

(1952) 07 KL CK 0018

High Court Of Kerala

Case No: A.S. No. 845 of 1951

Devan Vasudevan Nambiathiri

APPELLANT

Vs

Parameswaran Iyer Anantha
Iyan

RESPONDENT

Date of Decision: July 4, 1952

Acts Referred:

- Debt Relief Act - Section 9(5)

Citation: AIR 1952 Ker 40

Hon'ble Judges: Koshi, C.J; Govinda Pillai, J

Bench: Division Bench

Advocate: N. Varadaraja Iyengar, for the Appellant; K.S. Nataraja Sarma, for the Respondent

Final Decision: Allowed

Judgement

1. The petitioner in the lower Court is the appellant. Money was due from him to the respondent under a promissory note and he was discharging the same in instalments under SR. 8 and 9 of the Debt Relief Act. At the last stage, the creditor, it was stated, refused to accept the balance due to make up 80 per cent of the total debt and JO the debtor had made a calculation of his own and deposited in Court the balance due. He also filed a petition for a final determination of the question relating to the amount due for the last instalment. According to him the balance due was Rs. 249-13-5 and according to the creditor, it was Rs. 376-9-0. The creditor opposed the application and stated that since the whole amount was not paid within nine years, the debtor was not entitled to the benefits under the Debt Relief Act. The Court below found that what was due towards the last instalment was Rs. 376-9-0 and that the deposit by the debtor was less than this amount. He was, therefore, held to be not entitled to the benefit under the Act. The lower Court was under the impression that an application under S. 15 to settle the amount when there was a doubt or dispute was to be filed at the time the first, instalment was deposited.

There is no justification for this interpretation, for it was open to the creditor to refuse to accept any payment made in accordance with S. 9 of any instalment, then the debtor could make the application under cl. 5 of S. 9 to the Court to have such amount deposited for payment to the creditor and such deposit shall be deemed to be a valid payment under this section. Section 15 cl. 1 provided that if there was a doubt or dispute in respect of any amount payable under S. 9, the debtor may apply for an order fixing the amount. Doubt or dispute could arise at any time and so it would be open to the debtor to file the petition under S. 15 when there is doubt or dispute. The view expressed by the Court below is, therefore, wrong.

2. It was now admitted by the appellant's learned advocate before us that the correct amount due to the creditor was Rs. 376-9-0. It is, therefore, not necessary to send back the case for the determination of the amount due and thereby clear the doubt or dispute. It is enough if we direct the appellant to make good the deficit within two weeks of the receipt of this order in the lower Court and if that is done such payment shall be deemed to be a valid payment for purpose of S. 9. With such payment the debt will stand discharged in its entirety. The order of the lower Court is set aside and the appeal allowed as indicated above. There will be no order as to costs here or in the Court below.