

STATE BANK OF HYDERABAD  
v.  
THE JOINT FAMILY OF M/S. MUKUNDAS  
RAJA BHAGWAN DAS AND ORS.

MARCH 22, 1995

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*A.P. Jagirdar Debt Settlement Act, 1952/Limitation Act, 1963: Sections 3, 11, 22, 25, 30, 57/Section 14—Scaling down of debt—Time taken in the proceedings—Whether gets excluded under s.14 of the Limitation Act and the suit filed was within the limitation period—Held: Yes.*

Respondents had executed a promissory note on 20.5.1953 for a sum of Rs. 37,000 in favour of the appellant-Bank with a letter to transfer the demand loan. Thereafter certain amounts were paid from time to time upto 3.9.1953 in a sum of Rs. 37,000 in favour of the appellant with a letter to transfer the demand loan. Even thereafter certain amounts were paid upto 3.9.1959.

In March 1960, Respondents made an application under Section 11 of the A.P. Jagirdar Debt Settlement Act, 1952 for scaling down the debts. The Debt Settlement Board issued notice to the appellant-Bank to submit the statement of account and the Bank submitted the same stating that a sum of Rs. 74,062.05 with interest at 9% was due from the Respondents. However, the Board held that it had no jurisdiction to entertain the claim for scaling down in view of the Full Court Judgment of A.P. High Court in *Jt. Family of Mukund Das Raja Bhawan Dass & Sons etc. v. State Bank of Hyderabad*, (1963) 2 AWR 147.

The appellant-Bank filed a suit for recovery of the amount due from the Respondents. The trial Court dismissed the suit on the ground that it was barred by limitation. The High Court confirmed it. Hence this appeal by the Bank.

Allowing the appeal, this Court.

**HELD : 1.** It is true that the benefit of s.14 of the Limitation Act would be extended only to the plaintiff who has instituted the suit in a

wrong forum and had prosecuted the proceedings in good faith in that court which ultimately found to have defect of jurisdiction or other cause of a like nature. The period during which such proceedings were prosecuted, would be excluded in computing limitation. The Scheme of the Act would indicate that all claims relating to a debt involving a Jagirdar are to be considered and adjudicated upon by the authorities including the Board constituted under the Act. When a Jagirdar files an application for scaling down the debt and the creditors file their claims, the position of the latter, namely, the creditors is that of the plaintiff, as their claim would be considered and appropriate orders for payment of the amount, though not necessarily the full amount due from the Jagirdar, would be paid. But this does not change their status and for purpose of Section 14 of the Limitation Act, they would, notwithstanding that the proceedings were initiated under the Act on an application made by the Jagirdar would be that of a plaintiff in a civil suit. [952-E-F]

2. When the Jagirdar himself made an application under s.11 together with an application under s.30 read with s.22 of the A.P. Jagirdar Debt Settlement Act, 1952 until the proceedings are determined the creditor has no right to lay the suit by operation of s.25 of the Act. The necessary implication is that the jurisdiction of the civil court under s.9 of the CPC stands excluded. Consequently, the appellant could lay the suit in 1962 though it was partly paid by the respondents. Since the application was held to be not maintainable by the Board on October 25, 1967, the suit was clearly within limitation when it was laid on February 10, 1970. The High Court, therefore, was not right in its conclusion that there should be a finding recorded by the Board that the respondent is not a debtor to get the benefit of s.57. That view does not help the respondents. In the light of the scheme of the Act, the time taken in the proceedings under the Act, gets excluded under s.14 of the Limitation Act. [952-G-H, 953-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 772 of 1979.

From the Judgment and Order dated 3.11.78 of the Andhra Pradesh High Court in C.C.C.A. No. 82 of 1974.

C.Sitramiah, A. Ranganadhan and A.V. Rangam with him for the Appellant.

