THE KERALA AGRICULTURAL DEBTORS (TEMPORARY RELIEF) ACT, 2001
(ACT 19 OF 2001)

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[Translation in English of "2001-ലെ കേരള കാർഷിക കടക്കാർ (താൽക്കാലിക ആശ്വാസ) ആക്റ്റ്" published under the authority of the Governor.]

ACT 19 OF 2001

THE KERALA AGRICULTURAL DEBTORS (TEMPORARY RELIEF) ACT, 2001*

An Act to provide temporary relief to certain Agricultural Debtors in the State of Kerala.

Preamble. — WHEREAS the benefits conferred by the Kerala Agriculturists Debt Relief Act, 1970 (11 of 1970) are available only in respect of debts incurred by the agriculturists before the 14th day of July, 1970 on which date the said Act came into force; AND WHEREAS even after this date the agricultural indebtedness in the State continued to be on the increase due to various factors;

AND WHEREAS the fall in prices of most of the agricultural commodities and the wide spread debilitating diseases of major crops like coconut, pepper and cashew for the last five years have created panic among the agriculturists in the State;

AND WHEREAS the recent flood and earth tremors in various parts of the State have

dealt a double blow to those agriculturists;

AND WHEREAS several suits and other proceedings have been filed in Courts, Tribunals and other authorities for the recovery of debts accrued from indebted agriculturists;

AND WHEREAS it is expedient to provide temporary relief to those agriculturists whose total principal amount of debts do not exceed fifty thousand rupees;

BE it enacted in the Fifty Second Year of the Republic of India as follows:—

1. *Short title and commencement*.—(1) This Act may be called the Kerala Agricultural Debtors (Temporary Relief) Act, 2001.

(2) It shall come into force at once.

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

(i) "agricultural labourer" means a person who, in consideration of the wages payable to him by a landowner, works on or does any other agricultural operation in relation to the agricultural land of such landowner;

(ii) "agriculturist" means a person who has an interest, other than as a simple mortgagee, in any agricultural or horticultural land in the State, the extent of which does not exceed two hectares and whose annual income does not exceed sixty thousand rupees and whose principal means of livelihood is agriculture and includes an agricultural labourer;

(iii) "Co-operative Society" means a society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (19 of 1969) and includes a Service Co-operative Bank;

(iv) "creditor" shall include the heirs, legal representatives and assignees of the creditor;

*Received the assent of Governor on 28.12.2001 and published in the Kerala Gazette Extraordinary No. 287 on 20th March, 2002.

(v) "debts" means any dues or liability in cash, 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 decree or order of any Court, or Tribunal, or otherwise but does not include,—

(a) any sum payable to,—

(i) the Government of India or the Government of any other State or Union Territory; 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 Bank) Act, 1959 or a scheduled bank; or

(iii) any creditor as may be notified by the Government, from time to time; or

(b) any loan given to an agriculturist utilising the fund received by the Kerala State Housing Board from any Central Institutions including HUDCO providing financial assistance for housing; or

(c) any debt exceeding fifty thousand rupees borrowed under a single transaction by an agriculturist and due before the commencement of this Act to a creditor;

(vi) "family" means husband and wife, minor children and unmarried daughters;

(vii) "Interest" means any amount or other things paid or payable in excess of the principal amount borrowed or pecuniary obligation incurred, or where anything has been borrowed in kind, in excess of what has been so borrowed by whatsoever name such amount or thing may be called, and whether the same is paid or payable entirely in cash or entirely in kind

or partly in cash or partly in kind and whether the same is expressly mentioned or not in the document or contract, if any;

(viii) "land owner" means,—

(a) in relation to a land personally cultivated, the owner of such land;

(b) in any other case, the person in actual possession of the land, and includes his heirs, assignees and legal representatives;

(ix) "pay" with its grammatical variations, includes deliver;

(x) "penal interest" means any amount or other thing payable in excess of the interest;

(xi) "prescribed" means prescribed by rules made under this Act;

(xii) "principal amount" means the amount originally advanced together with such sum, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as principal and notwithstanding that the debt has been renewed or included in a fresh document, whether by the same agriculturist or by his heirs, legal representatives or assign 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 assignees or of any other person acting on his behalf or in his interest.

3. Bar of suits, applications, criminal proceedings and other proceedings.—(1) No suit for recovery of debt shall be instituted, no application for execution of a decree in respect of a debt shall be made against an agriculturist and no appeal, revision petition or application for review against any decree or order in any such suit or application shall be presented or made against an agriculturist in any Civil Court, or Tribunal or other authority before the expiry of twelve months from the commencement of this Act and shall such suits, applications, appeals and petitions instituted or made against an agriculturist before such commencement and pending at such commencement shall stand stayed for the said period:

Provided that where a debt is due to a Co-operative Society, the bar on realisation of such debt from an agriculturist and the stay on institution of petitions or appeals or other proceedings against such agriculturists shall be for a period of six months.

(2) During the period specified in sub-section (1) and in sub-section (2) of section 4, in respect of a debt incurred by an agriculturist before the commencement of this Act, no criminal court shall take further proceedings on a complaint filed in a criminal court before the commencement of this Act or filing thereafter, for the prosecution of such agriculturist under section 138 of the Negotiable Instrument Act, 1881 (Central Act 26 of 1881) if the agriculturist files an application in such court raising the contention that the debt is one coming under the purview of this Act.

