A

P. NIRATHILINGAM

v.

ANNAYA NADAR AND ORS.

OCTOBER 31, 2001

B [D.P. MOHAPATRA AND K.G. BALAKRISHNAN, JJ.]

Tamil Nadu Debt Relief Act, 1980—Sections 4 and 5—Relief from indebtness—Jurisdiction of—Special Tahsildar—Institution of Civil Suit for realisation of the mortgage amount by creditor on the proceedings initiated
C *on application for grant of relief from indebtness filed by the debtor—Effect of—Held, Special Tahsildar to determine the question relating to the grant of relief from indebtness to the debtor to the exclusion of Civil Court—Such proceedings pending before the Tahsildar or the Appellate Authority cannot be dismissed without adjudication.*

D

Interpretation of Statutes:

Interpretation which defeats the intent and purpose of a statute—Such interpretation to be avoided.

E

Appellant-debtor mortgaged his land in favour of one 'R' which was subsequently assigned in favour of Respondent No. 1 for consideration. The Appellant filed an application before the Special Tahsildar (Debt Relief) seeking relief under the provisions of Tamil Nadu Debt Relief Act 1980 on pecuniary considerations. Creditor Respondent No. 1 opposed the
F **application during its pendency and also filed a civil suit. On inquiry, the Special Tahsildar concluded that the Appellant was entitled to the relief. Respondent No. 1 filed an appeal before the Revenue Divisional Officer which was dismissed. Respondent No. 1 then filed a writ petition before the High Court. Single Judge held that on filing of the civil suit, the Special**
G **Tahsildar who was the competent authority under the Act ceased to have jurisdiction in the matter and the decision of the civil court would be binding on the parties. Division Bench confirmed the same. Hence the present appeal.**

H **Allowing the appeal, the Court**

HELD : 1. The Special Tahsildar could have passed the order granting relief to the Appellant-debtor long after institution of the civil suit by Respondent No. 1 and during the pendency of the said suit before the competent civil court. [611-B] A

K.V.S.P. Subramanian Chettiar **v.** *R.D.O. Arantangi Pudukottai District,* **[1982] III MLJ 375, overruled.** B

2. The legislative scheme of the Tamil Nadu Debt Relief Act 1980 is not to allow interference by any Court with determination of the question by the Tahsildar of the Applicant-debtor's eligibility to receive benefit under the Act, and his order is made final subject to appeal under Section 8. The jurisdiction vests in the statutory authorities to determine such a question to the exclusion of the Court so that a debtor who is entitled to the benefits under the Act is able to enjoy such benefit without the hassle of a protracted litigation in a civil court or revenue court. The view taken by the High Court that if a civil suit for realisation of the amount or any other relief based on the debt in question has been filed or on the filing of such a suit the Tahsildar would lose his jurisdiction to deal with the matter is accepted, it will defeat the very purpose of granting relief to a certain class of indebted persons in the State for which the legislature enacted the statute and it would be easy for a creditor to prevent the debtor from getting benefits granted under the Act by filing civil suit relating to the debt. [616-H; 617-A-B] C D E

3. When a suit is filed by the creditor against the debtor before the debtor made the application to the Tahsildar seeking relief under the Act the proper and reasonable course to be followed is to stay the proceeding in the suit till the Tahsildar/appellate authority disposes of the proceeding under the statute. If it is held in that proceeding that the debtor is not entitled to the benefit under the Act then the civil suit may be proceeded with if on the/ other hand, it is held that the debtor is entitled to the benefits provided in the Act then the suit has to be dismissed under Section 4. Thus, in no case it can be held that by filing a civil suit for realisation of the mortgage amount the proceeding pending before the Tahsildar or the appellate authority is to be dismissed without adjudication. [617-G-H; 618-A-B] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6468 of 1998.

From the Judgment and Order dated 1.4.97 of the Madras High Court in W.A. No. 971 of 1996. H

A S. Ganesh (A.C.), Revathy Raghavan and Ms. Sweta Garg for the appearing parties.

The Judgment of the Court was delivered by

B **D.P. MOHAPATRA, J.** The effect of institution of a civil suit by the creditor on the proceeding initiated on the application filed by the debtor under the Tamil Nadu Debt Relief Act, 1980 (Act XIII of 1980) (for short 'the Act') is the question that falls for determination in this case.

A learned single Judge of the High Court of Madras held that on filing C of the civil suit the Special Tahsildar who was the competent authority under the Act ceased to have jurisdiction in the matter and the decision of the civil court would be binding on the parties. The judgment was confirmed by the Division Bench. Therefore, the debtor has filed this appeal assailing the judgment in Writ Appeal No. 971/96 confirming the judgment of the learned single D Judge in Writ Petition No. 3409/1983.

