



The Kerala Agriculturists Debt Relief Act, 1970

Act 11 of 1970

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THE KERALA AGRICULTURISTS' DEBT RELIEF ACT, 1970 [\[1\]](#)

(ACT 11 OF 1970)

An Act to give relief to indebted agriculturists in the State of Kerala

Preamble.- WHEREAS it is considered necessary to provide for the relief of indebted agriculturists in the State of Kerala;

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

I. Short title , extent and commencement.- (1) This Act may be called The Kerala Agriculturists' Debt Relief Act, 1970.

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

(3) It shall come into force at once.

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

(1) "agriculturist" means a person who has an interest, other than as a simple mortgagee, in any agricultural or horticultural land in the State of Kerala, and includes-

(a) an agricultural labourer;

(b) a kudikidappukaran; and

(c) a tenant.

But does not include-\

(i) any person assessed to sales tax on a turnover which in the aggregate is not less than forty thousand rupees in any two years within the three years immediately preceding the commencement of this Act, under the Kerala General Sales Tax Act, 1963 or the Central Sales Tax Act, 1956, or the law of any other State relating to sales tax;

(ii) any person assessed to income-tax under the Income-tax Act, 1961, in any two years within the three years immediately preceding the commencement of this Act and whose total income for the purposes of the said Act exceeded eight thousand rupees per annum;

(iii) any person assessed to agricultural income tax in any two years within the three years immediately preceding the commencement of this Act, under the Agricultural Income tax Act, 1950, or under any other law relating to agricultural income-tax, on an income exceeding eight thousand rupees per annum.

Explanation-Notwithstanding anything contained in the Indian Evidence Act, 1872, where a creditor proves that his debtor is a person assessed to the tax mentioned in sub-clause (i) or sub-clause (ii) or sub-clause (iii) for the period referred to in that sub-clause, the burden of proving that such debtor does not fall under the category specified in that sub-clause shall lie on the debtor;

(iv) 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 I.-For the purposes of this clause, "agricultural labourer" shall mean a person whose principal means of livelihood is the income he gets as wages in connection with the agricultural or horticultural operations he performs.

Explanation II.- For the purposes of this clause, the expression "person" shall include a family, provided that sub-clauses (i) to (iii), in their application to a family consisting of not less than five members, shall have effect as if for the turnover, total income or income specified therein, twice such turnover, total income or income, as the case may be, were substituted.

Explanation III.-Where a family is an agriculturist every coparcener or member of the family shall be deemed to be an agriculturist, provided that he does not fall under any of the categories specified in sub-clauses (i) to (iii);

(2) "banking company" means a banking company as defined in the Banking Regulations Act, 1949;

(3) "court" means any civil court having jurisdiction to entertain a suit for the recovery of a debt;

(4) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, 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 or any local authority; or

(ii) the Reserve Bank of India or the State Bank of India or any subsidiary bank within 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:

[Provided that the right of the bank to recover the sum did not arise by reason of

(A) any assignment made; or

(B) any transfer effected by operation of law, subsequent to the 1st day of July, 1957; or [\[2\]](#)

(iii) a corporation owned or controlled by the Government of Kerala; or the Government of any other State 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 Act, 1947, or the Cardamom Board constituted under the Cardamom Act, 1965; or

(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 bank specified in column (2) of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, on account of any transaction entered into after the 18th day of July, 1969, other than by way of renewal; 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 for the purpose of trade; 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

(i) any rent or michavaram payable in respect of any land:

Provided that in the case of arrears of rent or michavaram accrued due on or after the 1st day of May, 1968, and before the commencement of this Act, any agriculturist debtor shall be entitled to pay such arrears in five equal half-yearly instalments as provided in sub-section (3) of section 4, but the provisions of section 5 shall not apply to such arrears.