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

(2) If any debt is repaid in thirty monthly instalments together with interest at the rate specified in section 5, on the principal amount outstanding at the time of each payment, the whole debt shall be deemed to be discharged.

(3) The first instalment of any debt payable under sub-section (2) other than a debt payable to a co-operative society shall be paid before the expiry of a period of twelve months from the commencement of this Act and first instalment of any debt due to a co-operative society shall be paid before the expiry of six months from such commencement and each of the

remaining instalments of all such debts shall be paid on or before the expiry of a period of thirty days from the last day on which the previous instalment was due.

(4) 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 9 but, the agriculturist shall not forfeit the benefits conferred by this section:

Provided that if default is made in payment of four consecutive instalments, the agriculturist 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.

5. Interest payable on debts.—(1) Notwithstanding anything contained in any law or contract or in any decree or order of any court or tribunal, for determining the amount due from an agriculturist 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 the Court or tribunal under which it arises or at the rate fixed by the Reserve Bank of India for similar debt or loan, 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:

Provided that no interest shall accrue during the period mentioned in sub-section (1) of section 3 in respect of a debt due to a co-operative society or to the Government at the commencement of this Act, from an agriculturist entitled the benefits of sub-section (1) of Section 3:

Provided further that no interest shall accrue during the period mentioned in sub-section (1) of section 3 to an agriculturist who discharged his debt in lesser number of monthly instalments than that is mentioned in sub-section (2) of Section 4:

Provided also that no penal interest shall be levied if the Agriculturist pays the debt within the period mentioned in Section 4.

(2) 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.

(3) The Government shall reimburse as prescribed to the Co-operative Society concerned an amount equal to the amount of interest suffered by the Co-operative Societies under the provisos to sub-section (1), in respect of a debt.

6. Application for 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, or the tribunal shall apply it in the order of, costs due under the decree (where the debt has ripened into a decree), then interest as recalculated under section 5 and then 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 agriculturist who is entitled to pay his debts under section 4, other than a debt due to a co-operative society, or the creditor of any such agriculturist may apply to the court for an order fixing the amount payable under section 4, in the manner prescribed.

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

(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 an agriculturist 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 his accrued dues:

Provided that 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 agriculturist 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 purpose of section 4.

(9) The order passed by the court in 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 judgement-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 sub-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. Decree and orders against agriculturist.—(1) Where in respect of a decree for a debt passed before the commencement of this Act, an Agriculturist 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 arrears.

(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 twelve months from the commencement of this Act for the recovery of a debt due from an agriculturist, the court in decreeing 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 provision in the decree or order against the non-agriculturist, that he is not eligible for the benefits of the agriculturist as the circumstances of the case may warrant.

10. 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 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 agriculturist 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.

11. 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 the 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 thereon to the creditors and all other

persons interested, by registered post with acknowledgement due or in such other manner as prescribed.

(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 shall be the court of a Munsiff.

12. Presumption as to transfer of immovable property of agriculturist.—(1) Every transfer of immovable property made by an agriculturist entitled to the benefits of this Act 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 an agriculturist entitled to the benefits of this Act has in collusion with another allowed his immovable property to be sold after the date of commencement of this Act, 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.

13. 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 one year immediately proceeding the date of publication of this Act in the Gazette, such agriculturist shall not be entitled to the benefits of this Act.

14. Limitations.—(1) In computing the period of limitation of a suit for recovering the debt or application for executing the decree in connection with the debt the time during which such institution of the suit or filing of application were 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 payment or deposits any amount towards that debt, as provided for in Section 4 or Section 7 or Section 10, a fresh period of limitation shall be computed in two manner from the time when the payment or deposit was made, both against the agriculturist and the non-agriculturist.

15. Special provision for settlement of certain loans taken by an agriculturist from banks.—(1) Notwithstanding anything contained in this Act or in any law or contract or decree or order of any Court or Tribunal, the Government may with the concurrence of the Reserve Bank of India or NABARD,—

(a) reschedule of short term loans into medium term loans and medium term loans into long term loans of the debts availed of by agriculturists from commercial banks or other scheduled banks, or

(b) provide necessary facilities for one time settlement of agriculture loans falling under the category of non-performing assets, as per the guidelines issued by the Reserve Bank of India, or

(c) waive penal interest as per the norms fixed by the Reserve Bank of India.

(2) Where any settlement of loan is made under sub-section (1), the agriculturist shall be bound to repay such loan with interest to the bank concerned within the period allowed by such bank.

16. Re-schedule of loans taken by an agriculturist from financial institutions.—(1) Notwithstanding anything contained in this Act or in any law or contract or decree or order of any Court or Tribunal the Government may, in such manner as may be prescribed reschedule the recovery of loans availed by an agriculturist and due on or before the date of commencement of this Act to a financial institution owned or fully controlled by the Government.

(2) Where the reschedule of loan is made under sub-section (1), the agriculturist shall be bound to repay such loan with interest to the financial institutions concerned within the period allowed by such financial institution.

17. Appeal.—(1) An appeal shall lie against any order passed under sub-section (8) of section 7 or section 10 to the Court or Tribunal to which appeals ordinarily lie, from the decisions of the Court or authority which has passed the order.

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

18. Overriding effect of Act.— The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law, other than this Act, or any instrument having effect by virtue of any law, other than this Act.

19. Power to remove difficulties.—(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion requires, do anything not inconsistent with the provisions of this Act which appears to them to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made before the Legislative Assembly while it is in Session for a 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 order or decides that the order should not be made, the order 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 order.

20. 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.