The following Act of the Tamil Nadu Legislature received the assent of the President on the 11th June 1979 and is hereby published for general information:—

ACT No. 40 OF 1979.

An Act to provide for the relief of certain indebted persons in the State of Tamil Nadu.

BE it enacted by the Legislature of the State of Tamil Nadu in the Thirtieth Year of the Republic of India as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*— (1) This Act may be called the Tamil Nadu Debt Relief Act, 1979.

(2) It extends to the whole of the State of Tamil Nadu.

(3) This Act except sections 32, 33 and 34 shall be deemed to have come into force on the 15th day of July 1978 and sections 32, 33 and 34 of this Act shall come into force on the date of the publication of this Act in the *Tamil Nadu Government Gazette*.

2. *Declaration.*— It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in Article 46 of the Constitution.

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

(1) 'creditor' includes his heirs, legal representatives and assigns;

(2) 'debt' means any liability in cash or in kind, whether secured or unsecured and whether decreed or not, but does not include rent as defined in clause (8) ;

(3) 'debtor' means any person from whom any debt is due :

Provided that a person shall not be deemed to be a debtor, if he—

(i) has, in both the financial years ending on the 31st March 1977 and the 31st March 1978, been assessed to—

(*a*) income-tax under the Income-tax Act, 1961 (Central Act 43 of 1961) or under the income-tax law in force in any foreign country; or

(*b*) agricultural income-tax under the Tamil Nadu Agricultural Income-Tax Act, 1955 (Tamil Nadu Act V of 1955) or under any law in force in any other State or Union territory in India ; or

(ii) has, in both the financial years ending on the 31st March 1977 and the 31st March 1978, been assessed to sales tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) ; or

(iii) has, in all the four half-years immediately preceding the 1st March 1978, been assessed to property or house-tax in respect of buildings or lands other than agricultural lands, under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919), the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971), the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958), the Cantonments Act, 1924 (Central Act II of 1924) or any law governing municipal or local bodies in this State or in any other State or Union territory in India, provided that the aggregate annual rental value of such buildings and lands whether let out or in the occupation of the owner is not less than rupees one thousand and two hundred.

Explanation.—The annual rental value of any building or land for the purposes of proviso (iii) shall—

(1) where the assessment is based on the annual rental value, be deemed to be such value;

(2) where the assessment is based on the capital value, be deemed to be five per cent of the capital value; and

(3) in any other case, be deemed to be the value ascertained in the prescribed manner; or

(iv) has, in all the four half-years immediately preceding the 1st March 1978, been assessed to profession tax on a half-yearly income of more than one thousand and two hundred rupees derived from a profession other than agriculture under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919), the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971), the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958), the Cantonments Act, 1924 (Central Act II of 1924) or any law governing municipal or local bodies in this State or in any other State or Union territory in India ;

(4) "Government" means the State Government;

(5) "interest" means any amount or other thing paid or payable in excess of the principal sum 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 or 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 ;

(6) "mortgagee" includes his heirs, legal representatives and assigns;

(7) "person" means an individual and includes an undivided Hindu family, a marumakkattayam or aliyasantana tarward or tavazhi, but does not include a body corporate, a charitable or religious institution or an unincorporated company or association or any firm as defined in the Indian Partnership Act, 1932 (Central Act IX of 1932);

(8) "rent" means—

(i) the rent payable in respect of agricultural land by any tenant to the land owner and includes the fair rent payable to the land owner under the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Tamil Nadu Act XXIV of 1956) or the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961), or the rent or michavaram as defined by the Malabar Tenancy Act, 1929 (Tamil Nadu Act XIV of 1930), or quit rent, jodi, kattubadi, poruppu or the like payable to any person under any law relating to tenancy for the time being in force in this State ; or

(ii) the rent payable by any tenant to the owner of any building in respect of such building or portion thereof occupied by such tenant.

Explanation.—For the purpose of this clause, the expression 'building' shall have the same meaning as in clause (2) of section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960).

