

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No.924 OF 2010

ORDER :

This Civil Revision Petition is filed against order dated 15.12.2009 in E.A.No.670 of 2009 in E.P.No.45 of 1999 in SC No.57 of 1991, wherein the Court below dismissed the application filed by the petitioner under Sections 3, 4 and 13 of the A.P. Agricultural Indebtedness (Relief) Act 14 of 1977 (for short 'the Act') as not maintainable.

Heard learned counsel for the petitioner and learned counsel appearing for the 2nd respondent.

Learned counsel for the petitioner by relying on the judgment reported in **Illapu Apparao v. Somireddy Chenchunaidu**¹, submits that the Court below without properly considering the application of the petitioner has dismissed the application. He submits that even if petitioner is set *exparte*, it was the duty of the Court below to decide the suit by framing an issue in respect of the plea under Sections 3, 4 and 13 of the Act. Without framing the issue to that effect, the suit was decreed. When the petitioner raised the said issue by filing E.A.No.670 of 2009, the Court below instead of considering the same in view of **Illapu Apparao v. Somireddy Chenchunaidu (supra)**, dismissed the application.

Learned counsel for the 2nd respondent submits that he is only an auction purchaser and that the petitioner has not raised

¹ 2006 (1) ALT 303 (D.B)

any such plea earlier and that at this stage of delivery of possession, petitioner cannot raise such issue.

The issue in this revision is no longer *res integra*, as the same is considered in the judgment referred to **Illapu Apparao v.**

Somireddy Chenchunaidu (supra), wherein it is held as follows:

“17. Whenever the creditor presents a plaint he has to plead that the defendant is not entitled for the benefits of the Act. On such pleading only, the Civil Court would entertain the suit and issue summons to the defendant. If the defendant makes his appearance and takes a plea that he is entitled for the benefits of the Act 7 of 1977, an issue will be framed and the evidence will be adduced by both parties. If the plaintiff discharges his initial burden of establishing that the defendant is not entitled for the benefits of the Act 7 of 1977, the burden shifts to the defendant to establish that he is entitled for the benefits of the Act. In view of the Sections 4 and 13 of the Act, the initial burden is on the plaintiff to establish that the suit is maintainable against the defendant. The initial burden is not on the defendant to prove that he is a small farmer.

18. Even if the defendant remains *ex parte*, the plaintiff, in order to obtain an enforceable decree, has to adduce evidence to prove that the defendant is not entitled for the benefits of the Act. Unless the Court is satisfied that the debt did not stand discharged, it will not pass a decree in favour of the creditor. Even if the plaintiff obtains a decree without convincing the Court that the defendant is not entitled for the benefits of the Act, it will not be a bar for the defendant to raise the said plea at any stage of the suit proceedings, appeal or execution proceedings. The mere passing of a decree will not operate as constructive *resjudicata* and the defendant will not be precluded to make an application raising the plea under the Act to get the benefits provided under the Act.

23. With due respect to the view expressed by the learned single Judge, we are unable to endorse the said view, in the light of the mandate under Section 4 that every debt shall be deemed to be discharged and the cause of action do not survive. When a statute mandates that the debt against the debtor under the Act did not survive, it is for the creditor to make out a case that the debt covered by such suit do not come within the purview of the Act. Therefore, the person claiming the benefit of the Act need not establish *prima facie* that he is a small farmer. In the light of the object of the Act, all artisans, agricultural labourers and agriculturists are entitled to the benefits of the Act unless the contrary is proved by the creditor or the debtor concedes that he is not entitled for the benefits of the Act.

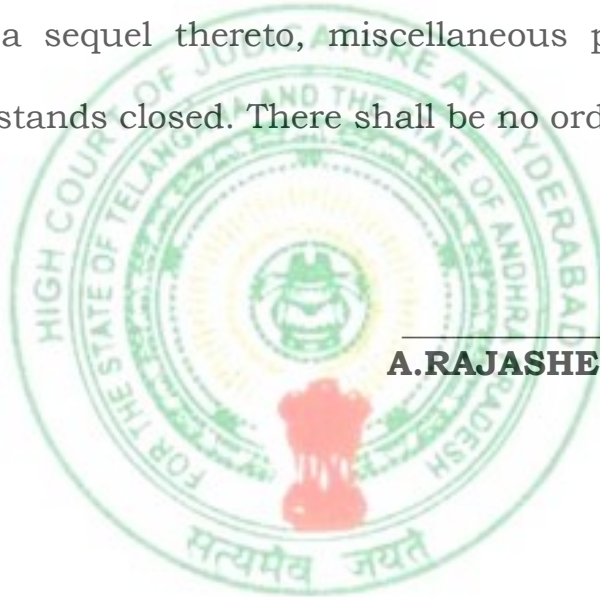
25. Every debt on coming into force of the Act stands *ipso facto* discharged. Therefore, the Court inherently lacks jurisdiction to entertain a suit or to execute a decree already passed which is null and void. The Court gets jurisdiction only when it is established that the borrower is not the debtor within the meaning of the Act. When once the plea is raised and decided that the defendant is not the debtor within the meaning of the Act, the defendant cannot raise the objection once again in the execution proceedings. If a decree is passed *ex parte* without there being any opportunity to the defendant to place the relevant material to rebut the evidence of the plaintiff, he is not entitled to raise the plea at

any stage of subsequent proceedings and in such a case, the Court is bound to adjudicate on the issue whether the defendant is not entitled for the benefits of the Act and whether the plaintiff is entitled for a decree as prayed for. In a suit filed before the Act came into force, the decree granted subsequent to the Act shall not be entertained by the executing Court unless it is established by the creditor plaintiff that the defendant was not a debtor within the meaning of the Act.”

In view of the principle laid down in the above judgment, the impugned order is set aside and the Court below is directed to consider E.A.No.670 of 2009 in accordance with law, after issuing notice to parties and dispose of the same within a period of two months from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is allowed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

02.12.2016
kvs



A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P No.924 OF 2010



Date: 02.12.2016

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