1964

Biren Dutta
v.
C.C. of Tripura

Gajendragadkar C.J.

R. 30A(8) is not, as a matter of law, required to be communicated to the detenu, it is desirable and it would be fair and just that such a decision should in every case be communicated to the detenu. If the appropriate authority considers the question about the continuance of the detention of a particular detenu and decides that such continuance is justified, we see no justification for failing to communicate the said decision to the detenu concerned. If the requirement as to such communication were held to be necessary as a matter of law, non-communication would render the continuance of the detention invalid; but that is a matter which we are not deciding in these cases. We are only emphasising the fact that it would be fair that such a decision should be communicated to the detenu.

In the result, the appeals and writ petitions are allowed and the detenues concerned ordered to be set at liberty at once.

Appeals and Writ Petitions allowed.

1964

July, 24

K. HUTCHI GOWDER

v

RICHOBDAS FATHAIMULL AND COMPANY

(K. SUBBA RAO AND N. RAJAGOPALA AYYANGAR, JJ.)

Madras Agriculturist's Relief Act—Debt incurred after commencement of Act—Final Decree—Scaling down—Madras Agriculturists Relief Act, 1938 (*Mad.* 4 *of* 1938), *ss.* 13, 19.

The respondent, who was the assignee-mortgagee of a mortgage deed executed on February 15, 1945 by the appellant for a certain sum payable with interest, filed a suit for the recovery of the sum with interest. The suit ended in a compromise under which a decree was passed and certain payments were made towards the decree. In due course the respondent moved for the passing of a final decree. The appellant applied for scaling down of the debt under the Madras Agriculturists Relief Act. The respondent, *inter alia,* contended in his objections filed against this application that as the debt sought to be scaled down was incurred subsequent to the date of commencement of the Act, the decree could not be scaled down under s. 19(2) of the

Act. The Subordinate Judge overruled the objection and held that the debt was liable to be scaled down in terms of s. 13 of the Act. On appeal, the High Court held that as the statutory right to have the interest scaled down was not put forward before the consent decree was passed, the decree could not be scaled down at the stage of the final decree proceedings. It further held that s. 19(2) of the Act only applied to debts payable at the commencement of the Act and, therefore, the application for scaling down the decree was not maintainable. On appeal by certificate.

Held: Sections 7, 8, 9 and 13 form a group of sections providing the principles of scaling down of debts incurred by agriculturists under different situations. A debt can be scaled down in an appropriate proceeding taken in respect of the same. But in case of debts that have ripened into decrees, s. 19(1) and (2) prescribe a special procedure for reopening the decree only in respect of debts incurred before the Act. The Madras Agriculturists Relief Act does not provide for the reopening of decrees made in respect of debts incurred after it came into force, and for understandable reasons the relief in respect of such decrees is specifically confined only to a concession in the rate of interest.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 80 of 1962.

Appeal from the judgment and decree dated December 19, 1957, of the Madras High Court in C.M. Appeal No. 303 of 1956.

A. V. Viswanatha Sastri, V. Ratnam and *R. Ganapathy Iyer*, for the appellant.

G.S. Pathak and *R. Thiagarajan*, for the respondent.

July 24, 1964.

The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—This appeal by certificate raises the question whether a decree obtained in a suit to enforce a debt incurred after the Madras Agriculturists Relief Act, 1938 (Act 4 of 1938), hereinafter called the Parent Act, came into force could be scaled down under s. 13 of the Parent Act.

The facts are as follows: On February 15, 1964, the appellant and 4 others executed a mortgage deed in favour of Kaverlal Chordia for a sum of Rs. 2,00,000 payable after three years with interest at 9 per cent. per annum. On January 24, 1946, the mortgagee assigned the said mortgage

1964

K. Hutchi Gowder
v.
Richobdas Fathaimull and Co.

Subba Rao J.