4. *Certain debts and liabilities not to be affected.*—Nothing contained in this Act shall apply to the following categories of debts and liabilities of any debtor, namely :—

(*a*) any amount recoverable as arrears of land revenue ;

(*b*)(i) any revenue, tax or cess payable to the State Government or any other sum due to them, by way of loan or otherwise ;

(ii) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise ;

(iii) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise ;

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

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

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

(*f*) a debt due to—

(i) the Central Government or any State Government ;

(ii) any local authority ;

(*g*) save as otherwise provided in this Act, any liability in respect of any sum due to—

(i) (*A*) any banking company to which the Banking Regulation Act, 1949 (Central Act 10 of 1949) applies ;

(*B*) the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955) ;

(*C*) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959) ;

(*D*) any corresponding new bank as defined in clause (*d*) of section 2 of the Banking Companies Acquisition and Transfer of Undertakings Act, 1970 (Central Act 5 of 1970) ;

(*E*) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act, 1963 (Central Act 10 of 1963) ;

(*F*) any Regional Rural Bank established under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976) ;

(*G*) the Committee for the Administration of the Amalgamated Tamil Nadu Shares of the Post War Services Reconstruction Fund and Special Fund for Reconstruction and Rehabilitation of Ex-servicemen ;

(*H*) any other financial institution notified in this behalf by the Government in the *Tamil Nadu Government Gazette* ;

(ii) any Government company within the meaning of the Companies Act, 1956 (Central Act 1 of 1956) ;

(iii) any company which is declared to be a Nidhi or Mutual Benefit Society under sub-section (1) of section 620-A of the Companies Act, 1956 (Central Act 1 of 1956) ;

(iv) any corporation owned or controlled by the Central Government or any State Government ;

(v) the Life Insurance Corporation of India ;

(vi) any co-operative society including a land development bank, registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) ;

(*h*) any debt which represents the price of property whether movable or immovable purchased by a debtor or any amount due under a hire purchase agreement ;

(*i*) any amount received by a debtor as advance for the delivery of goods at a future date ;

(*j*) any liability incurred or arising under any chit, the by-laws of which have been registered under the Tamil Nadu Chit Funds Act, 1961 (Tamil Nadu Act 24 of 1961) ;

(*k*) any debt or debts payable on the 14th day of July 1978 to—

(i) a widow, or

(ii) a minor child both of whose parents are dead; or

(iii) a minor child whose father is dead ; or

(iv) a female person whose marriage has been dissolved by a decree of divorce or has been declared null and void, or annulled by a decree of nullity :

Provided that,—

(*a*) the value of the property owned by such widow, minor child or female person on that date, including the principal amount of the debt or debts so due, did not exceed ten thousand rupees ;

(*b*) the right of such widow, minor child or female person to recover the debt or debts did not arise by reason of any assignment.

5. *Special provision for undivided Hindu families, etc.*—Where an undivided Hindu family other than a marumakkattayam or aliyasantana tarward or tavazhi falls within the purview of the proviso to section 3 (3), no person who was a member of the family on the 1st March 1978 shall be deemed to be a debtor for purposes of this Act.

6. *Heirs of non-debtor members of Hindu families to be non-debtors.*—Where in an undivided Hindu family other than a marumakkattayam or aliyasantana tarward or tavazhi which is a debtor within the meaning of section 3 (3), any member of the family is not a debtor, then, none of his heirs shall be deemed to be a debtor for purposes of sections 7 to 12 and 16 to 28 of this Act.

TAMIL NADU LEGISLATIVE ASSEMBLY
TRUTH ALONE TRIUMPHS

CHAPTER II.

Relief from Indebtedness and Scaling Down of Debts.

7. *Debts payable by debtors to be scaled down.*—(1) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument having force by virtue of any such law and save as otherwise expressly provided in this Act, all debts payable by any debtor on the 14th day of July 1978 shall be scaled down in accordance with the provisions of this Chapter:

Provided that no debt which was already scaled down under the provisions of sections 8, 9-A, 10, 11 and 12 of the Tamil Nadu Agriculturists Relief Act, 1938 (Tamil Nadu Act IV of 1938), or sections 7, 8, 9, 10 and 11 of the Tamil Nadu Debt Relief Act, 1972 (Tamil Nadu Act 38 of 1972), shall again be scaled down in accordance with the provisions of this Chapter.

(2) No sum in excess of the amount as so scaled down shall be recoverable from the debtor or from any land or interest in land belonging to him; nor shall his other property be liable to be attached and sold

or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Chapter.