S. Markandeya, Ajay Singh, H.P. Sharma and Ms. C. Markandeya  
for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave is filed against the judgment of the Division Bench of the Andhra Pradesh High Court made in C.C.C.A. No. 82/74 dated November 3, 1977. The appellant-Bank laid the suit on February 10, 1970 in the City Civil Court to recover a sum of Rs. 35,000 from the respondents on the foot of a Promissory note and against the security of 133 shares of Nizam State Railway with a face value of Rs. 250 each at 5% interest thereon. The trial Court and the High Court recorded a finding that the suit is barred by limitation. Thus the suit stood dismissed. The question, therefore, is whether the suit is barred by limitation. The facts, in nutshell, are that the respondents had executed a promissory note, Ex.A-2 dated May 20, 1953 for a sum of Rs. 37,000 in favour of the appellant with a letter to transfer the demand loan. Thereafter certain amounts were paid from time to time upto September 3, 1953 for a sum of Rs. 37000 in favour of the appellant with a letter to transfer the demand loan. Thereafter certain amounts were paid from time to time upto September 3, 1959 under Ex.A-7. A.P. Jagirdar Debt Settlement Act, 1952 for short to Act prescribed procedure for making the applications by the Jagirdars or the creditors to scale down the debt liability incurred by the Jagirdars and the procedure in that behalf has been prescribed thereunder. The respondents made an application in March, 1960 under section 11 of the Act for scaling down the debts. The Board issued notice to the appellant to submit the statement of the account. Ultimately the Bank has submitted the account on September 15, 1967, Ex.A-12 stating that the respondents were due of a sum of Rs. 74,062.05 with interest at 9% from July 1, 1967. The Board by order dated October 25, 1967, Ex.A-11 held that it has no jurisdiction to entertain the claim for scaling down in view of the judgment of the Full Bench of the Andhra Pradesh High Court in *Jt. Family of Mukund Das Raja Bhawan Dass & Sons etc. v. State Bank of Hyderabad*, reported in [1963] 2 AWR 147. The suit, therefore, came to be filed as stated earlier on February 10, 1970.

The High Court held that Ex.A-13 dated October 4, 1967 cannot be used as an acknowledgment to save the limitation under s.19 of the Limitation Act 21/63. Similarly, s.57 of the Act cannot be availed of since the Debt

Settlement Board had not recorded any finding that the respondent is a debtor and, therefore, the running of the limitation having begun in 1953, it had run out its full course, so the suit was barred by limitation. Dismissal of the suit by the trial court was held to be correct.

Admittedly, the respondents made an application under s.11 and also IA No. 77/64 on January 19, 1962 under s.30 read with s.22 on the ground that the debts stand extinguished by reason of the fact that the appellant had not made an application under s.11. The Board by its order dated August 5, 1964 held that:

"As already stated the statement filed within the time on 21.6.60 is sufficient compliance with the provisions in s.30(3) of the Act. I, therefore, find that the debt due to the bank for which the Nizam's Government Shares have been secured is not extinguished."

By order dated October 27, 1967, Ex.A-11, the Board closed the Case No. 25/A of 1960 with a finding that :

"In view of the full bench decision *State Bank of Hyderabad v. Mukundas Raja Bhagwan Das*, reported in [1963] 2 A.W.R. 147 (FB), the matter not having been referred to this Board on or before 30.6.1953, this Court has no jurisdiction to entertain this matter. Hence Item No. 1 will be returned to the party concerned for presentation before proper court."

Thus it could be seen that proceedings before the Debt Settlement Board came to a terminus with a finding that the Board had no jurisdiction to entertain the matter. In view of the facts, the question is whether the suit laid by the appellant has been barred by limitation. Under Article 35 of the Limitation Act on a bill of exchange or promissory note payable on demand and not accompanied by any writing, restraining or postponing the right to sue, the period of limitation is three years from the date of the bill or note. In Ex.A-5 dated 15.9.58, the respondents made part payment and acknowledged the liability and in Ex.A-6 he made part payment in 1959 equally Ex.A-7 dated 3.9.59, he acknowledged the liability by making part payment of Rs. 12,500. Thus the limitation of further period of three years would ensure to the appellant under s.18 of the Limitation Act as an acknowledgment in writing of the liability in respect of the amount lent to the respondents under the promissory note with a charge on the shares.

