Mohanlal Kanayalal Vs Lalchand Motilal Malani

Court: Bombay High Court

Date of Decision: Sept. 20, 1960

Citation: (1961) 63 BOMLR 183

Hon'ble Judges: Patel, J

Bench: Single Bench

Judgement

Patel, J.
This application arises out of somewhat unusual circumstances. The opponents executed a mortgage in favour of the petitioner on.

January 24, 1950. On December 13, 1955, they made an application to the Debt Conciliation Board under Act I of 1349 Fasli. After this the

petitioner filed a suit in the Court of the District Judge at Aurarigabad on January 4, 1956. The claim in the suit was 39,100 0.8. equivalent to a

sum of Rs. 33,514-4-0 I.G. currency. The Board came to an ex parte decision that the petitioners before it were agricultural debtors and,

therefore, issued a certificate to the Civil Court on January 12, 1956, of the pendency of the application before it. As a result of the certificate of

February 5, 1957, the suit came to be stayed. The Hyderabad Agricultural Debtors Relief Act came into force on September 30, 1956. Section

65 of the Act repealed the Conciliation Act and dissolved the Boards. On October 28, 1958, the petitioner made an application to the District

Judge at Aurangabad that the stay should not be continued and the District Court should proceed with the suit filed by the petitioner. The learned

District Judge observed that from the certified copies of the proceedings of the Board it appeared that the life of the Board expired on September

30, 1956, and thereafter no extension was made by the Government. He held that in view of Section 28 of the Debt Conciliation Act as there was

no final decision of the Board, the proceedings in his Court could not go on, and he had no jurisdiction to take up the trial of the suit. It is against

this decision that the present Revisional Application is directed.

2. The question concerns interpretation of Section 65 of the Hyderabad Agricultural Debtors Relief Act, 1956. Until this Act was passed, the Debt

Conciliation Act I of 1349 Fasli was in force in the Hyderabad State. According to the provisions of this Act, Boards were constituted with

defined territorial jurisdiction for conciliation between debtors and creditors. The debtors were permitted to make applications for conciliation of

their debts and certain consequences followed. By the enactment of the Agricultural Debtors Relief Act, these provisions were repealed. Section

65, the repealing section, so far as is relevant, is to the following effect:-

The Debt Conciliation Act, 1349 F., is hereby repealed.

All Boards established u/s 3 of the repealed Act shall be dissolved:

Provided that-

(a) All proceedings pending before any such Board at the date when this Act comes into force shall-

(i) it they are within the pecuniary limits of the jurisdiction of a Court, be continued and disposed of by the Court under this Act as if an application

u/s 4 had been made to the Court in respect thereof;

(ii) if they are beyond the pecuniary limits of the jurisdiction of a Court, be continued and disposed of as if this Act had not been passed;...

Under the scheme of the latter Act (Hyderabad Agricultural Debtors Relief Act, 1956), the Courts having jurisdiction to deal with applications

under the Act are three as defined by Section 2, Sub-section (4). These Courts are, the Munsiff''s Court, the Subordinate Judge''s Court, or a

Judge of the City Civil Court having ordinary jurisdiction in the area in which the debtor ordinarily resides. The City Civil Court has jurisdiction in

Hyderabad City and it can deal with applications of debtors residing within its jurisdiction. Each of these Courts had different pecuniary jurisdiction

and the scheme of the Act is that an application has to be made by a debtor to the Court of the lowest pecuniary jurisdiction. Consistent with this

scheme, the first part of the proviso to Section 65 provides that any application pending before the Board on that date should be transferred to the

Court having jurisdiction to deal with the application and should be continued and disposed of by that Court under the new Act. The question is,

what is to happen to applications pending before the Boards and beyond the pecuniary jurisdiction of the Courts and where the indebtedness of

the debtor was beyond Rs. 15,000, so that the adjustment of the debts could not be made under the provisions of this latter Act? On the one hand

it is contended by Mr. Vaishnav that Sub-clause (ii) of Clause (a) of the proviso to Section 65 is inconsistent with the earlier part, by which all

Boards established u/s 3 of the repealed Act are dissolved and in view of this inconsistency, it must be regarded as ineffective and void. It is

argued on the other hand by Mr. Kanade that that cannot be the meaning of the section. What is meant is that the Boards before which those

applications were pending still continue to exist or in any case the powers u/s 3 of the repealed Act to appoint fresh Boards still continues. The

question is, which of the rival contentions is correct and what is the result of the acceptance of the one or the other ?

3. It is not possible to accept Mr. Kanade"s contention for the obvious reason that the main enacting part, by which all Boards established u/s 3 of

the repealed Act are dissolved, does not make any reservation in favour of continuation of any Board or in favour of the power of appointment of

a fresh Board after the Boards are dissolved. I am, however, referred by Mr. Kanade to Section 3 of the repealed Act, which contains provisions

for dissolution of Boards by the Government and re-appointment of the Boards or giving the powers of the Boards to certain officers mentioned in

it. The scheme of Section 3 is to have a Board with a President. That Board has to consist off 10 members to be nominated by the Government

and one of them is to be the President. A quorum has to consist of 3 members. Under certain eventualities, the President may nominate someone

else, who is a member of the Board, to act as the President, Then Sub-section (5) gives power to the Government to abolish or to cancel any

appointment or abolish a Board, after giving reasons therefor. Sub-section (6) provides that after having abolished a Board (which would mean

under Sub-section (5)), if the Government deems it necessary or proper to establish any other Board, it may give specific powers of the Board to

any officer having experience of such work or give powers to some Collector. The scheme of Section 3 is such that by no stretch of language can it

be said that where the Boards are abolished by the Legislature, the power still continues in the Government to appoint fresh Boards. The language

of the earlier part of Section 65 is express and mandatory that on and from that date all Boards shall be dissolved. How is it possible to construe

this to mean only such Boards as would be covered by the first part of the proviso, is difficult to see. It must also be remembered that the Boards

are constituted generally and not for the purpose of settlement of the debts of a single individual. Moreover, the earlier part repeals the Debt