8. *Provision for debts incurred before 14th day of July* 1978.—Debts incurred before the 14th day of July 1978 shall be scaled down in the manner mentioned hereunder, namely :—

(1) Where any debtor has paid to any creditor one and a half times the amount of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(2) Where the sums repaid by way of principal or interest or both fall short of one and a half times the amount of the principal, only so much of the amount as would make up such shortage, shall be repayable.

(3) Subject to the provisions of sections 20 to 23, nothing contained in clauses (1) and (2) shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Explanation I.—Where the principal was borrowed in cash with an agreement to repay it in kind, the debtor shall, notwithstanding such agreement, be entitled to repay the debt in cash after deducting the value of all payments made by him in kind, at the rate, if any, stipulated in such agreement, or if there is no such stipulation, at the market rate prevailing at the time of each payment.

Explanation II.—Where a debt has been renewed or included in a fresh document executed before, on or after the 14th day of July 1978, 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 of any other person acting on his behalf or in his interest, the principal originally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.

Explanation III.—Where a debt has been split up whether before, on or after the 14th day of July 1978, among the heirs, legal representatives or assigns of a debtor, or of a creditor and fresh documents have

been executed in respect of the different portions of such debt, the provisions of this section shall continue to apply in respect of each of the different portions.

9. *Special provision in respect of mortgages.*—(1) This section applies to all mortgages executed at any time before the 14th day of July 1978 and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof—

(*a*) where no rate of interest is stipulated for as due to the mortgagee, or

(*b*) where a rate of interest is stipulated for as due to the mortgagee in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such.

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

(2) The mortgagor shall be entitled to redeem the whole of the property mortgaged, notwithstanding that the time, if any, fixed in the mortgage deed for redeeming the mortgage has not arrived.

(3) Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of less than ten years, the mortgagor shall not be entitled to redeem the mortgage, unless he pays to the mortgagee—

(i) the difference between the principal amount secured by the mortgage and an amount bearing to the principal amount the same proportion as the period during which the mortgagee has been in possession bears to ten years;

(ii) where any interest on the principal amount secured by the mortgage or any portion thereof has been stipulated for, in addition to the usufruct from the property, the arrears of such interest as scaled down under section 8 read with section 12 ; and

(iii) all other sums payable to the mortgagee by the mortgagor, in his capacity as such, together with the interest, if any, due thereon.

(4) Where the mortgagee has been in possession of only a portion of the property mortgaged to him for an aggregate period of less than

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ten years, the mortgagor shall not be entitled to redeem the mortgage, unless he pays to the mortgagee—

(i) the difference between that portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee and an amount bearing to that portion of the principal amount the same proportion as the period during which the mortgagee has been in possession bears to ten years;

(ii) where any interest has been stipulated for, in addition to the usufruct from the property, the arrears of interest on the portion of the principal amount referred to in clause (i), such arrears being scaled down under section 8 read with section 12 ;

(iii) balance of the debt as scaled down under section 8 read with section 12 ; and

(iv) all other sums payable to the mortgagee by the mortgagor in his capacity as such, together with the interest, if any, due thereon.

(5) (*a*) Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of ten years or more, then, notwithstanding anything contained in sections 8 and 12 the mortgage debt shall be deemed to have been wholly discharged with effect from the expiry of the period of ten years or where such period expired before the 14th day of July 1978, with effect from the said date—

(i) if no interest has been stipulated for on the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property ;

(ii) where such interest has been stipulated for, if no arrears of interest are due from the mortgagor ; and

(iii) if no other sums or interest thereon are due to the mortgagee by the mortgagor in his capacity as such.

(*b*) Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of ten years or more, then, in cases not governed by clause (*a*), the mortgagor shall not be entitled to redeem the mortgage unless he pays to the mortgagee—

(i) the arrears of interest stipulated for in addition to the usufruct from the property, as scaled down under section 8 read with section 12 ; and

(ii) all other sums due to the mortgagee by the mortgagor in his capacity as such and referred to in sub-clause (iii) of clause (*a*) together with any interest due thereon.

(6) Where the mortgagee has been in possession of only a portion of the property mortgaged to him for an aggregate period of ten years or more, the mortgagor shall not be entitled to redeem the mortgage unless he pays to the mortgagee—

(i) where, in addition to the usufruct from the property, any interest has been stipulated for, the arrears of interest on that portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee such arrears being scaled down under section 8, read with section 12 ;

(ii) the balance of the debt not attributable to such portion of the property as scaled down under section 8, read with section 12 ; and

(iii) all other sums payable to the mortgagee by the mortgagor in his capacity as such, together with the interest, if any, due thereon.

