

THE KERALA DEBT RELIEF ACT, 1977

(ACT 17 OF 1977)

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ACT 17 OF 1977

THE KERALA DEBT RELIEF ACT, 1977*

An Act to provide relief from indebtedness to certain persons in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide relief from indebtedness to certain persons in the state of Kerala;

BE it enacted in the Twenty-eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Debt Relief Act, 1977.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 13th day of January, 1977.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) “appellate authority” means an appellate authority appointed under section 6;

(2) “creditor” shall include the heirs, legal representatives and assigns of the creditor;

(3) “debt” means any liability in cash or kind, whether secured or unsecured, due from or incurred by a debtor on or before the date of commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, and subsisting on that date but does not include—

(a) any sum payable to—

(i) the Government of Kerala or the Government of India or the Government of any other State or Union Territory in India or any local authority; or

(ii) the Reserve Bank of India or the State Bank of India or any subsidiary bank with the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 or the Travancore credit Bank (in liquidation) constituted under the Travancore Credit Bank Act, IV of 1113; ¹[or any Regional Rural Bank established under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976).]

(iii) a corporation owned or controlled by the Government of Kerala or the Government of any other State or Union Territory in India or the Government of India, or a Government company as defined in the Companies Act, 1956; or

(iv) the Tea Board constituted under the Tea Act, 1953, or the Coffee Board constituted under the Coffee Act, 1942, or the Rubber Board constituted under the Rubber

* Received the assent of the President on the 12th day of August, 1977 and published in the Kerala Gazette No. 474 dated 12th August, 1977.

1 Inserted by Act 28 of 1979 (w.e.f. 13-01-1977).

Act, 1947, or the Cardamom Board constituted under the Cardamom Act, 1965; or

²[(iv-a) the Kerala State Housing Board constituted under the Kerala State Housing Board Act, 1971 (19 of 1971);]

(v) any co-operative society, including a Land Mortgage Bank, registered or deemed to be registered under the Co-operative Societies Act for the time being in force; or

(b) any sum payable to any corresponding new bank specified in column (2) of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; or

(c) any liability arising out of a breach of trust or any tortious liability; or

(d) any liability in respect of maintenance, whether under a decree of court or otherwise; or

(e) any liability in respect of wages or remuneration due as salary or otherwise for services rendered; or

(f) any debt which represents the price of goods purchased; or

(g) any liability for which a charge is provided under sub-clause (b) of clause (4) of section 55 of the Transfer of Property Act, 1882; or

(h) any rent payable in respect of any building; or

³[xxxx]

(j) any debt or debts due to a widow at the commencement of this Act, provided that the value of the property owned by her at such commencement, including the principal amount of the debt or debts so due, does not exceed ten thousand rupees.

Explanation.—For the purposes of this sub-clause, the house in which the widow lives, her wearing apparel or similar personal belongings shall not be regarded as property; or

(k) any liability incurred or arising under a chitty or kuri which is registered or licenced under the Travancore Chitties Act, 1120, or the Cochin Kuries Act, VII of 1107, or the Kerala Chitties Act, 1975, or conducted under any chit fund scheme, and which has not terminated two years before the commencement of his Act:

Provided that nothing in this sub-clause shall apply to the liability of a foreman incurred or arising under any such chitty or kuri where the foreman is a co-operative society registered or deemed to be registered under the Co-operative Societies Act for the time being in force.

Explanation.—For the purposes of this sub-clause, a chitty or kuri shall be deemed to have terminated—

² Inserted by Act 28 of 1979 (w.e.f. 13-01-1977).

³ Omitted by Act 28 of 1979 (w.e.f. 13-01-1977).

(i) when the period fixed in the variola or vaimbu or kuripattika or the period as altered by a subsequent special resolution for the duration of the chitty or kuri, has expired; or

(ii) when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind or the subscriber or subscribers selected therefore fails or fail to conduct the chitty or kuri or to make suitable arrangements for the further conduct of the chitty or kuri; or

(iii) on the failure of the foreman to pay the prize amount to the subscriber within one month from the due date thereof; or

(iv) on the failure of the foreman or foremen to conduct the chitty or kuri at any instalment or on any other date before the next instalment as may be agreed upon in writing by a majority of the non-prized subscribers:

Provided that if there are more foremen than one and one or more of such foremen is or are living and is or are not disqualified to conduct the chitty or kuri, the chitty or kuri shall not be deemed to have terminated if there is provision in the variola or vaimbu or kuripattika enabling the remaining foreman or foremen to conduct the chitty or kuri or if the non prized subscribers agree by a special resolution to the conduct of the chitty or kuri by the remaining foreman or foremen; or

(l) any debt due to any banking company as defined in the Banking Regulation Act, 1949; or

(m) any amount due on account of any goods to a financier who financed the purchase of such goods and whose principal business is to finance the purchase of goods; or

(n) any sum advanced for the purposes of agriculture by any institution receiving financial assistance from the Agricultural Refinance and Development Corporation established under the Agricultural Refinance and Development Corporation Act, 1963.

Explanation I.—For the purposes of this clause,—

(i) the liability of a surety who is a debtor shall be deemed to be a debt within the meaning of this Act, notwithstanding that the principal debtor is not a debtor for the purposes of this Act;

(ii) where a debt has been split up in any manner whatsoever, whether before or after the commencement of this Act, and fresh documents have been executed in respect of different portions of the debt, each such different portion shall be a debt.

Explanation II.—Where the debt is a liability in kind, the value of the commodity shall be commuted at the market rate prevailing on the date on which the debt was incurred;

(4) “debtor” means any person whose annual income does not exceed three thousand rupees, from whom any debt is due, but does not include—

(i) any person from whom debt or debts exceeding three thousand rupees (excluding interest) is or are due:

(ii) a firm registered under the Indian Partnership Act, 1932, or a company as defined in the Companies Act, 1956, or a corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian Law.

Explanation.—For the purposes of this clause, the term “person” shall include a family;

(5) “family” means a Hindu undivided family or a Marumakkathayam tarwad or tavazhi or an Aliyasanthana kutumba or a kavaru or a Nambudiri illom;

(6) “interest” means any amount or other things paid or payable in excess of the principal amount borrowed or pecuniary obligation incurred, or, where anything has been borrowed in kind, in excess of what has been so borrowed, by whatsoever name such amount or thing may be called, and whether the same is paid payable entirely in cash or entirely in kind or partly in cash and partly in kind and whether the same is expressly mentioned or not in the document or contract, if any;

(7) “pay”, with its grammatical variations, includes deliver;

(8) “prescribed” means prescribed by rules made under this Act;

(9) “principal amount” means the amount originally advanced together with such sum, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as principal and notwithstanding that the debt has been renewed or included in a fresh document, whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest, and whether in favour of the same creditor or his heirs, legal representatives or assigns or of any other person acting on his behalf or in his interest;

(10) “Tribunal” means a Tribunal constituted under section 5.

3. *Discharge of debt.*—Notwithstanding anything contained in any other law for the time being in force, or in any contract or other instrument having force by virtue of any such law, or in any decree or order of court, with effect on and from the commencement of this Act-

(a) every debt and the interest thereon payable by a debtor to a creditor shall be deemed to be wholly discharged;

(b) no civil court shall entertain any suit or other proceeding against debtor for the recovery of any debt or part of a debt or any interest thereon;

(c) all suits and other proceedings (including appeals, revision petitions, applications for review, proceedings for attachment and execution proceedings) pending at such commencement against any debtor for the recovery of any debt shall abate:

Provided that nothing in this clauses shall apply to—

(i) the sale of any movable property conducted and concluded before the commencement of this Act;

(ii) the sale of any immovable property confirmed before such commencement:

Provided further that where a suit or other proceeding is instituted jointly against a debtor and any other person, nothing in this section shall apply to the maintainability of such suit or other proceeding in so far as it relates to such other person;

(d) every debtor undergoing detention in a civil prison in execution of any decree for money passed against him by a civil court in respect of any debt shall be released;

(e) every movable property pledged by a debtor before the commencement of this Act shall stand released in favour of such debtor and the creditor shall be bound to deliver possession of such property to the debtor;

(f) every mortgage executed by a debtor in favour of creditor shall stand redeemed and the creditor shall be bound to deliver possession of the mortgaged property to the debtor.

Explanation I.—In this section, the term ‘suit’ shall not include a claim to a set off made in a suit instituted by a debtor.