(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 licensed under the Travancore Chitties Act, 1120, or the Cochin Kuries Act, VII, of 1107, or conducted under any chit fund scheme, and which has not terminated one year before the commencement of this 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-

(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 the 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 or foremen 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

(1) any debt exceeding three thousand rupees borrowed under a single transaction

and due before the commencement of this Act to any banking company:

Provided that in the case of any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company, any agriculturist debtor shall be entitled to repay such debt in eight equal half yearly instalments as provided in sub-section (3) of section 4, but the provisions of section 5 shall not apply to such debt; 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 an institution receiving financial assistance from the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963

Explanation I.-For the purposes of this clause.-

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

(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;

(5) "debtor", "creditor", "melpattomdar" "mortgagee" and "mortgagor" shall include the heirs, legal representatives and assigns of the debtor, creditor, melpattomdar, mortgagee, and mortgagor respectively:

Provided that in the case of a debtor, such heirs, legal representatives or assigns

are also agriculturists;

(6) "family" means a Hindu undivided family or a Marumakkathayam tarward or thavazhi or an Aliyasanthana kudumba or kavaru or a Namboodiri illom;

(7) "kudikidappukaran" shall have the same meaning as in clause (25) of section 2 of the Kerala Land Reforms Act, 1963;

(8) "melpattom" means any transaction relating only to the usufructs of trees for a specific period in recoupment of an advance made or promised;

(9) "pay" with its grammatical variations includes deliver;

(10) "principal" 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;

(11) "tenant" shall have the same meaning as in clause (57) of section 2 of the Kerala Land Reforms Act, 1963.

3. Bar of suits and applications.- (1) No suit for recovery of a debt shall be instituted and no application for execution of a decree in respect of a debt shall be made, against any agriculturist in any court before the expiry of six months from the commencement of this Act; and all such suits and applications instituted or made against any agriculturist before such commencement and pending at such commencement shall

stand stayed for the said period of six months.

Explanation I.- Where a debt is payable by an agriculturist jointly, or jointly and severally, with a non-agriculturist, no suit or application of the nature mentioned in this sub-section shall be instituted, made or continued either against the non-agriculturist or against the agriculturist before the expiry of the period mentioned in this sub-section.

Explanation II.-For the purposes of this Act, 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 relief are prayed for in such suit, and a decree shall be deemed to be a 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 mesne 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.-Where the decree passed is a conditional decree, and the conditions imposed relate to the discharge of a debt, breach of any such condition shall not be deemed to have taken place so long as the judgment-debtor acts in accordance with the provisions of this Act.

(2) Where a creditor institutes a suit for the recovery of a debt after the agriculturist has paid or deposited the sums and instalments specified in section 4, and during the period when he is so entitled to pay, the court shall in decreeing the suit direct the plaintiff to bear his own costs and to pay the costs of the defendant who is an agriculturist, except in cases where the claim would have been barred by limitation had no such suit been instituted or where a debt is jointly due from an agriculturist and a non-agriculturist.

4. Payment of debt in instalments.- (1) Notwithstanding anything contained in any law or contract or in any decree or order of court, but subject to the provisions of sub-section(5), an agriculturist may discharge his debts in the manner specified in sub-sections (2) and (3).\

(2) If any debt is repaid in seventeen equal half-yearly instalments together with interest at the rate specified in section 5 on the principal outstanding at the time of each payment, the whole debt shall be deemed to be discharged:

Provided that -

(a) in the case of debts due to a banking company the number of instalments in which the debt shall be repaid shall be twelve where the debt does not exceed three thousand rupees and eight where it exceeds three thousand rupees;

(b) in the case of arrears of rent or michavaram accrued due on or after the 1st day of May, 1968 and before the commencement of this Act, the number of instalments in which such arrears shall be repaid shall be five.

(3) The first instalment of any debt payable under sub-section (2) shall be paid before the expiry of a period of six months from the commencement of this Act, and each of the remaining instalments shall be paid on or before the expiry of a period of six months from the last day on which the previous instalment was due.

(4) Notwithstanding anything contained in sub-section (2), except in the case of the last instalment, the amount paid at each instalment shall not be less than five rupees.

(5) Where any instalment of a debt is not paid on the due date; the creditor shall be entitled to recover the same as provided in section 10, but the debtor shall not forfeit the benefits conferred by this section:

Provided that if default is made in payment of three consecutive instalments, the debtor shall not be entitled to the benefits of the provisions of sub-sections (2) and (3), and the whole debt together with such interest as may have accrued thereon less any amount which has already been paid shall be payable forthwith.

(6) The provisions of this section shall not apply to mortgages to which section 11 applies, except as provided in sub-section (8) of that section.