in favour of the respondent. Certain payments towards principal and interest were made thereunder. On February 28, 1950, the assignee-mortgagee *i.e.*, the respondent, filed a suit, O.S. No. 55 of 1950, in the Court of the Subordinate Judge, Nilgiris, Ootacamund, for the recovery of Rs. 1,98,487-8-0, made up of Rs. 1,50,000 for the balance of the principal and Rs. 48,487-8-0 for interest due on the mortgage. The suit ended in a compromise dated December 21, 1950, under which a decree was passed for Rs. 1,50,000 on account of principal, with interest and further interest at 9 per cent. per annum and costs, subject to some concessions being shown in the event of payments being made in certain specified instalments. Thereafter, certain payments were made towards the decree. In due course the respondent filed I.A. No. 382 of 1953 for the passing of a final decree. On June 24, 1955, the appellant filed O.P. No. 24 of 1955 for scaling down the debt. The respondent, *inter alia*, contended in his objections filed against the said application that as the debt sought to be scaled down was incurred subsequent to March 22. 1938, which is the date of the commencement of the Parent Act, the decree could not be scaled down under s. 19(2) of the Parent Act. The learned Subordinate Judge overruled the objection and held by his order dated August 10, 1956, that the decree was liable to be scaled down in terms of s. 13 of the Parent Act. He accordingly scaled down the decree debt. On appeal, a Division Bench of the Madras High Court held that as the statutory right to have the interest scaled down was not put forward before the consent decree was passed, the decree could not be scaled down at the stage of the final decree proceedings. It further held that s. 19(2) of the Parent Act only applied to debts payable at the commencement of the said Act and, therefore, the application for scaling down the decree was not maintainable. In the result it set aside the order of the Subordinate Judge and dismissed the petition for scaling down the debt. Hence the present appeal.

Mr. A. V. Viswanatha Sastri, learned counsel for the appellant, did not press the appellant's claim under s. 19(2) of the Parent Act, but put it under s. 13 of the said Act.

He took us through the relevant provisions of the Parent Act, which according to him disclose the legislative policy undermining the sacrosanctity of decrees and pressed on us to hold, on a scrutiny of the provisions of s. 13 of the Parent Act in the light of the said policy, that the decree made in respect of a debt incurred after the Parent Act came into force was liable to be scaled down thereunder.

Mr. Pathak, learned counsel for the respondent, makes a distinction between the substantive and procedural provisions and contends that the Parent Act does not make any provision for scaling down decrees made in respect of debts incurred after the said Act came into force. The general scheme of the Parent Act gathered therefrom may be briefly stated thus. The main object of the Parent Act was to give relief to agriculturists. "Debt" has been defined in s. 3(iii) of the Parent Act as any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue court or otherwise. This definition is rather comprehensive; it takes in secured, unsecured and decree debts due from an agriculturist. Section 7 of the Parent Act declares that a debt so defined has to be scaled down in the manner prescribed by the said Act. Section 8 provides the mode of scaling down debts incurred before 1932 and s. 9, the debts incurred after 1932 but before March 22, 1938; and s. 13 deals with the scaling down of debts incurred after the commencement of the Parent Act. The relief granted under the said Act varies with the date of the debt depending upon whether it falls under one or other of the said three periods. While ss. 7, 8, 9 and 13 give the principles for scaling down a debt, s. 19 provides the machinery for scaling down. Section 19 of the Parent Act, as amended in 1948, reads:

> "(1) Where before the commencement of this Act a court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist..... apply the provisions of this Act to such decree

1964

K. Hutchi Gowder v. Richobdas Fathaimull and Co.

Subba Rao J.

and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

(2) The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement."

It may be mentioned that the second clause was inserted by the Amending Act of 1948. Before the amendment there was a conflict of view on the question whether s. 19(1) could be invoked in amending a decree passed after the commencement of the Parent Act in respect of a debt incurred before the said Act. Sub-section (2) made the position clear and declared that it could be done. The position, therefore, is that in the case of debts other than decree-debts, the scaling down process will have to be resorted to in an appropriate proceeding taken in respect of the debt and in the case of decrees in respect of debts incurred before the Parent Act whether made before or after the said Act, by filing an application under s. 19(1) or (2) of the Board Act, as the case may be. But s. 19 on its express terms does not permit the filing of an application for amending a decree by scaling down a debt incurred after the Parent Act came into force. Doubtless, as Mr. Viswanatha Sastri contents, the Parent Act, to some extent, undermines the sanctity of decrees, but that is to implement the policy of the Legislature to give relief to agriculturists over burdened with debts. But a Court, particularly in the case of an expropriatory measure like the Act, cannot rely upon the supposed policy of the Legislature and extend the scope of the relief given to agriculturists by analogy. The scope of the relief shall necessarily be confined to that given by the Act expressly or by necessary implication. A fair reading of sub-sections (1) and (2) of s. 19 of the Parent Act disclose beyond any reasonable doubt that the Legislature does not provide thereunder any machinery for reopening a decree made in respect of a debt incurred after the Act came into force.

Realizing this difficulty, Mr. Viswanatha Sastri relied upon the provisions of s. 13 itself and contends that the said section provides, in the case of debts incurred after the Parent Act came into force, both for the substantive relief as well as for the machinery to give the said relief. The said section reads:

> "In any proceeding for recovery of a debt, the Court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6¼ per cent. per annum, simple interest....."