The question, therefore, is whether the suit is barred by limitation after the expiry of September 2, 1962. It is seen that in March 1960, the respondents made an application under s.11 of the Act for scaling down the debts. Similarly, an application under s.30 read with s.22 was filed for a declaration that the debt was extinguished. On the application made under s.11 as noted, the Board found that the debt was not extinguished. Thus, the liability for payment was subsisting as on March, 1960. A reading of the relevant provisions of the Act would indicate that the Act provides a complete machinery to settle the debts incurred by the Jagirdars as defined under s.2(f) of the Act and in relation to the liability of the debt as defined under s.2(e) of the Act. The Board was constituted under s.4 of the Act with the Additional Judge of the City Civil Court to be the Board for the purpose of the Act. The Board was enjoined to enquire into the liability of the debts and in an appropriate case it would scale down the debts. Chapter III relates to the procedure for settlement of debts. An application for settlement of debts is required to be filed either by the Jagirdar or by the creditors before the notified date as the Government may notify in the official gazette for settlement of the debts due by the Jagirdar. Section 22 postulates that any settlement or adjustment made by the Jagirdar with the Creditor without the order of the Board was declared to be void. Similarly any settlement with the consent of the debtor and the creditor without it was certified under s.15 or in terms of s.16 as the case may be was declared void. under s.25 all suits, appeals, applications for execution and proceedings, other than revisional, in respect of any debt, pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application is less than Rs. 5,000, be transferred to the Board. Similarly, any suit or appeal, application or proceeding is transferred to the Board under Sub-s.(2) the Board shall proceed as if an application under s.11 had been made to it. Section 13 gives power to the Board to issue notice to the Cooperative Society, Scheduled Banks etc. requiring them to file the statement of claims within the specified time and also the amount of debt due by the debtor to the Government or Scheduled Banks etc. Section 35 gives power to the Board to scale down the debts, the details of which were not material for the purpose of the case. Even after determining the amount of debts scales down in the manner provided under s.35, the Board shall save, as otherwise, provided in s.36, make an award as enumerated with the conditions

imposed in Sub-s.(2) thereof. Under s.42, the award is required to be registered and also to be executed in the manner laid down therein. Section 47 gives right of appeal.

Thus, it could be seen that the debt due by a Jagirdar is required to be adjudicated and be scaled down according to the procedure laid down under the Act. The scheme of the Act is a complete code for determination of the liability of the debt due by a Jagirdar to the creditors. Despite saving the liability of a Scheduled Bank etc., s.3 and s.30 gives powers to the Board to scale down the debt due to the Scheduled Bank. Since the claim was not made within the prescribed time from the notified date, the Full Bench of the High Court held that the Board has no power to entertain the claims for determination. That view was upheld by this court in *Joint Family of Mukund Das Raja Bhagwan Dass & Sons etc. v. State Bank of Hyderabad*, [1971] 2 SCR 136. In that view of the matter, the question is whether s.14 of the Limitation Act stands attracted to the facts in this case.

It is true that the benefit of s.14 would be extended only to the plaintiff who has instituted the suit in a wrong forum and had prosecuted the proceedings in good faith in that court which ultimately found to have defect of jurisdiction or other cause of a like nature. The period during which such proceedings were prosecuted, would be excluded in computing limitation. The Scheme of the Act would indicate that all claims relating to a debt involving a Jagirdar are to be considered and adjudicated upon by the authorities including the Board constituted under the Act. When a Jagirdar files an application for scaling down the debt and the creditors file their claims, the position of the latter, namely, the creditors is that of the plaintiff, as their claim would be considered and appropriate orders for payment of the amount, though not necessarily the full amount, due from the Jagirdar would be paid. But this does not change their status and for purpose of Section 14 of the Limitation Act, they would, notwithstanding that the proceedings were initiated under the Act on an application made by the Jagirdar, would be that of a plaintiff in a civil suit. As seen when the Jagirdar himself made an application under s.11 together with an application under s.30 read with s.22 of the Act, until the proceedings are determined the creditor has no right to lay the suit by operation of s.25 of the Act. The necessary implication is that the jurisdiction of the civil court under s.9 of the CPC stands excluded. Consequently, the appellant could lay the suit in 1962 though it was partly paid by the respondents. Since the

application was held to be not maintainable by the Board on October 25, 1967, the suit was clearly within limitation when it was laid on February 10, 1970. The High Court, therefore, was not right in its conclusion that there should be a finding recorded by the Board that the respondent is not a debtor to get the benefit of s.57. That view does not help the respondents. In the light of the scheme of the Act, the view taken in the proceedings under the Act gets excluded under s.14 of the Limitation Act. Accordingly, we hold that the suit is within limitation and the civil court and the High Court had committed grave error of law in taking the contrary view.

Accordingly, the appeal is allowed. In the circumstances of long pendency, the trial court is directed to proceed with the trial of the suit according to law as expeditiously as possible preferably within six months from the date of the receipt of this order. No costs.

G.N.

Appeal allowed.