(7) For the purposes of this section, the portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee shall be determined in the manner prescribed by rules made under this Act.

(8) The mortgagor shall not be entitled to redeem a mortgage under sub-section (2) or obtain possession of the mortgaged property by virtue of sub-section (5) (*a*) unless he pays to the mortgagee the cost of the improvements, if any, effected by him to the mortgaged property.

(9) (*a*) (i) Except in cases falling under sub-section (5) (*a*) where the mortgaged property or, as the case may be, the portion thereof, in the possession of the mortgagee has been leased back to the mortgagor by the mortgagee, the rent due to the mortgagee under the lease (after deducting from such rent any revenue, tax or cess paid or payable by the mortgagee in respect of the property) shall be deemed to be the interest on the mortgage debt or the portion thereof attributable to the portion of the property aforesaid and the provisions of section 8, read with section 12, shall apply to the entire debt.

(ii) Nothing contained in sub-section (3) or sub-section (4) shall apply to any debt falling under sub-clause (i).

(*b*) In cases falling under sub-section (5) (*a*), where the property has been leased back to the mortgagor by the mortgagee nothing contained

in that sub-section shall affect the right of the mortgagee to recover any rents due to him under the lease for any period before the date on which the mortgage debt is deemed to have been wholly discharged by virtue of that sub-section, if such rents have not become barred by limitation under any law for the time being in force.

(10) Notwithstanding anything contained in this section,—

(*a*) Where, during the period on and from the 1st March 1972 and before the 14th day of July 1978, the mortgagee or any of his successors in-interest has transferred either wholly or in part the mortgagee's right in the property bonafide and for valuable consideration, then, the provisions of sub-sections (1) to (9) shall apply to such mortgage and for purposes of sub-sections (3) to (9) the period during which the last transferee was in possession of the property shall alone be taken into account :

Provided that the transferee of a mortgage shall not be entitled to recover in respect of such mortgage, anything more than the value of the consideration for the transfer ; but nothing herein contained shall, in cases when the property or portion thereof has been leased back to the mortgagor, affect the right of the transferee to recover the rents, if any, due under the lease, if such rents have not become barred by limitation under any law for the time being in force.

(*b*) Notwithstanding anything contained in clause (*a*), where the mortgagee's interest in the property subject to the mortgage or any part of such interest belonged to, or devolved on, two or more persons and during the period aforesaid, a partition has taken place among such persons, then, nothing contained in this section, except sub-sections (1) and (2) shall apply to the whole or such part of the interest, as the case may be.

(11) Where the equity of redemption in the property subject to the mortgage belonged to, or devolved on, two or more persons and any one of them or any person claiming under any of them has, during the period referred to in clause (*a*) of sub-section (10) redeemed the entire mortgage, nothing contained in this section shall affect the rights or the reliefs to which the persons redeeming the mortgage might be entitled to under any other law for the time being in force as against the other persons aforesaid.

10. *Exceptions.* —Nothing contained in section 8 shall affect —

(*i*) any mortgage of the description referred to in sub-section (1) of section 9, except to the extent provided for in that section; or

(ii) any liability for which a charge is provided under section 55 clause (4), sub-clause (*b*) of the Transfer of Property Act, 1882 (Central Act IV of 1882)

11. *Provision as to costs, etc., in certain cases.* —Where a debt payable by any debtor includes any sum decreed as costs by any court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of section 8.

12. *Rate of interest payable by debtors on scaled down debts.* —All debts which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise, or at the rate of nine per cent per annum simple interest whichever is less.

13. *Separation of share of debt in particular cases.* —Subject to the provisions of sections 5 and 6, where in a Hindu family, whether divided or undivided, some of the members liable in respect of a family debt are not debtors while others are debtors, the creditor shall, notwithstanding any law to the contrary, be entitled to proceed—

(*a*) against the non-debtor member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt; and

(*b*) against the debtor-member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt which shall be scaled down in accordance with the provisions of this Act.

14. *Certain instruments to be of no effect, etc.* —(1) Where any creditor has advanced any amount to a debtor on the basis of a security, whether movable or immovable offered by the debtor, and where in respect of such amount so advanced the creditor has obtained from the debtor any promissory note or other document, it shall be sufficient for the debtor to discharge the secured debt as scaled down under the provisions of this Act, and on such discharge the debt covered by the promissory note or other document shall be deemed to have been wholly discharged.

