A STATE OF KERALA AND ORS.

*v.*

V.R. KALLIYANIKUTTY AND ANR. ETC. ETC.

APRIL 1, 1999

B [MRS. SUJATA V. MANOHAR, D.P. MOHAPATRA AND R.C. LAHOTI, JJ.]

*Kerala Revenue Recovery Act, 1968—Ss. 71,70 (2)(3) and 69(2)—Time barred debts—Recovery of—Notification—Provisions of Act made applicable* C *to recovery of loans by Bank or Kerala Financial Corporation—Whether debts barred by limitation can be recovered by restoring to proceedings under the Act? Held, no, the Act does not create any new right and it merely provides a process for speedy recovery in public interest—Thus, time barred debts which are not legally recoverable cannot be recovered under the Act.*

D *Words & Phrases*

*"Amount due"—Meaning of in the context of sec. 71 of Kerala Revenue Recovery Act, 1968.*

E **In exercise of its powers under sec. 71 of Kerala Revenue recovery Act, 1968, State Government issued a notification by which the provisions of the said Act were made applicable to the recovery of amounts due from any person by any Bank or Kerala Financial Corporation. A question of law arose whether debt barred by limitation Act can be recovered by restoring to recovery proceedings under the act. A Division Bench of High Court held** F **that in the absence of any provision in the Act creating a substantive right to recover time barred debts, debts barred under limitation Act cannot be recovered. However, the said judgment was overruled by a Full Bench of High Court. Hence the present appeals.**

**Disposing of the matter, this Court**

G

**HELD : 1. Under sec. 71 of the Kerala Revenue Recovery Act, 1968 claims which are not legally recoverable and are time barred on the date of requisition under sec. 69 (2) of the Act are not "amounts due" and cannot be recovered under the said Act. [381-H; 382-A]**

H **2. The Act does not create any new right. It merely provides a process**

for speedy recovery of moneys due. Therefore, instead of filing a suit, obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Act. Since the Act does not create any new right, the person claiming recovery cannot claim recovery of amount which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Act. Although the necessity of filing a suit by a creditor is avoided, the extent of claim which is legally recoverable is not thereby enlarged.

[378-A-B; 381-B]

*The Director of Industries, U.P. & Ors.* v. *Deep Chand Agarwal,* AIR (1980) SC 801; *Hansraj Gupta & Ors.* v. *Dehradun-Mussoorie Electric Tramway co, Ltd.,* AIR (1933) PC 63 and *New Delhi Municipal Committee* v. *Kalu Ram & Anr.,* [1976] 3 SCC 407, relied on.

*Khadi Gram Udyog Trust* v. *Ram Chndraji Virajman Mandir, Sarasiya Ghat, Kanpur,* [1978] (1) SCC 44 and *Punjab National Bank & Ors.* v. *Surendra Prassad Sinha,* [1993] supp. 1 SCC 499, held inapplicable.

3. An "amount due" normally refers to an amount which the creditor has a right to recover. " Amount due" under sec. 71 of the Act are those which the creditor could have recovered had he filed a suit.

[377-A-B; 381-G]

Wharton's Roman *Law Lexicon; Black's Law Dictionary, 6th Edn. at page 499,* referred to.

4. Under sec. 70 (3) a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law he would be entitled to submit in the suit that the claim against which the recovery has been made is time-barred. Hence no amount should have been recovered from him. When the right to file a suit under section 70 (3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act which expressly brings about such a result. Provisions of the said Act. However, indicate to the contrary. Moreover, such a wide interpretation of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironical if an Act for speedy recovery is held

A **as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims. [378-E-H]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4211 of 1988 Etc. Etc.

B From the Judgment and Order dated 2.11.87 of the Kerala High Court in W.A.. No. 222 of 1987.

P.K. Krishnamurthy, T.L. V. Iyer, A.K. Ganguli, K.M.K. Nair, P.B. Suresh, Vipin Nair, G. Prakash, Wills Mathew, R.S. Negi, M.K. Michael, (S.A. syed) .(NP), (M.A. Firoz). (NP), Ramesh Babu, M.R., N. Sudhakaran, K.R. Nambiar C and Ms. Meera Mathur for the appearing parties.

