

## **KARNATAKA DEBT RELIEF ACT, 1980**

**29 of 1980**

**[December 31, 1980]**

### CONTENTS

1. Short title and commencement
2. Definitions
3. Relief from indebtedness
4. Creditors to file statement, etc
5. Debtors to apply in certain cases
6. Burden of proof, etc
7. Legal practitioners not to appear
8. Penalty
9. Offences by Companies
10. Certain debts and liabilities not to be affected
11. Procedure to be followed by the Assistant Commissioner
12. Act to override other laws, contracts etc
13. Power of the Assistant Commissioner to declare transfer purporting to be a sale to be in the nature of mortgage
14. Revision by the Deputy Commissioner
15. Savings
16. Power to make rules
17. Repeal of Karnataka Ordinance No.19 of 1979

## **KARNATAKA DEBT RELIEF ACT, 1980**

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STATEMENT OF OBJECTS AND REASONS [KARNATAKA ACT No. 29 OF 1980] Karnataka Gazette, Extraordinary, dated 29-2-1980 After issues of Karnataka Debt Relief Act, 1976, many representations were received from the people suggesting inter alia the following. (i) Orders issued by Sub-Divisional Magistrates should be made appealable to the judiciary; (ii) To clear off the debtors who have taken loans 5 to 10 years before the coming of this Act into force; (iii) There is no need for enquiry by the Sub-Divisional Magistrates in cases where the creditor and the Debtor mutually agree that the Debtor is within the specified income group; (iv) The definition of "Weaker Section" should include the aggregate income of "Family"

of the debtor as against the individual income at present; (v) To increase income limit from Rs. 2,400/- to Rs. 4,800/-. 2. After issuing the Karnataka Debt Relief Ordinance, 1979 incorporating the suggestions representations have been received to increase the time limit for the creditors to file the application from 45 days to 180 days. It has also been proposed to increase the extent of land holding from one unit to two units. 3. The Ordinance issued in 1979 has to be replaced by the Bill. 4. It has become therefore necessary to amend the provisions of the Act to help the weaker section of the people as defined in the Act. Hence the Bill.

### **1. Short title and commencement :-**

(1) This Act may be called the Karnataka Debt Relief Act, 1980.

(2) It shall be deemed to have come into force on the Fifteenth day of November, 1979.

### **2. Definitions :-**

In this Act, unless the context otherwise requires,

(1) "Agriculture" includes.

(i) horticulture;

(ii) raising of crops (including plantation crops) grass or garden produce;

(iii) dairy farming;

(iv) poultry farming;

(v) breeding of livestock; and

(vi) grazing, but does not include cutting of wood only.

(2) "Annual income" means the gross annual income during the period of twelve months immediately prior to the commencement of this Act;

(3) "Assistant Commissioner" includes any officer of the Revenue Department not below the rank of Tahsildar authorised by the State Government to exercise the powers of the Assistant Commissioner under this Act;

(4) "Creditor" includes his heirs, legal representatives and assigns;

(5) "Debt" means any liability in cash or in kind whether secured or unsecured and whether decreed or not and includes any interest

due on such debt;

(6) "Debtor" means a person who is,

(i) a landless agricultural labourer;

(ii) a person belonging to the weaker section of the people; or

(iii) a small farmer, and from whom a debt is due;

(7) "Family" in relation to a person means such person, the wife or husband, as the case may be, of such person, and their minor children;

(8) "Landless agricultural labourer" means a person who, on the date of commencement of this Act, does not hold any land and whose principal means of livelihood is manual labour on land;

(9) "Small farmer" means a person who on the date of commencement of this Act, holds whether as owner, tenant, or mortgagee with possession or partly in one capacity and partly in another not more than two units of land, the annual income from which does not exceed Four thousand and Eight hundred Rupees and who has no income from any source other than agriculture;

Explanation:- Where a person holds more than one category of land referred in clause (10), the extent of land held by him for the purposes of this clause shall be determined according to the following formula, namely: Two hectares of unirrigated land-one and one fourth hectares of rainfed wet land=half hectare of land having facilities for growing one irrigated crop or for growing plantation crops or grapes or coconut or arecanut or sugarcane or for growing mulberry by irrigation=quarter hectare of land having perennial irrigation facilities or facilities for growing more than one irrigated crop in a year;

(10) "Unit" means,

(i) two hectares of unirrigated land; or

(ii) one and one-fourth hectares of rainfed wet land; or

(iii) half hectare of land having facilities for growing one irrigated crop or for growing plantation crops or grapes or coconut or arecanut or sugarcane or used for growing mulberry by irrigation; or

(iv) quarter hectare of land having perennial irrigation facilities or

facilities for growing more than one irrigated crop in a year.