5. Interest payable on debts.-(1) Notwithstanding anything contained in any law or contract or in any decree or order of court, for determining the amount of a debt (other than a debt due to a banking company) for the purpose of payment under this Act..-

(a) interest shall be calculated at the rate applicable to the debt under the law, custom or contract or the decree or order of court under which it arises or at six per cent per annum simple interest, whichever is less, and credit shall be given for all sums paid or credited

towards interest, and only such amount as is found outstanding, if any, as interest thus calculated shall be deemed payable together with the principal or such portion of it as is due:

Provided that not more than one-half of the principal shall be deemed payable or to have been payable towards interest which accrued due till the commencement of this Act;

(b) if the amount paid or credited towards interest exceeds the amount payable under clause (a), such excess shall be credited towards the principal and the balance, if any, and future interest alone shall be recoverable.

(2) Notwithstanding anything contained in any law or contract or in any decree or order of court, for determining the amount due to a banking company for the purpose of payment under this Act, interest shall be calculated at the rate applicable to the debt under the law or contract or the decree or order of court under which it arises or at seven per cent per annum simple interest, whichever is less, with effect on and from the commencement of this Act, but nothing contained in this sub-section shall be deemed to require a re-appropriation of interest already paid and credited before such commencement.

(3) Nothing contained in this section shall be deemed to require the creditor to refund any sum which has been paid to or recovered by him.

6. Application of payment towards debt and limit of time for execution of decree.-(1)

When any amount has been paid or recovered towards any debt referred to in section 4 the court shall apply it in the order of costs due under the decree (where the debt has ripened into a decree), then interest as re-calculated under section 5 and next towards principal.

(2) An order passed in pursuance of the provisions of section 4 shall be deemed to be a subsequent order of court within the meaning of article 136 of the Schedule to the Limitation Act, 1963.

7. Power of court to decide doubts and disputes regarding amount payable under section 4.-(1)

Any debtor who under section 4 is entitled to pay his debts in instalments or the creditor of any such debtor may apply to the court for an order fixing the amount payable under section 4.

(2) In an application under sub-section (1), the applicant shall state the correct amount which according to him is payable.

(3) If the debt has ripened into a decree, the application shall be made to the court which passed the decree or to the court to which the decree has been sent for execution.

(4)) If the debt has not ripened into a decree, the application shall be made to the court competent to pass a decree for the recovery of the debt.

(5) An application made by a debtor under sub-section (1) shall be dismissed if he fails to deposit in the court to which the application is made, the amount of any instalment or instalments which according to him is payable by him under the provisions of this Act and has accrued due:

Provided that the court may extend the time for making the deposit, for any just and sufficient cause.

(6) Where an application is dismissed under sub-section (5), no fresh application for the same purpose shall be entertained.

(7) A proceeding under this section shall, for purposes of enquiry and disposal, be deemed to be a proceeding to which section 141 of the Code of Civil Procedure, 1908, applies.

(8) The court shall, by order, determine the amount which the debtor has to pay under the provisions of section 4 and the time within which such payment shall be made, and any payment made in accordance with such order shall be deemed to be a valid payment for the purposes of section 4.

(9) In an application filed by the creditor under this section in respect of a debt has not ripened into a decree, he shall be liable to pay court-fees on the difference between the amount claimed by him and that admitted by the debtor.

(10) The court-fees payable under sub-section (9) shall be paid within a period of two weeks from the date on which the counter-statement is filed by the debtor or within such further time as may be granted by the court.

(11) In an application filed by the debtor under this section in respect of a debt which has not ripened into a decree, the creditor shall be liable to pay court-fees on the difference between the amount admitted by the debtor and that claimed by the creditor.

(12) The court-fees payable by the creditor under sub-section (11) shall be paid along with the counter-statement filed by him or within such further time as may be granted by the court.

(13) The court-fees payable under sub-section (9) or sub-section (11) shall be at the rates under the Kerala Court Fees and Suits Valuation Act, 1959, for the suits for recovery of money.

(14) If the creditor fails to pay court fee under sub-section (9) or sub-section (11), his application or counter-statement, as the case may be, shall be rejected.

(15) The order passed by the court on an application filed under this section shall have the force of a decree of a civil court of competent jurisdiction and shall be executable as such.