The shot resume of the facts relevant for appreciating the case may be stated thus :

The appellant herein mortgaged his land measuring about 3.07 acres for E a sum of Rs. 10,000 in favour of one Ramummal wife of Madasami Raja on 28.2.1965. The said mortgage was assigned in favour of the respondent No. 1 for consideration on 12.6.1974. The appellant filed the application dated 11.9.1980 before the Special Tahsildar (Debt Relief), Sivakasi, seeking relief under the provisions of the Act on the ground that the annual household income during 1979 was Rs. 3600 and the immovable properties owned by him were F worth Rs. 22,840. The assignee-creditor, respondent no.1 herein, opposed the application. When the application was pending before the Special Tahsildar the assignee creditor filed O.S. No. 123/81 on 25.4.1981 in the Sub-Court, Ramanathapuram, which was re-numbered as O.S. No. 150/81 on the file of Sub-Court, Srivilliputhur.

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The Special Tahsildar, on inquiry came to the conclusion that the annual household income of the appellant's family during 1979 did not exceed Rs. 4,800 and the value of the immovable properties did not exceed Rs. 25,000, and therefore, the appellant was entitled to the relief provided under the Act. H The appeal filed by the respondent No. 1 (assignee-creditor) before the Rev-

enue Divisional Officer, Sivakasi, against the said order was dismissed on the ground of limitation. A

Aggrieved by the said order the respondent No. 1 filed Writ Petition No. 3409/83 in which the learned single Judge relying on the judgment of the Division Bench in *K.V.S.P. Subramanian Chettiar* v. *R.D.O., Arantangi, Pudukottai District*, (1982) II MLJ 375, held that the Special Tahsildar could not have passed the order granting relief to the appellant on 8.1.1982 long after institution of the civil suit by the respondent no. 1 and during the pendency of the said suit before the competent civil court. On the said finding the writ petition was allowed and the order of the Special Tahsildar as confirmed by the appellate authority was set aside. The learned single Judge left it to the parties to vindicate their claims before the civil court in the pending civil suit. The operative portion of the judgment of the learned single Judge runs as follows : B C

> "In this view, the impugned orders are quashed, However, liberty is reserved to the third respondent to seek adjudication before the civil court where the suit is pending on the question "as to whether he is entitled to the benefits of the Act. If the court comes to the conclusion that the third respondent herein is entitled to the benefits of the Act then the court has to dispose of the suit in accordance with section 4 of the Act. The writ petition is allowed. No costs." D E

On appeal, filed by the appellant, the Division Bench of the High Court relying on the decision in *K.V.S.P. Subramanian* case (supra) confirmed the judgment of the learned single Judge. The Division Bench made the following observations on the point : F

> "The fact remains that the suit was pending on the date when the second respondent passed the order granting relief which had the consequence of nullifying the civil suit filed and pending before the competent civil court. The learned Judges of the Division Bench did not base their conclusions on the ground that the suit had been filed earlier in point of time, the real test or criteria being the pending of the suit dehors the date of its filing as on the date of consideration by the competent authority. When the case is one of the total lack of jurisdiction, the fact that the creditor participated in the proceedings or he kept quiet without objecting to the jurisdiction had no significance, since G H

A it is a well settled principle of law that the jurisdiction cannot be conferred on authorities by mere consent of parties, where it is totally wanting and the statutory authorities could not claim to have jurisdiction to function under an Act, merely because the parties before them agreed to participate in the proceedings. For the same reason, we are
B of the view that the reliance placed on Section 7 of the Act and the finality given to the orders passed under the Act subject to the orders passed on appeal, will not be of any help to the appellant where it is a case of absolute and total want of jurisdiction on the original authority. The order passed by the authority which suffered total want of
C jurisdiction would be a nullity and there is no question of attaching any finality to such an order. For all the reasons stated above, we see no merit in the above appeal. The appeal, therefore, fails and shall stand dismissed."

On the facts and circumstances discussed above the point formulated
D earlier arises for determination.

We have heard Mrs. Revathy Raghavan, learned counsel appeared for the appellant. None appeared for the respondents despite service of notice. Since the question involved in the case is of considerable importance determi-
E nation of which depends on interpretation of the relevant provisions of the Act,we requested Mr. S. Ganesh, Senior Advocate to act as *amicus curaie*, for assisting the Court which he readily accepted.

Before proceeding to consider the correctness or otherwise of the judgments rendered by the High Court it will be convenient to notice some relevant
F provisions of the Act.

In the Preamble of the Act it is stated :

"An Act to provide for the relief of certain indebted persons in the State of Tamil Nadu.

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Whereas it is expedient to provide relief to certain indebted persons in the State of Tamil Nadu from the usurious practices of pawnbrokers, money-lenders and other non-institutional sources of credit and to give relief from the debts due to such pawnbrokers, money-
H lenders, and other non-institutional sources of credit."