Explanation II.—For the purposes of this section, a suit in which a decree in respect of a debt is prayed for shall be deemed to be a suit for the recovery of the debt notwithstanding that other reliefs are prayed for in such suit, and a decree shall be deemed to be decree in respect of a debt notwithstanding that other reliefs are granted in such decree:

Provided that a suit or decree for possession of land shall not be deemed to be a suit for recovery of, or a decree in respect of, a debt by reason merely of mense profits being also prayed for or included in such suit or decree.

Explanation III.—Nothing in this section shall debar a decree-holder from enforcing reliefs other than in respect of a debt, where the decree-contains independent reliefs.

Explanation IV.—Nothing in this section shall be construed as entitling any debtor to the refund of any part of any debt or interest thereon already repaid by him or recovered from him before the commencement of this Act.

4. *Reconveyance of property.*—(1) Any debtor entitled to the delivery of possession of any property under clause (e) or clause (f) of section 3 or any other person on behalf of such debtor may apply to the Tribunal within three months from the commencement of this Act or within such further period as may be notified by the Government in this behalf, for such delivery of possession.

(2) On receipt of an application under sub-section (1), the Tribunal shall make necessary inquiries in respect of such application and, if it is satisfied that the applicant or the person on whose behalf the application has been made is entitled to the delivery of possession of the property mentioned in the application, it shall, by order, direct the person in possession of such property to deliver possession thereof to the applicant or to the person on whose behalf the application has been made, within a period of thirty days from the date of service of the order:

Provided that no order under this sub-section shall be made unless the person in possession of the property has been given a reasonable opportunity of being heard.

(3) Every order made under sub-section (2) shall be served on the person for whom it is intended,—

(a) by delivering or tendering it to that person; or

(b) if it cannot be delivered or tendered to that person, by delivering or tendering it to any officer of such person or any adult member of the family of such person or by affixing a copy thereof on the outer door or some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or

(c) failing service by any of these means, by registered post.

(4) Any person aggrieved by an order of the Tribunal under sub-section (2) may, within a period of thirty days from the date of service of the order, prefer an appeal to the appellate authority, and the decision of the appellate authority on such appeal shall be final and shall not be called in question in any court of law:

Provided that before taking a decision on the appeal, the appellate authority shall give the opposite party an opportunity of being heard.

(5) Where an order under sub-section (2) has not been complied with, and—

(a) an appeal has not been preferred within the time allowed for such appeal;

or

(b) an appeal having been preferred has been dismissed, the Tribunal shall cause the property to which the order relates to be delivered to the debtor by putting him in possession of that property.

5. *Constitution of Tribunals.*—(1) The Government may, by notification in the Gazette, constitute for such area as may be specified therein a Tribunal for the purpose of performing the functions of a Tribunal under this Act.

(2) A Tribunal shall consist of a sole member who shall be an officer not below the rank of Tahsildar appointed by the Government.

6. *Appointment of appellate authorities.*—(1) The Government may, by notification in the Gazette, appoint for such area as may be specified therein an appellate authority for the purpose of this Act.

(2) An appellate authority shall be an officer not below the rank of Revenue Divisional Officer.

7. *Power of Tribunal and appellate authority.*—(1) Every Tribunal and every appellate authority shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

- on oath;
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) any other matter which may be prescribed.

(2) The decisions of the Tribunals and the appellate authorities under this Act shall have the force of a decree of a civil court.

8. *Legal practitioners not to appear before Tribunals and appellate authorities.*—Notwithstanding anything contained in any law for the time being in force, no legal practitioner shall be allowed to appear in any proceedings before a Tribunal or an appellate authority under this Act.

9. *Burden of proof.*—Notwithstanding anything contained in any law for the time being in force, in any suit or other proceeding, the burden of proving that a debtor is not entitled to protection under the provisions of this Act shall be on the creditor.

10. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to decide or deal with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with, or to be determined by, the Tribunal or the appellate authority.

11. *Act to over-ride other laws, contracts, etc.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), or in any other law for the time being in force, or in any custom, usage or contract, or in any decree or order of a court or other authority.

12. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. *Repeal and saving.*—(1) The Kerala Debtors (Temporary Relief) Act, 1975 (30 of 1975) and the Kerala Debt Relief Ordinance, 1977 (9 of 1977) are hereby repealed.

(2) Notwithstanding the repeal of the Kerala Debt Relief Ordinance, 1977 (9 of 1977), anything done or deemed to have been done or any action taken or deemed to have been taken under that Ordinance shall be deemed to have been done or taken under this Act.