"Explanation. In this clause plantation crop means cardamom, cocoa, coffee, rubber and tea;

(11) "Weaker section of the people" means persons, whose annual income from all sources does not exceed four thousand and eight hundred rupees:

Provided that a person shall not be deemed to belong to the weaker section of the people if,

(i) he or his family has in both the two years immediately preceding the first day of April, 1979, been assessed to property or house tax in respect of buildings or lands, other than agricultural lands, under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977), the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964), the Karnataka Village Panchayats and Local Boards Act, 1959 (Karnataka Act 10 of 1959) or any law governing the municipal or local bodies anywhere in India, provided that the aggregate annual rateable value of such buildings or land, whether let out or in the occupation of the owner, is not less than two thousand four hundred rupees; or

(ii) he and members of his family own immovable property anywhere in India, the market value of which is not less than ten thousand rupees;

Explanation: "annual rateable value" of any building or land for the purposes of clause (i) shall,

(a) where the assessment is based on annual rateable value be deemed to be such value;

(b) where the assessment is based on the capital value, be deemed to be ten per cent of the capital value; and

(c) in any other case be deemed to be the value, ascertained in the prescribed manner.

### **3. Relief from indebtedness :-**

Notwithstanding any thing contained in any law for the time being in force or in any contract or instrument having force by virtue of any law or otherwise and save as otherwise expressly provided in this Act, with effect on and from the date of commencement of this Act,

(a) every debt incurred by a debtor before the date of commencement of this Act and payable by him to his creditor on such date shall be deemed to be wholly discharged;

(b) no Civil Court shall entertain any suit or other proceeding against the debtor or his surety for the recovery of any amount of such debt:

Provided that where any suit or other proceeding is instituted jointly against a debtor and some other person, other than a surety, 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 proceedings including appeals, revisions, attachments or execution proceedings, pending on the date of commencement of this Act against any debtor or his surety for the recovery of any such debt shall abate.

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

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

(ii) any immovable property held through Court and confirmed before such commencement;

(d) every debtor or his surety undergoing detention in a civil prison in execution of any decree passed against them by a Civil Court in respect of any such debt shall be released;

(e) every movable property pledged by a debtor or his surety as a security for such debt shall stand released in favour of such debtor or his surety, as the case may be, and the creditor shall be bound to return the same to the debtor or his surety forthwith;

(f) every mortgage executed by the debtor or his surety as security for such debt in favour of the creditor shall stand redeemed and the mortgaged property shall be released in favour of such debtor or his surety, as the case may be.

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

#### **4. Creditors to file statement, etc :-**

(1) Every creditor referred to in clause (e) of Section 3 shall, <sup>1</sup>[on or before the 31st December, 1981], furnish to the Assistant Commissioner having jurisdiction over the area where such creditor has his ordinary place of business a statement in the prescribed form containing such particulars as may be prescribed.

(2) A debtor referred to in the said clause (e) <sup>2</sup> [may on or before the 31st December, 1981, make an application] in the prescribed form to such Assistant Commissioner for an order of return of the movable properties pledged by him or by his surety.

(3) On receipt of the statement under sub-section (1) or an application under sub-section (2) and after such enquiry as he considers necessary the Assistant Commissioner, shall, by order, determine whether the debtor is entitled to relief under this Act and, if so, direct the creditor to produce on or before a date to be specified in the order, the document evidencing the debt of such debtor and the movable properties pledged by such debtor or his surety.

(4) Where the movable property pledged by the debtor is in the possession of a transferee of the creditor, the creditor shall redeem such property from such transferee and produce it on or before such date as may be specified in the order.

(5) Where the creditor produces the document and the movable property pledged as directed in the order under sub-section (3), the Assistant Commissioner shall record an endorsement of discharge on such document and return the same or issue a certificate of discharge in the prescribed form along with the pledged articles to the debtor.

