

M.N. ABDUL PAWOOF  
v  
PICHAMUTHU AND ORS.

A

FEBRUARY 10, 2000

[B.N. KIRPAL AND M.B. SHAH, JJ.]

B

*Tamil Nadu Debt Relief Act, 1979 : Section 3(3)—Proviso.*

*Expression "Not less than Rs. 1200"—Scope and meaning of.*

*Debtor—Who is—Respondents executed a usufructury mortgage in favour of appellant—Annual rental value of the property Rs. 1200—Respondent's application for claim as debtor within the meaning of the Act—Dismissal by Trial Court—Trial Court order affirmed by First Appellate Court—On second appeal High Court held the respondents were debtors within the meaning of Section 3(3) of the Act—It came to the conclusion that the annual rental value of Rs. 1200 was not enough to deprive them of the benefit of being regarded as debtors—Appeal before Supreme Court—Held if the annual rental value of the property which is owned by a debtor is not less than Rs. 1200 then he would be covered under sub-section (iii) of proviso to Section 3(3) and he would not be deemed to be a debtor—Not less than 1200 means that the minimum aggregate annual rental value should be at least 1200 if the aggregate rental value was less than 1200 only then the respondents would have been regarded as not being covered by the proviso to Section 3(3)—The High Court erred in arriving at the conclusion that even though the annual rental value was Rs. 1200 the respondents were entitled to the benefit of the said proviso and would be regarded as debtors within the meaning of that Act.*

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*Raja Kulkarni & Ors. v. State of Bombay, [1954] SCR 384; K.P. Varghese v. I.T.O. & Anr., [1981] 4 SCC 173; Karnail Singh & Ors. v. Darshan Singh & Ors., [1995] Supp. 1 SCC 760; The Pioneer Motors Pvt. Ltd. v. The Municipal Council, Nagarcoil, [1961] 3 SCR 609; C.I.T. Calcutta v. M/s. Braithwaita & Co. Ltd., [1993] 2 SCC 262 and Saketh India Ltd. & Ors. v. India Securities Ltd., [1999] 3 SCC 1, referred to.*

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2761 of 1989.

H

A From the Judgment and Order dated 15.7.88 of the Madras High Court in C.M.S.A. No. 30 of 1983.

K.V. Viswanathan and S.R. Setia for the Appellant.

V. Sudeer for S. Srinivasan for the Respondents.

B

The following Order of the Court was delivered :

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The only question which arises for consideration in this appeal is as to what is the meaning of the expression "not less than Rs. 1200" occurring in the Tamil Nadu Debt Relief Act, 1979 (hereinafter referred to as 'the said Act').

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The father of the respondent had executed a usufructuary mortgage deed in respect of a property in favour of the appellant herein for a sum of Rs. 10,000 on 25-12-1967. This property was given on lease to some tenants for more than 10 years. Under the provisions of the said Act the respondents filed an application seeking direction that the usufructuary mortgage had been completely discharged. The respondents claimed to be debtors within the meaning of the Act.

E

The appellant herein contended that the respondents could not be regarded as debtors within the meaning of Section 3(3) of the said Act inasmuch as the rental value of the respondent's property was as much if not more than what is required under the Act. The District Munsif dismissed the respondents application which was affirmed in appeal. In second appeal however the High Court came to the conclusion that the respondents were debtors within the meaning of Section 3(3) of the Act.

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It came to the conclusion that the annual rental value of Rs. 1200 was not enough to deprive them of the benefit of being regarded as debtors.

G

The admitted fact being that the annual rental value of the property belonging to the respondents being Rs. 1200 the question is whether the respondents can be regarded as debtors. The relevant provision of Section 3 (3) of the said Act reads as under :

"3(3) 'debtor' means any person from whom any debt is due;

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Provided that a person shall not be deemed to be a debtor if he,

(i) has in both the financial years ending on the 31st March, 1977 and the 31st March, 1978, been assessed to -- A

(a) income-tax under the Income tax Act, 1961 (Central Act XLIII of 1961) or under the income tax law in force in any foreign country; or B

(b) agricultural income-tax under the Tamil Nadu Agricultural Income-Tax Act, 1955 (Tamil Nadu Act V of 1955) or under any law in force in any other State or Union Territory in India; or

(ii) has, in both the financial years ending on the 31st March, 1977 and the 31st March, 1978, been assessed to sales tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act I of 1959) or under the Central Sales Tax Act, 1956 (Central Act LXXIV of 1956); or C

(iii) has in all the four half-years immediately preceding the 1st March, 1978 been assessed to property or house tax in respect of buildings or lands other than agricultural lands, under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919), the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act XV of 1971), the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958), the Cantonments Act, 1924 (Central Act II of 1924) or any law governing municipal or local bodies in this state or in any other State or Union Territory in India, provided that the aggregate annual rental value of such buildings and lands whether let out or in the occupation of the owner, is not less than rupees one thousand and two hundred." D E F

On a careful reading of the said provision, it appears that any person from whom debt is due is regarded as a debtor. The proviso to sub-section (3) excludes certain categories of persons from being regarded as debtors. According to sub-clause (iii) a person who owes money shall not be deemed to be a debtor if he has in all the four half-years preceding 1st March, 1978 been assessed to property or house tax provided that the aggregate annual value of such buildings or lands is not less than Rs. 1200. Owner of a property is thus sought to be excluded from the definition of H

A debtor, but not every owner is excluded as person who own property having less rental value will continue to be regarded as debtors.

