similar to the Act under consideration, it was observed that the Courts cannot look at the restrictions imposed under a beneficial legislation only from the point of view of the citizen who is affected, for that cannot be a correct or safe approach inasmuch as the restriction is bound to be irksome and painful to the citizen even though it may be for the public goods, and hence, a just balance, must be struck in relation to the restriction and the public good that is done to the people at large. In that context, reliance was placed by this Court on the observations made by this Court in *Jyoti Pershad* v. *The Administrator for the Union Territory of Delhi,* [1962] 2 SCR 125, which were of materiality and as follows :

"Where the Legislature fulfills its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of 'reasonableness' have to be viewed in the context of the issues which faced the Legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is

A the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concern and peaceful adjustment and thus furthering the moral and material progress of the community as a whole."

B It was also observed therein that in judging reasonableness of restrictions the Court would be fully entitled to take into consideration matters of common report, history of the times, matters of common knowledge and the circumstances existing at the time of legislation, relying upon the observations in *Mohd. Hanif Quareshi and Ors.* v. *The State of Bihar,* [1959] C SCR 629, which were as follows :

"It must be borne in mind that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that D in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assure every state of facts which can be conceived existing at the time of legislation."

E Therefore, when we look at the provision in sub-section (2) of Section 14 of the Act in the light of the observations of this Court made in *Fatehchand* (supra) and other decisions adverted to by us, we find that the Legislature of Gujarat, which had a human problem of saving the poverty striken debtors from the clutches of non-institutional creditors, relieving F them of their debts to the extent found necessary and getting return of their properties from, the creditors given as security for their debts to ekeout their livelihood it was very much justified in introducing the provision in sub-section (2) of Section 14 of the Act, which enabled the debtors to get back their properties given as security, from the creditors for making use of them in their own way to ekeout their livelihood, in as much as such G provision cannot be considered as that not made in social interest by the Legislature for promoting social and moral progress of the community as a whole. Therefore, the High Court was wholly wrong in its view that the provision in sub-section (2) of Section 14 of the Act to the extent it made the creditors who were entitled to get the scaled down debts from certain H debtors would have the effect of depriving the creditors of security for the

debt, was an unreasonable restriction under Articles 19(1)(f) and 19(1)(g) of the Constitution and that view called to be interfered with. As is observed by this Court in the judgments to which we have adverted, even if social legislations such as Debt. Relief Legislation enacted by a Legislature are to make a few creditors victims of such legislation in one way or the other, the same cannot be regarded as an unreasonable restriction which cannot be imposed in respect of the rights exercisable by the citizens under Article 19(1)(f) and Article 19(1)(g) of the Constitution. A B

For the foregoing reasons, we are constrained to uphold the constitutionality of sub-section (2) of Section 14 of the Act as a whole and set aside the judgment under appeals insofar as it has held the words "or an order reducing his debt is made" therein as unconstitutional and struck them down on that account. C

Before parting with this case, we feel it our bounden duty to place on record, our grateful thanks to Shri G. Vishwanatha Iyer who assisted us, as *amicus curiae*, at our request. D

In the result, we allow these appeals, however, with no costs.

T.N.A. Appeals allowed.