8. Amendment of certain decrees.-(1)Where, before the commencement of this Act, a court has passed a decree for the repayment of a debt , it shall, on the application of any judgment-debtor who is an agriculturist or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be.

(2) The provisions of section (1) shall also apply to cases where, after the commencement of this Act, a court has passed a decree for the repayment of any debt.

9. Right to prove real nature of transaction.-(1) Notwithstanding anything in The Indian Evidence Act, 1872, or in any other law for the time-being in force, any agriculturist may plead, adduce evidence and prove that any transaction, whether reduced to writing or not, and to which he is a party, is really a transaction in respect of a debt or that the amount mentioned therein is not the actual amount of the debt.

(2) Where under sub-section (1) the court holds that such transaction is in respect of a debt or fixes the actual amount, the court may pass an order in conformity with the other provisions of this Act.

(3) Notwithstanding anything in The Indian Evidence Act, 1872, or in any other law for the time being in force, in the case of any transaction entered into on or after the 14th day of July, 1958, and purporting to be a sale of immovable property or a lease of usufructs, any agriculturist who is a party to the transaction may plead, adduce evidence and prove that the transaction is really in respect of a debt, and thereupon the amount advanced shall be deemed to be the principal, and the income from the property or the value of the usufructs, as the case may be, shall be appropriated towards interest on the principal calculated at the rate specified in section 5 and the balance, if any, towards the principal:

Provided that this sub-section shall not affects the rights of **bona fide** alienees of the creditor deriving rights before the 25th day of July, 1968.

(4) The amount, if any, outstanding after the appropriation under sub-section (3), together with the value of improvements, if any, effected by the creditor, shall be paid in accordance with the provisions of sub-sections (2), (4) and (7) of section 11 as if the transaction were a mortgage to which that section applies and the rights of the debtor and the creditor shall be governed, as far as may be, by the provisions of the said sub-sections.

(5) Notwithstanding anything in The Indian Evidence Act, 1872, or in any other law for the time-being in force, a person though he is described as an agent or servant in a document evidencing the contract for the cultivation of any nilam, may, for the purposes of this Act, plead, adduce evidence and prove that he is a tenant.

(6) Any person entitled under sub-section (3) to plead, adduce evidence and prove that a transaction is a transaction in respect of a debt may apply to the court for permitting him

to do so and court-fees shall be paid in respect of every such application as if it were a suit for the same reliefs.

10. Decrees and orders against debtor.-(1) Where in respect of a decree for debt passed before the commencement of this Act, a debtor fails to make any one of the payment specified in sub-sections (2) and (3) of section 4 or in the order on the application made under section 7, the decree-holder shall be entitled to execute the decree in respect of the instalment which is in arrear.

(2) Where in any suit for the recovery of a debt pending at the commencement of this Act, the debtor claims to be an agriculturist, the court, on being satisfied that the debtor is an agriculturist, shall pass a decree for the immediate payment of such instalment or instalments as would have become payable under the provisions of sub-sections (2) and (3) of section 4 and for the payment of the balance in further instalments as specified in the said sub-sections.

(3) In any suit filed after the expiry of six months from the commencement of this Act for the recovery of a debt due from an agriculturist, the court in decreeing the suit shall provide for the immediate payment of such instalment or instalments as would have become due under the provisions of sub-sections (2) and (3) of section 4 and for the payment of the balance in further instalments as specified in the said sub-sections.

(4) Where in any suit for the recovery of a debt or in any application for the execution of a decree in respect of a debt, the debt is payable by an agriculturist jointly with a non-agriculturist, the court shall pass a decree or make an order for the payment of the debt found due from such agriculturist as provided in sub-sections (2) and (3) of section 4 and make such provision in the decree or order against the non-agriculturist as the circumstances of the case may warrant.

11. Special provision in respect of certain mortgages by agriculturists.- (1) This section applies to any subsisting mortgage executed by an agriculturist at any time before the commencement of this Act and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof.

Explanation .-A mortgagee shall be deemed to be in possession of the property mortgaged to him or any portion thereof, notwithstanding that he has leased it to any person other than the mortgagor.