(6) If the creditor fails to produce the documents and the movable property pledged as directed in the order under sub-section (3), the Assistant Commissioner shall, notwithstanding anything contained in any other law, but subject to sub-section (8) enter any premises of the creditor and search and seize the said documents and movable property and deliver the said documents and property to the debtor or to his surety, as the case may be, along with a certificate of discharge of such debt in the prescribed form.

(7) Pending determination of the question under sub-section (3), no creditor or the transferee of the creditor shall sell or pledge or otherwise transfer any movable property pledged by the debtor or

his surety.

(8) The provisions of Section 100 and Section 165 of the Code of Criminal Procedure 1973, (Central Act 2 of 1974), relating to searches and seizure shall, so far as may be, apply to searches and seizure under sub-section (6).

1. Substituted for the words "within one year from the date of commencement of this Act" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

2. Substituted for the words "may also make an application" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

### **5. Debtors to apply in certain cases :-**

(1) A debtor referred to in clause (f) of Section 3,<sup>1</sup> [may on or before the 31st December, 1981, make an application] to the Assistant Commissioner having jurisdiction over the area within which the mortgaged property is situate for an order releasing the mortgaged property and for the grant of a certificate of redemption.

(2)

(a) On receipt of such an application and after such enquiry as he considers necessary, the Assistant Commissioner shall pass an order releasing the mortgaged property and grant a certificate of redemption in the prescribed form which shall, notwithstanding anything contained in any law be admissible as evidence of such redemption in any proceeding before any Court or other authority;

(b) The Assistant Commissioner shall also direct the creditor,

(i) to deliver possession of the mortgaged property to the debtor on or before the dates specified in the order if the debtor is not already in possession of the mortgaged property, and

(ii) to produce on or before the date specified in the order, the mortgaged deed or other document and on such production, the Assistant Commissioner shall make an endorsement of redemption on the mortgage deed or other document and forward a copy of the said endorsement

(3) Pending orders under clause (a) of sub-section (2), no creditor shall transfer or otherwise assign his interest in or exercise of his right of foreclosure in respect of the property mortgaged by the

debtor or his surety.

1. Substituted for the words "may make an application" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

#### **6. Burden of proof, etc :-**

(1) If in any suit or other proceeding in a Court a question arises whether a party thereto is a debtor under this Act, the Court trying the suit or other proceeding shall frame a preliminary issue as to whether such person is not a debtor under this Act and shall decide it before other issues are considered.

(2) Notwithstanding anything in any law, the burden of proving that a person is not a debtor under this Act shall lie on the creditor.

#### **7. Legal practitioners not to appear :-**

No legal practitioner shall be allowed to appear in any proceeding under this Act before the Assistant Commissioner.

Explanation. In this section the expression "Legal practitioner" shall have the meaning assigned to it in Section 2 of the Advocates Act, 1961.

#### **8. Penalty :-**

Any person failing to furnish the statement under Section 4 or to comply with the order made or direction given under Section 4 or Section 5 or otherwise contravening the provisions of either of the said sections shall on conviction be punished with imprisonment for a term, which may extend to one year and with fine which may extend to five thousand rupees.

#### **9. Offences by Companies :-**

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.



(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purpose of this Section,

(a) "company" means any body corporate and includes a firm or other association of individuals and

(b) "director" in relation to a firm, means a partner in the firm.

**10. Certain debts and liabilities not to be affected :-**

Nothing in this Act shall apply to the following categories of debts and liabilities of a debtor, namely:

(a) any rent due in respect of any property including agricultural land let out to such debtor;

(b) any amount recoverable as arrears of land revenue;

(c) any revenue, tax or cess payable to the Central Government or the State Government or a local Authority under a decree of a Court or otherwise;

(d) any liability arising out of breach of trust or any tortious liability;

(e) any liability in respect of wages, or remuneration due as salary or otherwise for services rendered;

(f) any liability in respect of maintenance whether under a decree of a Court or otherwise;

(g) a debt due to,

(i) the Central Government or any State Government;

(ii) any local authority;

(iii) a credit agency as defined in the Karnataka Agricultural Credit Operations Miscellaneous Provisions Act, 1974 (Karnataka Act 2 of 1975);

(iv) a Government company within the meaning of the Companies

Act, 1956;

(v) the Life Insurance Corporation of India;

(vi) a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959.