Conciliation Act. If the Act is repealed and if all Boards are dissolved, it is impossible to say that Section 3 will still be operative for the purpose of

re-constitution of a Board or Boards. The contention is that since the second part of the proviso provides that such proceedings, as do not fall

within the jurisdiction of a Court, shall be continued as if the Act had not been passed, must mean that the Boards continue regarding those

applications. That would have been so, provided the existence of the Boards was maintained and their jurisdiction continued. Merely from the

language of this proviso it is not possible to say, that though the Legislature, by mandatory language, has declared that all Boards shall be

dissolved, they continued to exist. It is an admitted fact that the Boards have ceased to function after the Act came into force. I must, therefore,

accept the contention of Mr. Vaishnav that the second part of the proviso is clearly inconsistent with the enacting part of the section.

4. Once this conclusion is reached, what is the result? Though these two clauses are worded as proviso, in substance, these are saving clauses and

must be construed as such. Crawford on Statutory Construction at page 612 (para. 300) says:-

As we have stated elsewhere, the saving clause is used to exempt something from immediate interference or destruction. It is generally used in

repealing statutes in order to prevent them from affecting rights accrued, penalties incurred, duties imposed, or proceedings started under the

statute sought to be repealed. Its position or verbal form is unimportant. But if it is in irreconcilable conflict with the body of the statute of which it is

a part, it is ineffective, or void...

Craies on Statute Law (Fifth ed.) at page 203-204 says:

...and that if the repugnant clause is in the form of a saving clause, then this rule holds good no longer, for it is said that a saving clause which is

repugnant to the purview of the Act is to be rejected and treated as void...

I may also refer to the observations of Fry, J. in the case of Corporation of Yarmouth v. Simmons (1878) 10 Ch. D. 518 wherein he says (p. 528)

:

...But in the next place, it is to be observed that this section is only a saving clause in a general Act, and it appears to me that, even if it would in

itself have covered the alleged right, and have protected it, yet being, as I have pointed out, physically inconsistent with the doing of the thing which

is authorized to be done by the special Act, that saving clause would cease to be operative. I think the law is clearly laid down by Lord Coke in

the Case of Alton Woods 1 Co. Rep. 40 b, that a saving clause in an Act of Parliament which is repugnant to the body of the Act is void....

Under these circumstances, the second part of the proviso must necessarily be treated as void and ineffective.

5. The further result is that all the proceedings before the Board lapse. It may be that there is a lacuna in the Act of the Legislature. It is not,

however, the function of the Courts to remedy the same. Since the two parts cannot exist together, the necessary result must follow, and if the

proceedings before the Board lapse, then there is no hindrance in the way of the Civil Court taking up the case, which is pending before it.

6. It is contended by Mr. Kanade that the application of the opponents before the Board has not been decided and, therefore, the Civil Court will

have no jurisdiction to deal with the matter u/s 28. He has relied on the case of Ponnambala, v. Sriramulu A.I.R.[1945] Mad. 106, where the

provisions of the Conciliation Act (Madras) were somewhat similar to those of the repealed Act in question. In that case, however, there was no

question of repeal of the Act nor of dissolution of any of the Boards constituted under the Debt Conciliation Act. Therefore, clearly the case can

have no application to the facts of the present case.

7. My attention is also invited to a judgment of this Court in Rai Chotelal v. Lalchand Motilal [1958] Civil Revision Application No. 1608 of 1957,

decided by Chagla, C.J. on July 10, 1958 (Unrep) decided by Chagla, C.J. where also the circumstances were similar. The creditor made an

application to the Deputy Collector for recalling the certificate of stay, which was given by the Board. The Deputy Collector said that it was not

competent for him to remove the stay order but that could only be done by the High Court, Against this order the creditor came to the High Court

and it was held by the learned Chief Justice that the Deputy Collector had not given any decision, which could be questioned in the Court, that the

objection petition of the petitioner should come before the Board when it was constituted and be decided by that Board, and for that reason, it

was not necessary for him to make any order in the Revisional Application. In that case, the present question was not argued. Under these

circumstances, it is not possible to regard this decision as an authority for the proposition that the Boards still continued and the matter must still be

regarded as pending before the Board. As I have said above, the Boards ceased to exist, and unless any provision was made for proceeding with

pending matters, the proceedings must lapse. There is then no hindrance in the way of the Civil Court dealing with the disputes between the parties

in accordance with law.

8. The result is that the Court must be directed to proceed with the suit from the stage at which it was left. The suit was originally filed in the District

Court, which alone had pecuniary jurisdiction. After the Bombay Civil Courts Act became applicable to this area, the Civil Judge, Senior Division,

will have jurisdiction to deal with the suit. The suit is yet on the file of the District Court. It must now be transferred to the Court of the Civil Judge,

Senior Division, for disposal in accordance with law. Order accordingly. There will be no order as to costs of this Civil Revision Application.

9. The petitioner has made an application, being Civil Application No. 1325 of 1959, along with the Civil Revision Application, which I have just

now decided, for appointment of a receiver. Since I have disposed of the Civil Revision Application, this application will not survive in this Court.

But in-stead of asking the petitioner to make another application in the trial Court, I direct that this Civil Application be forwarded to the Civil

Judge, Senior Division, who will deal with it on merits after giving an opportunity to the opponents to put in their say.