(2) Notwithstanding that the period of the mortgage has not expired, a mortgagor who is an agriculturist shall, on application, be entitled, subject to the provisions of sub-sections (4) and (6), to recover the mortgaged property on depositing in the court-

(a) one-third of the mortgage amount;

(b) where there is stipulation for payment of interest to the mortgagee in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the

usufructs from the mortgaged property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such, and there has been arrears of such interest, such arrears calculated at the rate specified in section 5; and

(c) the value of improvements, if any, effected in the mortgaged property by the mortgagee subsequent to the date of the mortgage, as determined by the court.

(3) Along with the application under sub-section (2), the mortgagor shall pay court-fees as for a suit for redemption on the balance of the mortgage amount.

(4) Where the application and deposit as required by the sub-section (2) have been made and court-fees have been paid as required by sub-section (3), the court shall put the mortgagor in possession of the property and pass an order allowing the mortgagee to recover by sale of the mortgaged property the balance of the mortgage amount in sixteen half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six percent per annum, the first instalment being payable within a period of six months from the date on which the mortgagor recovered possession of the property mortgaged, and on payment of the last instalment, the mortgage shall be deemed to be discharged.

(5) An order passed under sub-section (4) shall be deemed to be a decree.

(6) Where the property mortgaged has been leased out by the mortgagee, the lease shall, except in the case of tenants entitled to fixity of tenure under any law for the time being in force, stand terminated when the mortgagor recovers possession of the mortgaged property, and thereupon any value of improvements due to the lessee shall be paid to him out of the amount deposited by the mortgagor under sub-section (2) towards the value of improvements.

(7) The charge for the balance amount due to the mortgagee shall have priority over all other charges created after the date of the mortgage

(8) Nothing contained in sub-sections (2) to (7) shall apply to mortgages where the property mortgaged has been leased back to the mortgagor by the mortgagee, and to such mortgages, the following provisions shall apply:-

(a) the mortgage shall be deemed to be a simple mortgage from the date of the lease back and the provisions of this Act shall apply to the debt covered by the mortgage;

(b) the interest payable on the mortgage amount after the commencement of this Act shall be at six percent per annum.

(9) Where the equity of redemption over the mortgaged property has been sold in execution of a decree for a claim arising under the mortgage and the mortgagee is the auction purchaser of the said property, the balance of any claim arising under the mortgage shall be deemed to be discharged.

(10) Nothing contained in this section shall be deemed to affect the rights of any mortgagee who is conferred the rights of a tenant under any law for the time being in force.

12. Sales with condition to repurchase, to be deemed mortgages.-(1) Where under a sale deed in respect of immovable property there is provision to repurchase the property within any stipulated period on payment of any specified amount and such period has not expired at the commencement of this Act, then, notwithstanding any law or contract to the contrary, the transaction shall be deemed to be a mortgage and the provisions of section 11 shall apply thereto.

(2) In a case falling under sub-section (1), the consideration for the sale shall be deemed to be the mortgage amount.

13. Special provision regarding certain melpattoms.-(1) This section applies to subsisting melpattoms granted by agriculturists before the commencement of this Act for periods of two years or more.

(2) Notwithstanding that the period of a melpattom has not expired, the agriculturist who granted the melpattom, or his successor-in-interest if he is an agriculturist, shall be entitled to terminate the melpattom on application to the court and on depositing in court one-third of the advance outstanding.

Explanation.-For the purposes of this sub-section, the expression "advance outstanding" means an amount which bears to the total amount of the advance the same proportion as the unexpired term of the melpattom bears to its full term.

(3) If there is dispute regarding the amount of the advance outstanding, the court may provisionally determine the amount after such summary enquiry as it deems fit and direct the deposit of the deficit, if any, and on such deposit, the rights of the melpattomdar to collect the usufructs shall cease, and the person who granted the melpattom or his successor-in-interest, as the case may be, shall be entitled to take the usufructs.

(4) As soon as may be after the provisional determination of the amount

under sub-section (3), the court shall, after due enquiry, finally determine the amount and pass orders-

(a) for the deposit of the deficit or the adjustment or refund of the excess if any, as the case may be; and

(b) directing the person who granted the melpattom or his successor-in-interest, as the case may be, to deposit the balance amount, if any, in ten equal half-yearly instalments together with interest which accrued due on such balance outstanding till the date of payment of each instalment, at six percent per annum simple interest, the first instalment being payable within a period of six months from the date of the first deposit or the date

of the provisional determination of the amount of advance under sub-section (2) or under sub-section (3), as the case may be.

