Vysyaraju Vadreenarayana Moorty Raju Vs. Epari Venugopalam

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Court : Orissa

Decided On : Oct-23-1979

Reported in : AIR1980Ori63; 49(1980)CLT227

Judge : R.N. Misra and ;N.K. Das, JJ.

Acts : Orissa Money-lenders Act, 1934 - Sections 7C, 7D, 10 and 10(1); ;Orissa Money-lenders (Amendment) Act, 1975

Appeal No. : A.H.O. No. 55 of 1976

Appellant : Vysyaraju Vadreenarayana Moorty Raju

Respondent : Epari Venugopalam

Advocate for Def. : R. Mohanty, Adv.

Advocate for Pet/Ap. : B.R. Rao, Adv.

Disposition : Appeal allowed

Judgement :

R.N. Misra, J.

1. This Letters Patent appeal is directed against the reversing appellate decision of our learned brother Acharya, J. and arises out of an execution proceeding.

2. The decree-holder-appellant filed Money Suit No. 3 of 1963 for recovery of a sum of Rs. 47,080.56 out of which Rs. 29,164.52 was the principal and the balance of Rs. 17,916.04 was interest up to the date of the suit. On 22-9-1965, the suit was decreed for the entire amount claimed together with pendente lite and future interest at 6 per cent per annum. Costs of Rs. 5,325.62 were decreed and the judgment-debtor was allowed to satisfy the decree in monthly instalments of Rs. 1000/-. The decree was executed in E. P. No. 22 of 1970. The judgment-debtor filed an application that the decree had been satisfied inasmuch as he had already paid Rs. 60,300/- by 16-9-1974. This stand was obviously taken by invoking the Damdupat Rule provided in Section 10 of the Orissa Money-lenders Act (hereinafter referred to as the 'Act'). On 3-1-1975, the executing court held that the judgment-debtor was liable to pay Rs. 47,080.56 together with pendente lite and future interest on the principal amount of Rs. 29,164.52 and the rule relied upon by the judgment-debtor was not applicable in respect of interest subsequent to institution of the suit. The judgment-debtor appealed and maintained that in view of the amended provisions of the Act, the creditor was not entitled to recover interest in excess of the principal amount and as

the judgment-debtor had already paid more than double of the principal amount, his liability under the decree stood liquidated.

3. The learned single Judge relying on the provisions of Section 7-C and Section 7-D of the Act accepted this contention and has vacated the decision of the executing court. The decree-holder is in appeal.

4. Chapter II-A was introduced into the Act by the Amending Act 54 of 1975. Sections 7-C and 7-D which are relevant for the present purpose provide :--

'7-C. Maximum amount recoverable on loans. -- No money-lender shall recover towards the interest in respect of any loan advanced by him, an amount in excess of the amount of the principal.

7-D. Discharge of loan on payment of double the amount of the principal. --Any loan in respect of which the money-lender has realised from the debtor an amount equal to, or more than, twice the amount of the principal, shall stand discharged and the amount, if any, so realised in excess of twice the amount of the loan shall be refunded by the money-lender to the debtor.'

Counsel for the decree-holder does not dispute that in terms of Section 7-D, a suit would lie at the instance of the judgment-debtor for recovery of the excess realisation above twice the amount of the loan. He does not also dispute that even if the recovery has been prior to the amendment, a suit would still lie subject to limitation for recovery of the excess. Therefore, Section 7-D would apply to recoveries by the creditor prior to the amending Act.

Undoubtedly Sections 7-C and 7-D are parts of the same legislative scheme and have to be read together. Section 7-C makes provision for the maximum amount that can be recovered on loans and gives a mandate that no money-lender can recover towards interest an amount in excess of the principal. According to Mr. Rao for the appellant, Section 10 embodies the Damdupat Rule which provides that interest for the period preceding the institution of the suit cannot exceed the amount of loan originally advanced. Therefore, the scheme in Section 10 is different from Section 7-C. Section 7-C and Section 10 are parts of the same Act and since they co-exist, a harmonious construction is to be adpoted. The decree-holder's counsel, therefore, contends that Section 10 must be confined to instances where the assistance of the court is sought for and application of Sections 7-C and 7-D must be limited to cases where the money-lender does not sue the debtor but seeks to recover the principal and interest out of court. Section 10 occurs in Chapter III of the Act which has a general heading 'Provisions Relating to Suits in respect of Loans and Execution of Decrees'. The new Chapter II-A has been labelled as 'General Provisions'.

There is no dispute before us that the order of the executing court was unassailable if Chapter II-A had not been introduced. The real dispute is as to whether the provisions contained in Sections 7-C and 7-D would apply to the instant case. Section 10, as far as relevant, provides :--

'(1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit ..... in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit

which together with any amount already realised as interest through Court or otherwise, is greater than the amount of the loan originally advanced.'

The embargo under Section 10 in clear terms refers to interest for the period up to the suit and restricts the quantum of such interest to a sum equal to the principal amount.

Chapter III with Section 10 was the existing law when Chapter II-A was introduced into the Act by amendment. The Legislature was aware of the existing law clearly making provision for award of interest by Court. If Sections 7-C and 7-D were intended to provide what the judgment-debtor contends for, appropriate amendments in Section 10 (1) of the Act should have been undertaken. It could not have been the intention of the Legislature to make inconsistent provisions in Chapters II-A and III. Since both the provisions co-exist and provide differently, it should be the duty of the court to harmonise the two and only when it is not possible to do so, to find fault with the legislation. This principle is a well, known doctrine of interpretation.

5. Chapter II-A contains general provisions while Chapter III makes special provision in respect of suits for recovery of loans. Law is fairly settled that a special provision prevails over the general provision. Lord Selborne in Seward v. Vera Cruz, (1884) 10 AC 59, pointed out :--

'..... where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.....'

It is the duty of the court to provide a harmonious construction where possible so that the legislative intention may be given effect to. It was pointed out by Venkatarama Aiyar, J., speaking for the Court in the case of Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SG 255:--

'..... The Rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction .....'

Faced with such a situation in the case of South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, Subba Rao. J., as the learned Judge then was, spoke for the Court that it is settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. Though there is force in the contention of Mr. Mohanty appearing for the judgment-debtor that a beneficial statute must be so construed so as to bring about the benefit intended by the Legislature, where the words of the statute are clear, it is not for the court to travel beyond the premissible limit under the doctrine of implementing legislative intention. The only harmonious construction that can be provided in the present case would be to confine the provisions of Section 10 to suits in court and the ambit of Sections 7-C and 7-D to instances where the assistance of the court is not sought for. We are cognisant of the position that the two situations would result differently namely, where the decree-holder comes to court he might be entitled to recover

higher interest than the principal amount in a given case, whereas if he seeks to recover his dues out of court, the embargo under Section 7-C would operate. It is not appropriate that such a discriminating situation should operate, but it is for the Legislature to intervene and by appropriate amendment bring the two provisions in accord. As the Act stands, we are, however, not prepared to accept the position that the decree-holder is not entitled to recover more than twice the principal amount notwithstanding the decree of the court keeping Section 10 of the Act in view.

6. The net result, therefore, is that the appeal has to be allowed and the direction given by the learned single Judge has to be vacated and the decision of the executing court must be sustained. We direct parties to bear their own costs.

Das, J.

7. I agree .