The Judgment of the Court was delivered by

**MRS. SUJATA V. MANOHAR, J.** Leave granted in S.L.P. (C) No.12051 of 1988.

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All these appeals raise a common question of law whether a debt which is barred by the law of limitation can be recovered by resorting to recovery proceedings under the Kerala Revenue Recovery Act of 1968. A Division Bench of the Kerala High Court in the impugned common judgment dated E 2.11.1987 in C.A.No.4211 of 1988, CA No.4393 of 1988 and C.A.No.4175 of 1988 held that in the absence of any provision in the Kerala Revenue Recovery Act creating a substantive right to recover time-barred debts, the said Act which provides for summary recovery cannot be availed of once the period prescribed for recovery under the Limitation Act has expired. This judgment of the Division Bench of the Kerala High Court was followed by a subsequent F Division Bench in its judgment dated 29.1.1988 which is the subject matter of appeal arising from S.L.P. (C) No.12051 of 1988. The above decisions of the Division Bench, however, have been overruled by a Full Bench of the Kerala High Court by its judgment dated 10.4.1996 which is the judgment under appeal in C.A.Nos.12393 and 12394 of 1996. All these appeals, have, therefore, G been heard together.

The Kerala Revenue Recovery Act, 1968 is an Act to consolidate and amend the laws relating to recovery of arrears of public revenue in the State of Kerala. Under Section 5 of the Kerala Revenue Recovery Act of 1968, "whenever public revenue due on land is in arrear," such arrear, together with H interest, if any, and cost of the process may be recovered by one or more of

the modes set out in that section. One of the modes so prescribed is attachment and sale of the defaulters' movable or immovable property. Under Section 68 of the said Act, "all sums due" to the Government on account of quit rent or revenue other than public revenue dues on land, as also all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue "due" on land or land revenue can be recovered under the provisions of the said Act. Under Section 2(a) of the said Act "arrears of public revenue due on land" is defined to mean the whole or any portion of any kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage. Under Sub-section (j) of Section 2 "public revenue due land" means the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purposes of irrigation. The Act, therefore, provides a method for speedy recovery of arrears of public revenue. Under Section 71, however, there is a provision for extending the Act to recovery of certain other dues if the Government is satisfied that it is necessary to do so in public interest. Under Section 71 it is provided as follows:-

> "Power of Government to declare the Act applicable to any institution:- The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

In exercise of its powers under Section 71, the State Government has issued a notification bearing S.R.O. No.797 of 79 by which the provisions of the said Act have been made applicable to the recovery of the amounts due from any person to any bank on account of any loan advanced to such person by that bank for agriculture or agricultural purposes. Under another notification S.R.O. No.851 of 79 issued under Section 71 by the State Government the provisions of the said Act are also made applicable to the recovery of amounts due from any person or class of persons to the Kerala Financial Corporation. Thus in public interest the State Government has made the said Act applicable for speedy recovery of loans given by a bank for agricultural purposes as well as for speedy recovery of loans given by the Kerala Financial Corporation. The overall scheme of the Act, therefore, is to provide for speedy recovery, not merely of public revenue but also of certain other kinds of loans which are required to be recovered speedily in public

A interest.

Explaining analogous provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1965, this Court in *The Director of Industries, U.P. and Ors.* v. *Deep Chand Agarwal,* AIR (1980) SC 801 held that the said Act is passed with the object of providing a speedier remedy to the State Government to B realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. Explaining the need for speedy recovery, it says that the State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry or for such other purposes which would advance C the economic well-being of the people. Moneys so advanced have to be recovered expeditiously so that fresh advances may be made for the same purpose. It is with the object of avoiding the usual delay involved in the disposal of suits in civil courts and providing for an expeditious remedy that the U.P. Act had been enacted. It was on this ground that this Court upheld D the classification of loans which are covered by the said U.P. Act in a separate category. It held that this is a valid classification and the provisions of the Act are not violative of Article 14.

The same reasoning would apply to the loans which are covered by the said notifications under Section 71 of the Kerala Revenue Recovery Act. E Agricultural loans and loans by the State Financial Corporation are also loans given in public interest for the purpose of economic advancement of the people of the State, to help them in agricultural operations or establishment of industries. For this reason the Kerala Revenue Recovery Act has been made applicable to such loans so that there can be a speedy recovery of such F loans and the amounts can be utilised for similar objects again.

