

(1983) 06 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 6903 of 1981

M. K. Ramachandra Menon

APPELLANT

Vs

P. Chathu (Rajamani) and two
Others

RESPONDENT

Date of Decision: June 22, 1983

Acts Referred:

- Kerala Debt Relief Act, 1977 - Section 2(3), 3, 4(1)
- Kerala Money Lenders Act, 1958 - Section 9F

Citation: (1983) KLJ 526

Hon'ble Judges: S.K. Kader, J

Bench: Single Bench

Advocate: M.C. Sen, for the Appellant;

Final Decision: Allowed

Judgement

S.K. Kader, J.

The petitioner, a pawnbroker registered under the Money Lenders" Act, prays that Ext.P3 dated 24-11-1981, an order passed by the Appellate Authority under the Kerala Debt Relief Act, 1977 (Act 17 of 1977), hereinafter called the Act, may be quashed by issue of a writ of certiorari or other appropriate writ. The second respondent herein is the Appellate Authority and the third respondent is the Tribunal constituted under the Act. The first respondent had pledged a gold chain with the petitioner on 1-10-1974 taking a loan of Rs. 240|- with interest at the rate of 12 percent. According to the petitioner, the first respondent did not pay back the amount of loan and take back the pledged chain within the stipulated period of one year; and therefore after due notice to the first respondent, the petitioner sold the gold ornament in public auction and adjusted the sale proceeds towards the debt due. This was according to the petitioner some days before the date on which the Act came into force. The first respondent thereafter filed an application u/s 4(1) of the Act for delivery of possession of the gold chain pledged on the ground that he is

a debtor coming within the ambit of the Act. This application was resisted by the petitioner who filed a counter Ext. P2 contending that within the period of one year from the date of transaction after giving notice to the first respondent, the gold ornament pledged by him was sold in public auction and the amount realized was adjusted towards the debt due and therefore there was no debt subsisting. It was also contended that the application filed by the first respondent was barred by limitation. The Tribunal, after hearing both parties, dismissed the application upholding the contentions of the petitioner herein. An appeal was filed by the first respondent challenging the order of the Tribunal before the Sub-Collector, Kozhikode, the appellate authority constituted under the Act. There also the same contentions were raised by the petitioner. The Appellate Authority allowed the appeal, set aside the order and allowed the application.

2. This appellate order is attacked by the counsel for the petitioner on the ground that it is an order passed without jurisdiction and is clearly illegal. The first respondent herein is absent and is not represented by any advocate.

3. It is contended in support of the petition that the appellate authority failed to note that there was no subsisting debt on the relevant date and that Explanation IV to section 3 of the Act applied to the facts of the case.

4. It is not disputed that the first respondent herein pledged a gold chain weighing 12 grams with the petitioner herein on 1-10-1974 for an amount of Rs. 240/-. It is also not disputed that the petitioner is a registered licensed pawnbroker who is empowered under the provisions of Sec.9F of the; Kerala Money Lenders' Act to sell, by auction in accordance with the provisions of the said Act, the pledged article after the expiry of one year. Relying on Ext. P3 appellate order, the counsel contended that although the appellate authority has accepted the case put forwarded by the petitioner that the gold chain pledged with him was sold in 1977 before the Act came into force, the appellate authority seriously erred in allowing the appeal and directing the petitioner to pay the price of the gold ornament which prevailed in the year 1977 to the first respondent. It was also argued that there is no provision in the Act for directing the creditor to pay the value of the property pledged to the debtor. Section 2(3) of the Act defines "debt" and it is clear from the definition that the debt defined therein must have been subsisting on the date the Act came into force. Explanation IV to Sec. 3 clearly states:

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

It is on the basis that the gold chain pledged with the petitioner was sold in public auction in the year 1977 that the appellate authority has directed payment of Rs. 720/- to the first respondent being the cost of the gold chain pledged with the petitioner, within 15 days of the receipt of the order. This amount was arrived at by

calculating the price of sovereign which was prevalent in the year 1977. If really, as found by the appellate authority, the petitioner had sold the pledged ornament in the year 1977 before the Act came into force and appropriated the sale proceeds towards the debt, it cannot be said that there was any subsisting debt on the date when the Act came into force. Similarly by virtue of Explanation IV to Sec. 3, the first respondent, the debtor is not entitled to the refund of any part of the debt already repaid or recovered from him before the commencement of the Act. In the instant case the claim of the petitioner is that the entire debt has been recovered from the first respondent before the commencement of the Act. In view of the conclusion of the appellate authority and in the light of the contention that the petitioner had sold the ornament pledged with him before the Act came into force and the sale proceeds was appropriated towards the debt due from the first respondent, no amount was due from the first respondent on the date of the commencement of the Act. The first respondent is therefore not entitled to the benefits under the Act. In the result this original petition is allowed and Ext. 3 is quashed. No costs.