(5) An order passed under sub-section (4) shall also direct the sale of the land on which a charge has been created under sub-section (6) for realising any amount due, and such order shall be deemed to be a decree.

(6) The mel pattomdar shall have a charge on the land, the usufructs from which formed the subject of the mel pattom, for the amount due, and such charge shall have priority over all other charges created after the date of the mel pattom.

(7) Court-fees on the amount outstanding after the deposit under sub-section (2) shall be paid by the applicant before the recording of evidence, or, where no such evidence is recorded, before the final determination under sub-section (4).

14. Deposit of debt in court.-(1) An agriculturist may deposit any of the instalments of the debt as provided in section 4 in the court having jurisdiction to entertain a suit for the recovery of the debt or, where the debt has ripened into a decree, in

the court which passed the decree or the court to which the decree has been sent for execution, and apply to that court for recording part satisfaction of the debt.

(2) Where an application and deposit are made as provided in sub-section (1), the court shall pass an order recording part satisfaction of the debt if the amount deposited is the correct amount.

(3) The court shall dismiss the application-

(a) if the applicant is not an agriculturist ; or

(b) if the liability is not a debt; or

(c) if the amount deposited is insufficient and the applicant on being required

by the court to deposit the deficit amount within a period fixed by the court,

fails to do so.

(4) Any agriculturists entitled to make such deposit may, before the date on which any instalment is due, apply to the court having jurisdiction under sub-section (1) for an extension of the time for making the deposit of the whole or any portion of such instalment, and the court may, after notice to the creditor, extend the time for payment of such instalment or part thereof for such period as it thinks fit.

(5) The procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits shall, as far as may be, apply to applications made under this section.

15. Application to court by persons unable to pay their debts.-(1) Any agriculturist who is unable to pay the debts payable by him may make an application to the court within whose jurisdiction he resides or ordinarily carries on business for a full settlement of such debts.

(2) Every application under sub-section (1) shall be in writing and shall be signed by the applicant and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

(3) An application under sub-section (1) shall contain the following particulars, namely:-

(a) the place where the applicant resides and the place or places where he holds any property, movable or immovable;

(b) the amount and other particulars of all claims against him on the date of the application;

(c) the names and addresses of his creditors;

(d) the particulars of all his property including claims due to him together with a specification of the value of such property and the place or places at which any such property is to be found and the details of any mortgage, lien or charges thereon;

(e) a statement that he unconditionally leaves all his assets in the control of the court;

(f) a statement that he wants a fair settlement of his debts;

(g) such other particulars, if any, as may be prescribed by rules made under this Act.

(4) On receipt of an application under sub-section (1), the court shall pass an order fixing a date for hearing the application, and issue notice thereof to the creditors and all other persons interested by registered post acknowledgement due or in such other manner if so prescribed by rules made under this Act.

(5) During the pendency of an application under this section, the court may stay the trial of any suit or the execution of any decree against the applicant or his properties.

(6) The court shall determine the admissibility and the amount of each claim against the applicant or his properties and shall for such purpose take all steps necessary for the determination of any question raised in the case.

(7) The procedure prescribed in the Insolvency Act, 1955, shall, **mutatis mutandis** be applicable to the proceedings under this section.

(8) "court" for the purposes of this section and section 16 shall be the court of a Munsiff if the total amount of the debts does not exceed five thousand rupees and in all other cases the court of a Subordinate Judge.

16. Settlement of liabilities by court.- (1) The court shall, after determination of the admissibility and the amount of each claim under sub-section (6) of section 15, settle the liabilities of the debtor in the manner mentioned thereunder, namely:-

(a) one-fourth of the entire assets, not exceeding six thousand five hundred rupees in value, shall be allotted and given over to the debtor subject only to such liabilities by way of public revenue due on land or any tax, cess, fee, rent, jenmikaram or such other dues chargeable thereon by virtue of any enactment for the time being in force:

Provided that in such allotment, the homestead in which the debtor lives shall, on his application, be allotted to his share;

(b) after payment of all liabilities by way of public revenue due on land or any tax, cess, fee, rent, jenmikaram or such other dues chargeable by virtue of any enactment for the time being in force, all the remaining assets shall be distributed and made over to the creditors:

Provided that secured creditors shall, in the order of mutual priority, be paid in preference to unsecured creditors, and after payment of all debts due to the Government or to any local authority, the balance of the assets shall be distributed amongst unsecured creditors in proportion to the debts due to them.