(2) Where a creditor had taken from any debtor any note, promise to pay, acknowledgement, power-of-attorney, bond, security or other document which does not state the actual amount of the debt, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of the particulars

incorrectly or in which any entry is left blank for completion on a later date, such note, promise to pay, acknowledgment, power-of-attorney, bond, security or other document shall, notwithstanding anything contained in any law for the time being in force, be void.

CHAPTER III.

PROCEDURE AND MISCELLANEOUS.

15. *Provision as to costs in certain cases.*—(1) Where a decree is passed against any debtor in a suit instituted on or after the 14th day of July 1978, the court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of this Act, and where in any such case a decree has been passed before the date of the publication of this Act in the *Tamil Nadu Government Gazette*, the court shall, on application by the judgment-debtor within six months from the date of such publication amend the decree accordingly.

(2) Nothing in sub-section (1) shall apply to any suit instituted on or after the 14th day of July 1978 and before the date of the publication of this Act in the *Tamil Nadu Government Gazette* in respect of a claim which would be barred by limitation before the date of such publication.

16. *Amendment of certain decrees.*—Where before the date of the publication of this Act in the *Tamil Nadu Government Gazette*, a court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is a debtor within the meaning of this Act, or in respect of a Hindu joint family debt on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder within six months from the date of such publication apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908), amend the decree accordingly or enter satisfaction, as the case may be :

Provided that all payments made or amounts recovered, whether before or after the date of such publication in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

17. *Application for the determination of the amount of debt due.*—(1) Where any debt incurred before the 14th day of July 1978, other than a decree debt, is due by any person who claims that he was a debtor on that date, the debtor or the creditor may apply to the court having

jurisdiction for a declaration of the amount if the debt is due by the debtor on the date of the application :

Provided that no such application shall be presented or be maintainable if a suit for the recovery of the debt is pending.

Explanation.—The court having jurisdiction under this section shall be the court which would have jurisdiction to entertain a suit for the recovery of the debt as unscaled.

(2) The provisions of sub-section (1) shall apply also to any person claiming to be such a debtor, who contends that any such debt due by him has been discharged.

(3) All persons who would have been necessary parties to a suit for the recovery of the debt shall be impleaded as parties to the application under sub-section (1) or under that sub-section read with sub-section (2).

(4) (*a*) When any such application is made, the court shall first decide whether the person from whom the debt is due was a debtor within the meaning of section 3 (3) or not, and if it finds that he was such a debtor, pass an order declaring the amount due by him or declaring that the debt has been discharged, as the case may be.

(*b*) The court shall dismiss the application if it finds that such person was not a debtor within the meaning of section 3 (3).

(5) At any time, after passing an order under clause (*a*) of sub-section (4), the court shall, on payment by the creditor of the court fee payable on a debt for the amount declared due to him, grant a decree to the creditor for such amount:

Provided that the creditor may on his application be granted a decree for an amount less than that declared due to him on paying the appropriate court fee.

(6) The court may order that the court fee, if any, paid by the creditor under sub-section (5) shall be paid by the debtor in addition to the amount decreed.

(7) If the debtor pays into the court, the amount declared to be due under clause (*a*) of sub-section (4) or the amount of the decree granted under sub-section (5) together with the costs, if any, ordered to be paid under sub-section (6), the court shall grant to the debtor a certificate that the debt has been discharged.

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

(9) No court shall entertain a suit by the creditor for the recovery of a debt—

(i) if an application has been made under sub-section (1) in respect of such debt to a court having jurisdiction and is pending in such court; or

(ii) if a court having jurisdiction has passed an order under clause (*a*) of sub-section (4) in respect of such debt.

(10) In computing the period of limitation prescribed for a suit by the creditor for the recovery of a debt, the time, if any, during which the court was prevented from entertaining the suit by virtue of the provision contained in clause (i) of sub-section (9) shall be excluded.

18. *Stay of execution proceeding.*—Every court executing a decree passed against a person entitled to the benefits of this Act, shall, on application, stay the proceedings until the court which passed the decree has passed orders on an application made or to be made under section 16 :

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 16 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.

Explanation.—The expression "the court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1908 (Central Act V of 1908).