Section 3 of the Act contains definitions of different expressions used in the Act. They are as under :

3(a) "annual household income" means the aggregate of the gross annual income from all sources of all the members of a family during the year ending on the 31st December, 1979.

3(b) "creditor" means a person from or in respect of whom the debtor has borrowed or incurred a debt and includes the heir of such person.

3(c) "debt" means nay liability in cash or in kind whether secured or unsecured and whether decreed or not, but does not include arrears of taxes due to the Central Government or a State Government or a local authority.

3(d) "debtor" means any person from whom any debt is due and whose annual household income does not exceed four thousand and eight hundred rupees.

The proviso enumerates the class of persons who shall not be deemed to be debtor. The proviso is not relevant for the purpose of the present case.

3(g) "person" means an individual or a family.

3(i) "transferee of the creditor" means any person (including an institution referred to in clause (h) of section 12) to whom :-

(i) the creditor has pledged the movable property pledged to him, by the debtor and includes any subsequent transferee to whom such transferee has pledged such movable property and also includes any person in possession of the property pledged or :

(ii) the creditor has transferred or otherwise assigned his interest in the property mortgaged by the debtor and includes any subsequent transferee to whom such transferee has transferred or otherwise assigned his interest in the property mortgaged and also includes any person in possession of the property mortgaged.

Section 4 of the Act contains the provision regarding relief from indebt-

A edness. In reads as follows :

4. *Relief from indebtedness :* (1) Notwithstanding anything contained in the Tamil Nadu Agriculturists Relief Act, 1938 (Tamil Nadu Act 1 of 1938), the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu Act XXIII of 1943) the Tamil Nadu Money-Lenders Act, 1957 (Tamil Nadu Act XXIV of 1957) the Tamil Nadu Debt Relief Act, 1972 (Tamil Nadu Act XXXVIII of 1972), the Tamil Nadu Debt Relief Act, 1976 (President's Act XXXI of 1976), the Tamil Nadu Debt Relief Act, 1979 (Tamil Nadu Act XL of 1979) or in any other law for the time being in force or in any contract or instrument having force by virtue of any such law and save as otherwise expressly provided in this Act, and in particular subsection (2) with effect on and from the commencement of this Act.

(a) every debt advanced or incurred before the first day of January, 1980 (including interest, if any) and payable by the debtor to the creditor shall be deemed to be wholly discharged;

(b) no Civil Court shall entertain any suit or other proceeding against the debtor for the recovery of any amount of such debt (including interest, if any);

Provided that where any suit or other proceeding is instituted jointly against the debtor and any other persons, nothing in this section shall apply to the maintainability, of such suit or proceeding in so far as it relates to such other person;

(c) all suits and other proceeding (including appeals, revisions, attachments or execution proceedings) pending at the commencement of this Act against any debtor for the recovery of any such debt (including interest, if any) shall abate;

Provided that nothing in this clause shall apply to the sale, in respect of any such debt of —

(i) any movable property held and concluded before the commencement of this Act

(ii) any immovable property confirmed before such commencement.

(d) every debtor under going detention in a civil prison in execution of any decree for money passed against him a Civil Court in respect of any such debt (including interest, if any) shall be released;

(e) every movable property pledged by a debtor shall stand released in favour of such debtor and the creditor shall be bound to return the same, to the debtor forthwith;

(f) every mortgage executed by the debtor in favour of the creditor shall stand redeemed and the mortgaged property shall be released in favour of such debtor.

Explanation : Nothing in this section shall be construed as entitling any debtor for refund of any part of any debt repaid or interest paid already by him or recovered from him before the commencement of this Act.

(2) Nothing contained in this Act shall apply to any debtor who is entitled to the benefits of the Tamil Nadu Debt Relief Act, 1976 (President's Act XXXI of 1976) only in so far as any debt to which the Act applies, is concerned."

Section 5 makes provision for the debtors to make application for the return of the movable property pledged by them. In sub-section (1)(a) it is laid down that every debtor referred to in clause (e) of sub-section (1) of section 4 shall make an application in such form and containing such particulars as may be prescribed to the Tahsildar having jurisdiction over the area where his creditor has his ordinary place of business for an order for the return of the movable property pledged by the debtor.

In sub-section (2) of the said section power has been vested in the Tahsildar to pass an order after giving a reasonable opportunity to the creditor concerned and the debtor to make their representations for return of the immovable property pledged by the debtor if he is satisfied that the debtor is entitled to relief under section 4 and to pass an order dismissing the application if he is satisfied that the debtor is not entitled to such relief.