(2) Notwithstanding anything contained in sub-section (1), where the value of the homestead allotted under clause (a) of that sub-section exceeds one fourth of the entire assets of the debtor or six thousand five hundred rupees, the amount of such excess, or where the value of the homestead exceeds both one fourth of the entire assets and six thousand five hundred rupees, the excess of the value of the homestead over-

(a) one fourth of the entire assets, or

(b) six thousand five hundred rupees, whichever is smaller,

shall be deposited by the debtor in court in fifteen half-yearly instalments together with interest accrued due on the amount outstanding after payment of each instalment, at the rate of six per-cent per annum, for distribution to the creditors in the manner specified in clause (b) of the said sub-section.

(3) For the amount of the excess to be deposited by the debtor under sub-section (2), there shall be a first charge on the homestead subject only to the charge for public revenue due on land or any tax, cess, fee or such other dues chargeable by virtue of any enactment for the time being in force, in respect of the land on which the homestead is situated.

(4) The first instalment of the excess amount to be deposited under sub-section (2), shall be deposited before the expiry of a period of six months from the date of allotment of the homestead.

Explanation.- In this section, the expression "public revenue due on land" shall have the same meaning as in the Revenue Recovery Act for the time being in force.

17. Presumption as to transfer of immovable property of debtor.-(1) Every transfer of immovable property made by a debtor entitled to the benefits of this Act after the 25th day of July, 1968, and before the complete discharge of his debt, shall, in any suit or other proceeding with respect to such transfer, be presumed, until the contrary is proved, to have been made with intent to defeat or delay the creditors of the transferor.

(2) Where a debtor entitled to the benefits of this Act has in collusion with another allowed his immovable property to be sold after the 25th day of July, 1968, through court or otherwise, with a view to defeat or delay his creditors, the sale shall be voidable at the option of any creditor so defeated or delayed.

18. Exclusion from benefits.- Notwithstanding anything contained in this Act, where an agriculturist, with intent to defeat or delay his creditor or creditors, has made any voluntary transfer of any interest in immovable property within the six months immediately preceding the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968, in the Gazette, such agriculturist shall not be entitled to the benefits of this Act.

19. Limitation.- (1) In computing the period of limitation for a suit for recovery of a debt or an application for the execution of a decree in respect of a debt, the time during which the institution of the suit or the making of the application was barred under

section 3 shall be excluded.

(2) Where a debt is payable by an agriculturist either by himself or jointly with a non-agriculturist and where the agriculturist makes payments or deposits any amount towards that debt as provided for in section 4 or section 7 or section 11 or section 14, a fresh period of limitation shall be computed from the time when the payment or deposit was made both against the agriculturist and the non- agriculturist.

20. Sales of immovable property to be set aside in certain cases.- (1) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for recovery of a debt or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation-

(a) on or after the 1st day of November, 1956; or

(b) before the 1st day of November, 1956, but the possession of the said property has not actually passed before the 20th day of November, 1957, from the judgment-debtor to the purchaser,

and the decree-holder is the purchaser, then, notwithstanding anything in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908 or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution where such costs were not included in the purchase-money, and apply to the court within six months from the date of the commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six per cent per annum, the first instalment being payable within a period of six months from the date of the order of the court..

(2) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for arrears of rent or michavaram-

(a) during the period commencing on the 1st day of November, 1956 and ending with the 30th day of January, 1961 and the possession of the said property has actually passed on or before the 1st day of April, 1964, from the judgment-debtor to the purchaser; or

(b) before the 1st day of November, 1956, and the possession of the said property has actually passed during the period commencing on the 20th day of November, 1957 and ending with the 1st day of April, 1964, from the judgment-debtor to the purchaser;

then, notwithstanding anything contained in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution, where such costs were not included in the purchase money and apply to the court within six months from the date of commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six per cent per annum, the first instalment being payable within a period of six months from the date of the order of the court.