B As already noticed what has to be seen is as to what is the meaning of the expression is "not less than Rs. 1200" occurring in the aforesaid proviso. According to the High Court the respondents would get the benefit and would be regarded as debtors even though the annual rental value of the property owned by them is Rs. 1200. The implication of the decision of the High Court is that it is only if the rental value was more than Rs. 1200 that the proviso would have been attracted.

C As we read the said proviso it appears to us that the expression "not less than Rs. 1200" means that the minimum amount of rental value if it is Rs. 1,200 then the person would be covered by the proviso and would not be regarded as a debtor. In Stroud's Judicial Dictionary 5th Edn. at page 1700 it is noted that "where a statute prescribes a penalty for an offence of "not less" than a stated amount, that is the minimum penalty that justices can impose, notwithstanding that the section, prescribing the penalty, says that the offender "shall be liable" thereto; and the power to mitigate given by the Summary Jurisdiction Act 1879 (c.49) s.4, was in such a case qualified so that mitigation could not go below such minimum *Osborn v. Wood*, [1897] 1 Q.B. 197."

E In *Raja Kulkarni & Ors. v. State of Bombay*, [1954] SCR 384 a question arose regarding the recognition of a trade union. Section 13 of the Bombay Industrial Regulation Act, 1946 provided that a representative union should have a membership of "not less than 15 per cent of the total number of employees." While interpreting this provision it was observed at page 390 that "the statute lays down a minimum qualification of 15 per cent of membership to enable the union to be called a representative union....." After laying down the test of not less than 15 per cent it was perfectly reasonable "not to allow any other union such as the appellants to interpose in a dispute on behalf of the textile workers when they did not command the minimum percentage or when their membership fell below the prescribed percentage." The view which was expressed in *Raja Kulkarni* case (supra) clearly was that when the statute uses the expression not less than a particular figure then that figure is the minimum.

H In *K.P. Varghese v. I.T.O. & Anr.*, [1981] 4 SCC 173 this Court was required to interpret section 52 of the Income tax Act 1961 where in

sub-section (2) the Income tax Officer would get jurisdiction to acquire a capital asset if the fair market value of that asset exceeded the full value of consideration "by an amount of not less than 15 per cent of the value declared...." Analysing this provision it was held that according to sub-section (2) the difference between the fair market value and the consideration declared will have to be 15 per cent or more to enable the Income tax Officer to exercise jurisdiction under that section. To the same effect is the decision of this Court in *Karnail Singh & Ors. v. Darshan Singh & Ors.*, [1995] Supp. (1) SCC 760. Section 4 of the Punjab Gram Panchayat Act, 1952 enables the Government to declare any village or the group or contiguous villages to constitute one or more sabha area if they had population of "not less than 500." Interpreting this provision it was held that what was required for the exercise of powers under said Section 4 was that there should be a minimum population of 500. In other words, the expression population of not less than 500 was interpreted to mean that minimum population should be 500.

The High Court has referred to the decision of this Court in *The Pioneer Motors Pvt. Ltd. v. The Municipal Council, Nageroil*, [1961] 3 SCR 609 where the expression was, which was being interpreted, "not being less than one month." This Court held that in order that a notice should be valid the expression not being less than one month would mean that there must be notice of 30 clear days. This would be possible only if the 1st and the last day on which the notice is issued is excluded. Rather than helping the respondent in our opinion the said decision fortifies the view which we have taken namely, that the period specified is the minimum period. Not less than one month meant that 30 clear days notice had to be given and it is only in order to ensure that 30 clear days notice is given that, basing on section 9 of the General Clauses Act, it was observed that the 1st and the last date should be excluded.

Similarly, in *C.I.T. Calcutta v. M/s. Braithwaite & Co. Ltd.*, [1993] 2 SCC 262 where the Court had to consider the expression "of a period not less than 7 years" it was held that the period cannot be even one minute less than 7 years. The ratio of this decision is not different than the decision of this Court in *Karnail Singh v. K.P. Raghese and Raja Kulkarni*, (supra). To the same effect is the decision of this Court in *Saketh India Ltd. & Ors. v. India Securities Ltd.*, [1999] 3 SCC 1.

- A** From the aforesaid discussion it clearly follows that if the annual rental value of the property which is owned by a debtor is not less than Rs. 1,200 then he would be covered under sub-section (iii) of proviso to Section 3(3) and he would not be deemed to be a debtor. Not less than 1,200 means that the minimum aggregate annual rental value should be at least 1,200.
- B** If the aggregate rental value was less than 1,200 only then the respondents would have been regarded as not being covered by the proviso to Section 3(3). The High Court, in our opinion, was therefore, not correct in arriving at the conclusion that even though the annual rental value was Rs. 1,200 the respondents were entitled to the benefit of the said proviso and would be regarded as debtors within the meaning of that Act.

- C** For the aforesaid reasons, the appeal is allowed, the judgment of the High Court is set aside and that of the lower appellate court is affirmed. No order as to costs.

T.N.A.

Appeal allowed.