19. *Adjudications in insolvency.*—(1) Nothing contained in this Act shall apply to the debts payable by any person who has been adjudicated an insolvent, if prior to the 14th day of July 1978 a dividend has been declared out of his assets.

(2) If a dividend has not been so declared, the court shall, on application made within six months from the date of the publication of this Act in the *Tamil Nadu Government Gazette* by the insolvent-debtor, the Official Assignee or Official Receiver in whom the property of such debtor has vested, or any other person interested, apply the provisions of this Act to the debts payable by the insolvent-debtor if he would have been a debtor within the meaning of this Act but for his adjudication in insolvency.

(3) If the application aforesaid is not made by the Official Assignee or Official Receiver, he shall be impleaded as a party thereto.

20. *Special provision in the case of certain sales of movable property.*— Where in execution of any decree, any movable property of any debtor has been sold on or after the 14th day of July 1978, any judgment-debtor may, within six months from the date of the publication of this Act in the *Tamil Nadu Government Gazette*, apply to the court for an order that the provisions of section 8 and of sections 11 and 12 be applied to the decree, and the court, shall, if satisfied that the applicant is a debtor entitled to the benefits of those sections, apply the same and order the decree-holder to refund any sum received by him on or after the said date, in excess of the amount to which he would have been entitled to if the property had not been sold :

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

21. *Sales of immovable property to be set aside in certain cases.*— Where in execution of any decree, any immovable property, in which a debtor entitled to the benefits of this Act had an interest, has been sold or foreclosed on or after the 14th day of July 1978, then, notwithstanding anything contained in the Limitation Act, 1963 (Central Act 36 of 1963) or in the Code of Civil Procedure, 1908 (Central Act V of 1908) and notwithstanding that the sale has been confirmed, any judgment-debtor, claiming to be entitled to the benefits of this Act, may apply to the court within ninety days from the date of the publication of this Act in the *Tamil Nadu Government Gazette* to set aside the sale or foreclosure of the property and the court shall, if satisfied that the applicant is a debtor entitled to the benefits of this Act, order the sale or foreclosure to be set aside and thereupon the sale or foreclosure shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction-purchaser and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

22. *Consequential provision on setting aside of sale.*—Where a sale is set aside under section 21, a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to whom it has been paid:

Provided that no poundage shall be payable in respect of any such sale and where poundage has been collected, the court shall direct the same to be refunded.

23. *Power of court to reject certain claims.*—If in any suit or proceeding for the recovery of a debt, the court is satisfied that the claim therein is made in evasion of the provisions of this Act and that the document upon which the claim is based, although purporting to be executed by a different debtor or in favour of a different creditor, was in fact in renewal or part renewal of a prior debt to which the provisions of this Act would have applied, the court shall disallow the costs :

Provided that where in any such suit or proceeding two or more distinct claims are made, the provisions of this section shall apply separately in respect of each such claim.

24. *Alienations by debtor.*—All alienations of immovable property made by any debtor on or after the 14th day of July 1978 shall be invalid as against every creditor whose sale in execution or foreclosure decree has been set aside under section 21 or who became entitled to rateable distribution of the proceeds of such sale under section 73 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

25. *Appeals.*—(1) An appeal shall lie from any of the following orders passed by a court under this Act, as if such order related to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908 (Central Act V of 1908) :—

(*a*) An order under sub-section (1) of section 15 amending or refusing to amend a decree ;

(*b*) An order under section 16 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree ;

(*c*) An order under clause (*a*) of sub-section (4) of section 17 declaring the amount due to the creditor or declaring the debt to have been discharged ;

(*d*) An order under clause (*b*) of sub-section (4) of section 17 dismissing the application on the ground that the debtor was not a debtor within the meaning of section 3 (3) ;

(*e*) An order under section 20 directing or refusing to direct the refund of any excess realised in execution of a decree ;

(*f*) An order under section 21 setting aside or refusing to set aside any sale or foreclosure of immovable property ;

(*g*) An order under section 22 directing or refusing to direct the repayment of any purchase money realised in execution of a decree.