(h) any amount due by such debtor under a hire purchase agreement;

(i) any debt which represent the price of property; whether movable or immovable purchased by such debtor;

(j) any amount due by such debtor under a partition to another sharer;

(k) any amount received by a debtor as advance for the delivery of goods at a future date;

(l) any liability incurred or arising under any chit the bye-laws of which have been registered;

(m) any sum decreed as costs by any Court.

**11. Procedure to be followed by the Assistant Commissioner :-**

In enquiries under this Act, save as otherwise provided, the Assistant Commissioner shall follow the same procedure as is specified for a summary enquiry under Section 34 of the Karnataka Land Revenue Act, 1964.

**12. Act to override other laws, contracts etc :-**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or in any other law for the time being in force or any custom, usage or contract or decree or order of a Court or other authority.

**13. Power of the Assistant Commissioner to declare transfer purporting to be a sale to be in the nature of mortgage :-**

(1) Any debtor may, <sup>1</sup>[on or before the 31st December, 1981], make an application to the concerned Assistant Commissioner that any transfer of immovable property made by him or any other person <sup>2</sup>[through whom he inherited the immovable property was a transfer in the nature of a mortgage] and the Assistant

Commissioner, may, after such enquiry as he deems fit, if satisfied that the circumstances connected with the transfer <sup>3</sup>[showed the transfer] to be in the nature of a mortgage, then, notwithstanding anything to the contrary contained in any law, custom or contract declare such transfer to be a mortgage.

4

[(2) When the Assistant Commissioner makes any such declaration, if the transfer was made prior to the date of the commencement of this Act, the debt covered under the transfer shall deemed to be wholly discharged and the provisions of sub-section (2) of Section 5, shall mutatis mutandis apply for recording the redemption of the mortgage and delivering possession of the property.]

(3) For the purpose of any enquiry under sub-section (1), the Assistant Commissioner may exercise all or any of the powers conferred on him under the Karnataka Land Revenue Act, 1964 and shall follow such procedure as may be prescribed.

(4) The order of the Assistant Commissioner shall subject to any order in revision under Section 14 be final.

(5) Nothing in this section shall apply to,

(i) a transfer which has been finally adjudged to be a transfer, other than a mortgage, by a competent Court;

(ii) any bona fide transferee for value without notice of the real nature of such transfer or his representative;

(iii) any transfer made prior to 1st March, 1974;

(iv) a transfer in respect of which a proceeding is pending under Section 23 of the Karnataka Agricultural Debtors Relief Act, 1966 (Karnataka Act 29 of 1966), to declare that it is in the nature of a mortgage.

1. Substituted for the words "within one year from the date of commencement of this Act" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

2. Substituted for the words "through whom he inherited it was a transfer in the mortgage" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

3. Substituted for the words "showed it" by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

4. Sub-section (2) substituted by Act No. 17 of 1981 and shall be and shall be deemed always to have been substituted.

#### **14. Revision by the Deputy Commissioner :-**

The Deputy Commissioner may, on his own motion or on the application of any person aggrieved by an order passed under Section 13 at any time call for and examine the records of the proceedings leading to such order, for the purpose of satisfying himself as to the legality of such proceeding and may pass such orders with respect thereto as he thinks fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard.

#### **15. Savings :-**

(1) Nothing contained in this Act shall affect or shall be deemed to affect in any way the operation of the Karnataka Debt Relief Act, 1976 (Karnataka Act 25 of 1976).

(2) Nothing contained in this Act shall affect any rights or privileges which a debtor is entitled to under any other law, contract, custom, or usage if such rights or privileges are more favourable to him than those to which he would be entitled to under this Act.

(3) Save as otherwise provided under sub-sections (1) and (2) the provisions of this Act shall be in addition to and not in derogation of any law for the time being in force.

#### **16. Power to make rules :-**

(1) The State Government may by notification, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act, shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **17. Repeal of Karnataka Ordinance No.19 of 1979 :-**

(1) The Karnataka Debt Relief Ordinance, 1979 (Karnataka

Ordinance No. 19 of 1979), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the Corresponding provisions of this Act as if this Act was in force at all relevant times.