(3) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for the recovery of a debt or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation, on or after the 14th day of July, 1958, and the decree-

holder is not the purchaser, then, notwithstanding anything in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908 or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may, deposit the purchase money and apply to the court within six months from the date of commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside.

(4) No order under sub-section (1) or sub-section (2) or sub-section (3) shall be passed without notice to the decree-holder, the transferee of the decree, if any, the auction purchaser and any other person who in the opinion of the court would be affected by such order and without affording them an opportunity to be heard.

(5) Where improvements have been effected on the property sold after the date of the sale and before the notice under sub-section (4), the value of such improvements as determined by the court shall be deposited by the applicant for payment to the auction-purchaser.

(6) An order under sub-section (1) or sub-section (2) or sub-section (3) shall not be deemed to affect the rights of **bona fide** alienees of the auction-purchaser deriving rights before the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968, in the Gazette.

(7) Where a sale is set aside under sub-section (1) or sub-section (2) or sub-section (3), in case the applicant is out of possession of the property, the court shall

order redelivery of the property to him.

(8) In respect of any sale of immovable property which has not been confirmed, the judgment-debtor if he is an agriculturist shall be entitled to pay the decree debt in accordance with the provisions of sections 4 and 5 and on the deposit of the first instalment thereof, the sale shall be set aside.

(9) Where the judgment-debtor fails to deposit any of the subsequent instalments, the decree-holder shall be entitled to execute the decree and recover the defaulted instalment or instalments in accordance with the provisions of this Act.

Explanation I.-For the purposes of this section,-

(a) the expression "court" shall include a revenue court or authority exercising powers under the Revenue Recovery Act for the time being in force ; and

(b) the expression " judgment-debtor " shall include -

(i) a debtor from whom money was due to a banking company in liquidation; and

(ii) a person from whom the entire amount due under a decree has been realised by sale of his immovable property.

Explanation II.- For the purposes of this section, an applicant shall be deemed to be an agriculturist, if he would have been such an agriculturist but for the sale of the immovable property in respect of which he has made the application.

21. Appeal.- (1) An appeal shall lie against any order passed under sub-section (8) of section 7 or section 9 or section 11 or section 13 or section 14 or section 16 or section 20 to the court to which appeals ordinarily lie from the decisions of the court which has passed the order:

Provided that where the order is passed by a revenue court, the appeal shall lie to the District Court within whose jurisdiction the revenue court is situate and such appeal shall be filed within sixty days of the date of the order appealed against.

(2) An order passed in appeal under sub-section (1) shall be final.

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

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for prescribing the form of, and the fees to be paid in respect of, applications mentioned in this Act.

(3) 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

23. Repeal.- The Kerala Agriculturists' Debt Relief Act, 1958, (31 of 1958) , is hereby repealed.

Act 13 of 1973

**THE KERALA AGRICULTURISTS' DEBT RELIEF (AMENDMENT) ACT,
1973^[1]**

An Act to amend *the Kerala Agriculturists' Debt Relief Act, 1970*.

Preamble.—WHEREAS it is expedient to amend the Kerala Agriculturists' Debt Relief Act, 1970, for the purpose hereinafter appearing;

Be it enacted in the Twenty-fourth Year of the Republic of India as follows: —

1. *Short title and commencement.*—(1) This Act may be called the Kerala Agriculturists' Debt Relief (Amendment) Act, 1973.

(2) It shall be deemed to have come into force on the 14th day of July, 1970.

2. *Amendment of section 2.*—In clause (4) of section 2 of the Kerala Agriculturists' Debt Relief Act, 1970 (11 of 1970) (hereinafter referred to as the principal Act), for the proviso to paragraph (ii) of sub-clause (a), the following proviso shall be substituted, namely :—

"Provided that the right of the bank to recover the sum did not arise by reason of—

(A) any assignment made; or

(B) any transfer effected by operation of law, subsequent to the 1st day of July, 1957; or".

3. *Repeal and saving.*—(1) The Kerala Agriculturists' Debt Relief (Amendment) Ordinance, 1973 (1 of 1973) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.