

APPELLATE CIVIL

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Patanjali Sastri.*

1939,
March 30.

KUMARASWAMI PILLAI AND ANOTHER (DEFENDANTS
1 AND 2), PETITIONERS,

v.

THIRUVENGADATHA AYYANGAR (PLAINTIFF),
RESPONDENT.*

Madras Agriculturists Relief Act (IV of 1938), sec. 20, proviso—Period of sixty days provided by, for application under sec. 19—Expiry of, during closing for summer vacation of Court in which application had to be made—Application filed on re-opening day of Court but after expiry of sixty days allowed by proviso to sec. 20—If in time—Sec. 7 of Madras Act IV of 1938—Sec. 4 of Indian Limitation Act (IX of 1908)—Sec. 11 of Madras General Clauses Act (I of 1867)—Applicability and effect of.

The period of sixty days allowed by the proviso to section 20 of the Madras Agriculturists Relief Act, 1938, for making an application under section 19 of the Act for the scaling down of the debt expired while the Court to which the application had to be made was closed for the summer vacation with the result that the judgment-debtors were not in a position to file the application within the period allowed by the proviso to section 20. They filed it on the day that Court re-opened, that is, seventy days after the stay order had been passed.

Held that the application was filed in time.

Chenchuramana v. Arunachalam(1) explained and distinguished.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the order of the Court of the Subordinate Judge of Tiruvarur, dated 12th August

* Civil Revision Petition No. 1450 of 1938.
(1) (1935) I.L.R. 58 Mad. 794 (F.B.).

1938, in Interlocutory Application No. 78 of 1938 and passed in Small Cause Suit No. 600 of 1935.

KUMARASWAMI
v.
THIRUVEN-
GADATHA.

R. Krishnaswami Ayyangar for petitioners.

G. Jagadisa Ayyar for *R. Narasimhachari* for respondent.

JUDGMENT.

LEACH C.J.—A decree having been passed against the petitioners, the decree-holder applied for execution to the Court of the District Munsif, Tiruvarur. The petitioners then applied for a stay under the provisions of section 20 of the Madras Agriculturists Relief Act, 1938, in order that they might prefer an application under section 19 to the Court of the Subordinate Judge, Tiruvarur, for the scaling down of the debt. On 11th April 1938 the District Munsif granted a stay. Section 20 contains the following proviso :

LEACH C.J.

“ Provided that where within sixty days after the application for stay has been granted the judgment-debtor does not apply to the Court which passed the decree for relief under section 19 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in this Act to the contrary.”

The petitioners had therefore sixty days in which to apply to the Subordinate Judge. The Court of the Subordinate Judge closed for the summer vacation in the third week of April 1938 and did not re-open until 20th June 1938. As the result of the Court being closed the petitioners were not in a position to file the application for a period of eight weeks, but filed it on the re-opening day, that is, seventy days after the stay order had been passed. The petitioners, however, contended that they were within time and relied on section 4 of the Indian Limitation Act. The Subordinate Judge refused to accept this argument

KUMARASWAMI
v.
THIRUVEN-
GADATHA.
—
LEACH C.J.

and formed the opinion that the filing of the application within sixty days of the stay order was a condition precedent to their right to apply to the Court for relief. He considered that the decision in *Chenchuramana v. Arunachalam*(1) applied. On this reasoning the petition was dismissed. The petitioners have applied to this Court for revision of the Subordinate Judge's order.

The scheme of the Madras Agriculturists Relief Act is to provide for the scaling down of debts due by agriculturists. Section 7 of the Act states that, notwithstanding any law, custom, contract or decree of Court to the contrary, all debts payable by an agriculturist at the commencement of the Act shall be scaled down in accordance with the provisions of Chapter II. Section 19 provides for the scaling down of debts due under decrees passed before the commencement of the Act :

“ Where a Court has passed a decree for the repayment of a debt it shall on the application of a judgment-debtor who is an agriculturist apply the provisions of the Act notwithstanding anything contained in the Code of Civil Procedure, and amend the decree in accordance with the Act or enter up satisfaction as the case may be.”

By virtue of section 20 a Court is bound to stay execution proceedings against an agriculturist on application made by him. I have already referred to the proviso to this section, which gives him sixty days in which to make an application to the trial Court for scaling down the debt. If the proviso to section 20 can be read as fixing a period of limitation there can be no doubt that the application here was filed in time.

(1) 1925) I.L.R. 58 Mad, 794 (F.B.).

Section 29 of the Limitation Act applies *inter alia* section 4 to a special or local law unless such law expressly excludes section 4. Section 4 states that

“where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted preferred or made on the day that the Court re-opens.”

For the petitioners it is said that the proviso to section 20 fixes the period of limitation for an application by an agriculturist judgment-debtor when a decree is being executed against him. It is a special provision inserted in the Act to meet the case where an agriculturist against whom a decree has been passed has not taken the steps contemplated by section 19 and he finds that the decree-holder is taking active steps against him. I consider that this is the correct interpretation of section 20. The period of limitation fixed by section 20 has no application in any other circumstance. Reading section 19 in conjunction with section 7 it would appear that the intention of the Legislature was to fix no period of limitation in ordinary circumstances. So long as a debt is enforceable a debtor has a right to apply at any time for the scaling down of the debt, except in the circumstances contemplated by section 20. In such circumstances there is a period of limitation and it is sixty days from the date on which the application for a stay is granted. If the debtor has not previously made an application under section 19, the decree-holder is at liberty to apply for execution of the decree as it stands, but the judgment-debtor is still allowed to apply for relief under the Act, provided he applies within the time fixed.

The decision in *Chenchuramana v. Arunachalam*(1) has no application here. In that case the Court held

KUMARASWAMI
v.
THIRUVEN-
GADATHA.
—
LEACH C.J.

KUMARA SWAMI that the period of three months fixed in section 9 (1) (c) of the Provincial Insolvency Act is not a period of limitation, but is a condition precedent to an adjudication. In other words, unless an application for adjudication is filed within three months of the act of insolvency complained of, a petition does not lie. Section 9 of the Provincial Insolvency Act bears no analogy to section 20 of the Madras Agriculturists Relief Act, and the conclusion arrived at by the Subordinate Judge was based on a false premise. The application was in time and the petitioners are entitled to the relief they seek. My learned brother agrees with me and the case will therefore be remitted to the Subordinate Judge to be dealt with in the light of this judgment. The petitioners are entitled to their costs.

PATANJALI
SASTRI J.

PATANJALI SASTRI J.—I concur in the judgment just delivered by my Lord, the CHIEF JUSTICE, and would only add that even if the period of sixty days referred to in section 20 of the Madras Agriculturists Relief Act, 1938, be not strictly regarded as a period of limitation for an application under section 19, the result would be the same. For, apart from section 20, there is no time-limit for such an application. It is clear from section 7 that the debtor is entitled to the benefit of the scaling down of his debt in accordance with the Act so long as the debt is outstanding and enforceable. His right to apply under section 19 must therefore be taken to accrue *de die in diem*. His application would thus be a proceeding to which the Limitation Act does not apply and therefore the provisions of section 11 of the Madras General Clauses Act would be applicable. Under this section, the petitioners were clearly entitled to make their application on the re-opening day of the lower Court after the summer holidays.