Civil Appeal Nos. 4211 of 1988, 4393 of 1988 and 4175 of 1988 pertain to agricultural loans given by a bank while Civil Appeal Nos. 12393 of 1996 and 12394 of 1996 pertain to loans given by the Kerala Financial Corporation.

G Looking to the object of Section 71 we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it. Is the object only speed of recovery or is it also enlargement of the right to recover? The respondent-institutions rely on the words "amount due" in Section 71 as encompassing time-barred claims also. Now, what is meant by the words "amounts due" used in Section 71 of the Kerala Revenue H Recovery Act as also in the notifications issued under Section 71? Do these

words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor which are legally recoverable? An amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. In Black's Law Dictionary, 6th Edn. at page 499 the following comment appears against the word "due". "The word "due" always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue" and the third by the word "payable"." There is no reference in these definitions to a time-barred debt. In every case the exact meaning of the word "due" will depend upon the context in which that word appears.

In the case of *Hansraj Gupta & Ors.* v. *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.*, AIR (1933) PC 63 the Privy Council was required to interpret the words "money due" under Section 186 of the Companies Act, 1913. Section 186 dealt with the recovery of any money due to the Company from a contributory. Interpreting the words "money due", the Privy Council said that the phrase would only refer to those claims which were not time-barred. It noted that the section is concerned only with moneys due from a contributory. A debtor who is not a contributory is not affected by it. Moneys due from him can be recovered only by a suit in the Company's name. Secondly, the section creates a special procedure for obtaining payment of moneys. It is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights. Thirdly, the power of the court to order payment under that Section is discretionary. It may refuse to act under that section, leaving the liquidator to sue in the name of the Company. Therefore, the respondent under the procedure of Section 186 cannot be deprived of some defence or answer open to him in a suit for the same moneys.

The same reasoning would apply in the present case also. The Kerala

A Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts
B which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from
C him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been
D initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of whole or part of the money paid under protest. Under Sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.
E

Therefore, under Section 70(3) a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law he would be entitled to submit in the suit that the claim against which the recovery has been made is time-barred. Hence no amount should have been recovered from
F him. When the right to file a suit under Section 70(3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act which expressly brings about such a result. Provisions of the said Act, however, indicate to the contrary. Moreover, such a wide interpretation
G of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims.

H In the case of *New Delhi Municipal Committee* v. *Kalu Ram and Anr.*,

[1976] 3 SCC 407 relying on the Privy Council decision in *Hansraj Gupta* v. *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* (Supra) this Court interpreted Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 in a similar way. Under that Section where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. While considering the meaning of the words 'arrears of rent payable' this Court examined whether section 7 creates a right to realise arrears of rent without any limitation of time. The Court observed that the word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. In the context of recovery of arrears of rent under Section 7, this Court said that if the recovery is barred by the Law of Limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent the determination must be in accordance with law. Section 7 only covers arrears not otherwise time-barred.

The respondent-institutions, however, placed reliance on *Khadi Gram Udyog Trust* v. *Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur,* [1978] 1 SCC 44. This case turned on the interpretation of Section 20 of the U.P. Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Under Section 20(2)(a) a suit for eviction against a tenant may be instituted on the ground that the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. A further opportunity of payment of rent is provided to the tenant under Section 20(4) which provides that if, at the first hearing of the suit, the tenant unconditionally pays or tenders the entire amount of rent and damages due from him together with interest the court may pass an order relieving the tenant against his liability for eviction. The Court said that Section 20(4) is meant to give a last opportunity to the tenant to retrieve his position. It confers a benefit on the tenant to avoid a decree of eviction. Hence the entire amount of arrears due would have to be tendered including time-barred rent also. This reasoning, however, does not have any application to the Kerala Revenue Recovery Act. There is no indication in any of the sections of the said Act that the entire amount due whether time-barred or not, can be recovered by resorting to the procedure under the Kerala Revenue Recovery Act.