The Government by notification reduced the rates of interest to 5½ per cent. per annum with effect from July 29, 1947. Let us scrutinize the provisions of the section in the light of the arguments advanced.

Learned counsel asks us to read the words "decree debt" instead of "debt" in s. 13 of the Parent Act, for "debt" is defined to take in a decree debt, and by so reading, he contends, in any proceeding, which, according to him, includes a final decree application, the court shall scale down all interest in the manner prescribed thereunder. It is further argued that final decree proceedings are only proceedings in a suit and, therefore, the word "recovery" in the sub-section is appropriate in the context of a decree debt. This argument, if accepted, disturbs the entire scheme of the Parent Act. Section 13 is one of the group of sections *viz.*, ss. 8, 9 and 13, dealing with the principles of scaling down in a proceeding for the recovery of a debt. But where a decree is to be amended, the Act has taken care to provide expressly for the amendment of the decree. If the Legislature intended to provide for the amendment of decrees even in cases falling under s. 13, it would have added another appropriate clause in s. 19. The absence of any such clause indicates an intention that in cases of debts comprehended by s. 13, the Legislature gives only a limited relief expressly provided thereunder. It is said, so far as the reopening of decrees after the Parent Act came into force is concerned, whether in respect of

1964

K. Hutchi Gowder v. Richobdas Fathimull and Co.

Subba Rao J.

debts incurred before or after the said Act, there cannot possibly be a justification for a difference in the manner of their treatment. A plausible reason can be discerned for this legislative distinction between debts incurred before the Act and those incurred after the Act; for, in the former when the debts were incurred the Act was not in existence and, as the debtors could not have anticipated the provisions of the Act, they were given the summary remedy, but the agriculturists who incurred debts after the Parent Act with open eyes were denied the same; while in the former, they were allowed to reopen decrees made in respect of the said debts before or after the Act, in the latter they could claim relief only in an appropriate proceeding before the decree was made and that too was confined to the limited relief in regard to the rate of interest provided thereunder. The difference in the treatment of the two categories of decrees was brought about by sub-section (2) of s. 19 added by a later amendment. Whatever may be the reason for the difference, we cannot extend the scope of s. 13 by analogy or by stretching the meaning of the words "proceeding" and "recovery".

Reliance is placed upon s. 13-A of the Parent Act. which reads:

> "Where a debt is incurred by a reason who would be an agriculturist as defined in section 3(ii) but for the operation of proviso (B) or proviso (C) to that section. the rate of interest applicable to the debt shall be the rate applicable to it under the law. custom, contract or decree of Court under which the debt arises or the rate applicable to an agriculturist under section 13, whichever rate is less."

On the basis of this section a contention is raised that ss. 13 and 13A relate to the same subject-matter with the difference that while s. 13 applies to agriculturists who incurred debts after the Parent Act came into force. s. 13A applies to persons who would be agriculturists but for the provisos (B) and (C) of s. 3(ii) in respect of debts incurred after the Act, and as a fair reading of s. 13-A indicates that it applies to decrees made in regard to debts in-

curred after the Act, it must be interpreted reasonably that s. 13 also applies to such decrees. Mr. Pathak, learned counsel for the respondent, on the other hand, contends that s. 13-A only applies to pre-Act debts, as s. 7 which declares the scheme of scaling down of debts applies only to pre-Act debts and the only exception to it is s. 13-A. Be that as it may, we cannot construe s. 13 with the aid of s. 13-A which was introduced by the Amending Act 23 of 1948. This appeal does not call for an interpretation of s. 13-A of the Act and we shall not express any opinion thereon.

The legal position may be briefly stated thus. Section 7, 8, 9 and 13 form a group of sections providing the principles of scaling down of debts incurred by agriculturists under different situations. A debt can be scaled down in an appropriate proceeding taken in respect of the same. But in the case of debts that have ripened into decrees, s. 19(1) and (2) prescribe a special procedure for reopening the decree only in respect of debts incurred before the Parent Act. The Parent Act does not provide for the reopening of decrees made in respect of debts incurred after it came into force, and for understandable reasons the relief in respect of such decrees is specifically confined only to a concession in the rate of interest.

For the foregoing reasons, we hold that the order of the High Court is correct. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed

AMRIT BANASPATI CO. LTD. & ANR.

v.

STATE OF UTTAR PRADESH AND ORS.

1964

July, 27

(P. B. GAJENDRAGADKAR, C. J., M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

Sales Tax—Sales tax levied at the rate of one anna per rupee—New decimal coinage introduced by Act No. 31 of 1955—Effect on calculation of sales tax—Sales tax to be levied at the rate of one