Under sub-section (3) it is laid down that where the Tahsildar has passed

A an order under sub-section (2) dismissing the application the creditor may subject to the provisions of sub-section (3) of section 8, dispose of in accordance with the provisions of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu Act XXIII of 1943) or any other law for the time being in force relating to the sale of pledged articles, the movable property for the return of which the B said application was made.

In clause (d) of sub-section (3) it is provided that where any debtor referred to in clause (e) of sub-section (1) of section 4, has not made any application in accordance with the provisions of and within the time specified in sub-section (1), then, such debtor shall not be entitled to relief under this Act. C

The Act, as noticed earlier, is intended for giving relief to a certain class of indebted persons in the State. For that purpose procedure has been laid down in the Act for filing of application and for dealing with the same. The Tahsildar is vested with the power to decide whether the applicant-debtor is entitled to D relief under the Act and if he is satisfied that the applicant-debtor is entitled to such relief, he is to pass an order releasing the mortgaged property and granting a certificate of redemption in the prescribed form. The said certificate is to be taken as admissible evidence of such redemption in any proceeding before any Court or other authority. If, on the other had, the Tahsildar finds E that the applicant-debtor is not entitled to the relief under the Act he is to pass an order dismissing the application. Finality is attached to the order of the Tahsildar subject to the appeal under Section 8 of the Act. Further, the order passed by the Tahsildar is not to be questioned in any Court. A similar provision is made that the order of the appellate authority shall be final and shall not be questioned in any Court. F

From the provisions of the Act the legislative scheme is clear that the scheme is not to allow interference by any Court with determination of the question of eligibility to receive benefit under the Act by the applicant-debtor by the Tahsildar and his order is made final subject to an appeal under section G 8. The legislative intent is to vest the jurisdiction to determine the question relating to eligibility for the benefits under the Act in the statutory authorities, to the exclusion of the Court so that a debtor who is entitled to the benefits under the Act is able to enjoy such benefit without a hassle of a protracted litigation in a civil court or revenue court. The view taken by the High Court H that if a civil suit for realisation of the amount or any other relief based on the

debt in question has been filed or on the filing of such a suit the Tahsildar would lose his jurisdiction to deal with the matter if accepted will defeat the very purpose for which the legislature enacted the statute, that is, to grant relief to a certain class of debtors. If the view taken by the High Court is accepted then it would be easy for a creditor to prevent the debtor from getting benefits granted under the Act by filing civil suit relating to the debt. On the other hand in section 4(b) a declaration is made that any Civil Court which entertain any suit or other proceeding against the debtor for recovery of any amount of such debt (including interest, if any); all suits and other proceedings (including appeals, revisions, attachments or execution proceedings) pending at the commencement of this Act against any debtor for the recovery of any such debt, (including interest, if any) shall abate.

The principle is well settled that an interpretation of the statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided. The decision of the Madras High Court in *K.V.S.P. Subramanian* case (supra), holding that since the creditor had already filed suits for recovery of the mortgage amount and the suits were pending the debtor, who is the defendant in those suits, has to seek adjudication before the Civil Court on the question as to whether he is entitled to the benefit and if the Court comes to the conclusion that he is entitled to the benefit of the Act then the Court has to dispose of the suit in accordance with section 4 of the Act, in our view, does not lay down the law correctly. Accepting this view will render the provision regarding abatement of the suit redundant.

We are conscious of the position that the view taken by the Division Bench of the Madras High Court in *K.V.S.P. Subramanian* case (supra) has held the field for a good length of time. But as discussed earlier, the decision runs counter to the very intent and purpose for which the enactment was made. In such a situation the decision needs to be corrected and this has to be done despite the lapse of time.

The further question that arises for consideration is what is the appropriate course to be followed in a suit which was filed by the creditor against the debtor before the debtor made the application to the Tahsildar seeking relief under the Act; should it be dismissed immediately on filing or should it be suspended/stayed till the Tahsildar disposes of the application filed by the debtor. It is our view that in such a case the proper and reasonable course to

A be followed is to stay the proceeding in the suit till the Tahsildar/appellate authority disposes of the proceeding under the statute. If it is held in that proceeding that the debtor is not entitled to the benefit under the Act then the civil suit may be proceeded with, if on the other hand it is held that the debtor is entitled to the benefits provided in the Act then the suit has to be dismissed B under section 4. In no case can it be held that by filing a civil suit for realisation of the mortgage amount the proceeding pending before the Tahsildar or the appellate authority is to be dismissed without adjudication.

On the discussions in the forgoing paragraphs the inescapable conclusion is that the judgment of the learned single judge as confirmed by the Division C Bench is unsustainable. Accordingly, the appeal is allowed. The Judgment under challenge is set aside. Hearing fee is assessed at Rs. 10,000.

We are beholden to Shri S. Ganesh, Senior Advocate for the assistance rendered to us in the case.

D N.J. Appeal allowed.