In our view if such a wide interpretation is put on the words "amount

A due" under the Kerala Revenue Recovery Act, there is every likelihood of the provisions of Article 14 being attracted. This Court in the case The *Director of Industries, U.P. and Ors.* v. *Deep Chand Agarwal,* (Supra) justified the special procedure for recovery of certain debts under the U.P. Public Moneys (Recovery of Dues) Act, 1965 on the ground that the amounts which were advanced by the State. or by the financial institutions were for the economic
B betterment of the people of that State. Speedy recovery of these amounts was necessary so that these amounts could be re-utilised for the same public purpose. It is doubtful if this public purpose would extend to granting exemption to these claims from the statute of limitation. The law of limitation itself rests on the foundations of public interest. The courts have expressed
C at least three reasons for supporting the existence of statutes of limitation; (1) that long dormant claims have more of cruelty than justice in them; (2) that a defendant might have lost the evidence to disprove a stale claim; and (3) that persons with good causes of action should pursue them with reasonable diligence. (See Halsbury 4th Edn. Vol. 28 paragraph 605). In *Nav Rattanmal and Ors.* v. *State of Rajasthan,* AIR (1961) SC 1704, the Statutes of Limitation
D have been considered as Statutes of Repose and Statutes of Peace. The generally accepted basis for such statutes is that they are designed to effectuate a beneficent public purpose. Whether public purpose of speedy recovery would outweigh public purpose behind a statute of limitation is a most point. But we need not examine this aspect any further in view of our
E interpretation of the words "amounts due" in Section 71.

It has been submitted before us that the statute of limitation merely bars the remedy without touching the right. Therefore, the right to recover the loan would remain even though the remedy by way of a suit would be time-barred. Reliance was placed on *Khadi Gram Udyog Trust* v. *Ram Chandraji Virajman*
F *Mandir, Sarasiya Ghat, Kanpur* (Supra) in this connection. The Court there observed that though a debt may be time-barred, it would still be a debt due. The right remains untouched and if a creditor has any means of enforcing his right other than by action or set-off, he is not prevented from doing so. In *Punjab National Bank and Ors.* v. *Surendra Prasad Sinha,* [1993] Supp. 1
G SCC 499 at page 503-504), this Court held that the rules of limitation are not meant to destroy the rights of parties. Section 3 of the Limitation Act only bars the remedy but does not destroy the right which the remedy relates to. Excepting cases which are specifically provided for, as for example, under Section 27 of the Limitation Act, the right to which the remedy relates subsists. Though the right to enforce the debt by judicial process is barred,
H that right can be exercised in any manner other than by means of a suit. For

example, a creditor's right to make adjustment against time-barred debts exists. A

There is no question, however, in the present case of any payment voluntarily made by a debtor being adjusted by his creditor against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of "amounts due". Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable B is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. C The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such process of recovery would start with a written requisition issued in the prescribed form by the creditor D to the collector of the District as prescribed under Section 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act.

In view of the interpretation which we have put on Section 71 of the Kerala Revenue Recovery Act it is not necessary for us to consider whether E by making a requisition under Section 69(2) a creditor sets in motion a process of recovery which is a judicial process which would attract the Law of Limitation. There is a clear provision for adjudication under Section 70(3) of the said Act. This right under Section 70(3) is not affected by Section 72 of the said Act as was contended before us by the respondents. Section 72 F merely provides that every question arising between the Collector or the authorised officer and the defaulter relating to execution, discharge or satisfaction of a written demand issued under this Act will be determined not by a suit but under the provisions of the said Act. Section 72 does not cover the right of a person making a payment under protest to institute a suit which is expressly provided for under Section 70 Sub-section(3). Looking to the G scheme of recovery and refund under Sections 70 and 71, "amounts due" under Section 71 are those amounts which the creditor could have recovered had he filed a suit.

In the premises under Section 71 of the Kerala Revenue Recovery Act claims which are time-barred on the date when a requisition is issued under H

A Section 69(2) of the said Act are not "amounts due" under Section 71 and cannot be recovered under the said Act. Our conclusion is based on the interpretation of Section 71 in the light of the provisions of the Kerala Revenue Recovery Act.

In the premises, Civil Appeal Nos. 12393 and 12394 of 1996 are allowed
B while Civil Appeal Nos. 4211 of 1988, 4393 of 1988, 4175 of 1988 and Civil Appeal No. 1945/1999 (Arising out of SLP(C) No.12051 of 1988) are dismissed. There will, however, be no order as to costs.

S.V.K.I. C.A. Nos. 4211\88, 4175\88, 4393\88 and 1945\99dismissed.

C C.A. Nos. 12393 and 12394\96 allowed.