(2) From any order passed on an appeal presented to it under the provisions of sub-section (1) by a court subordinate to the High Court, an appeal shall lie to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

26. *Revenue officials to furnish information as to certain facts.*—Any creditor may apply to an officer in the Revenue Department not below the rank of Tahsildar having jurisdiction over the area where such debtor ordinarily resides or has his ordinary place of business for information as to whether such debtor has been or to be assessed to income-tax, agricultural income-tax or sales tax and such Revenue Officer shall thereupon ascertain such information and grant to such creditor a certificate in the prescribed form as to whether such debtor has been so assessed to income-tax, agricultural income-tax or sales tax. Such certificate shall be received as conclusive proof of the facts stated therein.

27. *Executive authorities of local bodies to furnish information as to certain facts.*—Any creditor may apply to the executive authority of a municipality, a panchayat, a panchayat union or a township or the Revenue Officer or Commissioner of the Municipal Corporation of Madras or Madurai for information as to whether such debtor was or is assessed to the property or house tax or profession tax in terms of clauses (iii) and (iv) of the proviso to section 3 (3) and the executive authority or Revenue Officer or Commissioner shall thereupon grant to such creditor a certificate in the prescribed form as to whether the debtor named in the application has been so assessed to property or house tax or profession tax. Such certificate shall be received as conclusive proof of the facts stated therein.

28. *Grant of certificate to debtors.*—Any debtor may apply to the officer or authority specified in section 26 or 27 for a certificate to the effect that he was not assessed to any of the taxes specified in the proviso to section 3 (3) during the relevant period specified in the said proviso.

29. *Savings.*—(1) Nothing contained in this Act shall affect or shall be deemed to affect, in any way the operation of the Tamil Nadu Debt Relief Act, 1976 (President's Act 31 of 1976).

(2) Nothing contained in this Act shall affect any rights or privileges which a debtor is entitled to under any other law, contract, custom or usage if such rights or privileges are more favourable to him than those to which he would be entitled to under this Act.

(3) Save as otherwise provided in sub-sections (1) and (2), the provisions of this Act shall be in addition to, and not in derogation of, any law for the time being in force.

30. *Power to make rules.*—(1) The Government may make rules to carry out the purposes of this Act.

(2) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette*. and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3) Every rule made under this Act shall, as soon as possible, after it is made, be placed on the table of both Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or both Houses agree 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.

31. *Repeal.*—The Tamil Nadu Debt Relief Act, 1978 (Tamil Nadu Act 40 of 1978) except section 29 thereof (hereinafter referred to as the said Act) is hereby repealed.

32. *Pending proceedings to abate, etc.*—(1) Section 8 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act I of 1891) shall not apply to the repeal of the said Act by this Act.

(2) Every proceeding made or taken under the said Act and pending before the date of the publication of this Act in the *Tamil Nadu Government Gazette* shall abate.

(3) No legal proceeding or remedy in respect of any right, privilege, obligation or liability acquired, accrued or incurred under the said Act shall be instituted, continued or enforced under the said Act.

33. *Removal of doubts.*—(1) Any liability incurred or arising under any debt due from a debtor shall be deemed never to have been discharged under the said Act, as if the said Act was not passed and every such debt shall be scaled down in accordance with the provisions of this Act.

(2) Nothing contained in this section shall be deemed to invalidate any proceeding in which the order passed has been executed or satisfied in full before the date of the publication of this Act in the *Tamil Nadu Government Gazette.*

34. *Exclusion of time for limitation and dissolution of stay of proceedings in respect of certain suits and applications.*—(1) Where, on or after the 15th day of January 1976, but before the date of the publication of this Act in the *Tamil Nadu Government Gazette,* any suit for the recovery of any amount towards any liability arising out of the debt due from a debtor would have been instituted or any application for the execution of a decree passed in any such suit would have been made but for the fact that the institution of the suit or the making of the application was barred by the provisions of the Tamil Nadu Debt Relief Act, 1978 (Tamil Nadu Act 40 of 1978), in computing the period of limitation or limit of time prescribed for such suit or application, the period commencing on and from the 15th day of January 1976 and ending with the date of the publication of this Act in the *Tamil Nadu Government Gazette,* shall be excluded.

(2) Where any proceedings in any of the suits or applications of the nature mentioned in sub-section (1) were stayed by any of the provisions of the Tamil Nadu Debt Relief Act, 1978 (Tamil Nadu Act 40 of 1978) the stay effected in respect of such proceedings shall stand dissolved and such suit or application shall be proceeded with under this Act from the stage which had been reached when further proceedings in such suit or application were stayed.

(By order of the Governor)

S. VADIVELU,
Secretary to Government, Law Department.



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