(1954) 01 BOM CK 0001

In the Bombay High Court

Case No : O.C.J. Summary Suit No. 410 of 1952

Baburao K. Pai APPELLANT

Vs

Dalsukh M. Pancholi RESPONDENT

Date of Decision : 25-01-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11, 11(2), 13, 14

Citation : AIR 1955 Bom 89 : (1954) 56 BOMLR 496

Hon'ble Judges : Chagla, C.J;Dixit, J

Bench : Division Bench

Advocate : M.P. Laud and L.C. Chogle, for the Appellant; S.H. Lulla and M.M. Desai, for the Respondent

Judgement

Chagla, C.J.—The plaintiff filed a summary suit in this Court against the defendant on 8-4-1952. On 6-5-1952, the defendant made an application u/s 5 of the Displaced Persons (Debts Adjustment) Act to the Tribunal in Delhi who is the Senior Sub-Judge there.

On 30-9-1953, the plaintiff took out a summons for judgment and in his affidavit in reply the defendant contended that inasmuch as he had made an application u/s 5, the suit pending before the Court was liable to be stayed u/s 15(a). Mr. Justice Tendolkar gave unconditional leave to the defendant to defend for the purpose of having the following issue determined:

"Whether this Court has jurisdiction to determine whether the defendant is ''a displaced person'' and whether the claim in suit is ''a debt'' within the meaning of those words in the Displaced Persons (Debts Adjustment) Act?"

The learned Judge also expressed an opinion that inasmuch as there were conflicting decisions of single Judges on this question, the matter should be referred to a Division Bench. Thereupon this matter has been referred to this Bench.

2. The Displaced Persons (Debts Adjustment) Act (70 of 1951) is an Act passed by Parliament setting up a special Tribunal to deal with debts due to and by displaced persons, and the question that we have to consider is, what is the Jurisdiction of this Tribunal and to what extent the jurisdiction of the civil Court has been ousted?

The Act gives a definition of the expression "debt" and also of "displaced person" and Chapter II deals with debt adjustment proceedings and it deals with three types of applications. One is an application by a displaced debtor for the adjustment of his debts, the second is an application by a displaced creditor having a claim against a displaced debtor, and the third is a claim by a displaced creditor in respect of a debt due from a person who is not a displaced person.

Section 5 provides for an application by a displaced debtor for the adjustment of his debts; and Sub-section (1) provides that a displaced debtor may make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain. It is under this section that the defendant has made an application to the Delhi Tribunal alleging that he resides or carries on business within the local limits of that Tribunal, that he is a displaced person, and that debts are due by him which should be adjusted.

Sub-section (2) sets out the particulars which should be contained in such an application, and under Clause (e)(i) a schedule must be attached to the application containing full particulars of all his debts, whether owed jointly or individually, with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him. Section 6 gives the power to the Tribunal to reject the application when that application does not comply with the requirements of Section 5. Section 7 provides for the issue of notices on the respondents who are the creditors mentioned in the schedule. The creditors are constituted respondents by Section 5(3).

Section 8 deals with the objections by the respondents and the respondent may show cause against the application by filing a written statement. Then comes the important section, Section 9, which deals with proceedings after service of notice on the respondents, and Sub-section (1) is to the following effect:

"If there is a dispute as to whether the applicant is a displaced person or not or as to the existence or the amount of the debt due to any creditor or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by all the parties concerned and shall pass such decree in relation thereto as it thinks fit."

Therefore, by Section 9 jurisdiction is conferred upon the Tribunal to decide (1) whether the applicant is a displaced person or not, (2) whether the debt mentioned in the debtor''s application exists, and (3) if the debt exists, what is the amount of the debt. It is clear that the debt referred to in Section 9(1) is the debt defined by the Act, and it is only in respect of such a debt that the Tribunal has jurisdiction to pass a decree.

Section 10 deals with claims by creditors against displaced debtors, and it is rather significant to note that as between displaced creditors and displaced debtors what has to be investigated is a claim made by the creditor and not a debt due by the displaced debtor as defined by the Act. Then Section 11 deals with procedure on the creditor''s petition. Section 13 deals with claims by displaced creditors against persons who are not displaced debtors, and in this case the creditor has not only to make a claim, but he must claim a debt due from a person who is not a displaced person. Therefore, it seems that u/s 13 an application can only be maintained by a displaced creditor against a non-displaced person provided his claim is in respect of a debt as defined by the Act.

Section 14 deals with the procedure on displaced creditor''s petition.

Then we come to Section 15 which deals with the jurisdiction of the civil Court, and that section provides:

"Where a displaced debtor has made an application to the Tribunal u/s 5 or under Sub-section (2) of section 11, the following consequences shall ensue, namely:

(a) all proceedings pending at the date of the said application in any civil court in respect of any debt to which the displaced debtor is subject. ....shall be stayed,......

(c) no fresh suit or other proceeding........

shall be instituted against a displaced debtor in respect of any debt mentioned by him in the relevant schedule to his application:"

3. Now, in this particular case, as already stated, the defendant has made an application u/s 5 and in the schedule to his application he has shown the plaintiff as a creditor. Notice has been served upon the plaintiff u/s 7 and the plaintiff has filed his objection u/s 8 and the Tribunal has raised the following three issues:

(1) is the liability a debt within the meaning of the Act LXX of 1951?

(2) is the petitioner a displaced person?

(3) What is the paying capacity of the petitioner?

The third issue arises by reason of Section 32 which provides for scaling down of the debts due by a displaced person in relation to his paying capacity.

It seems to us clear, looking to the language of Section 15, that as soon as an application has been made by the displaced person u/s 5 the consequence mentioned in Clause (a) must follow and the consequence is the staying of proceedings in respect of any debt which, is mentioned in the schedule annexed to the debtor''s application u/s 5. It also seems to us clear that u/s 9 the only authority that can determine whether a person is a displaced person or not and whether a debt is due by him which debt fails within the definition of the Act, is the Tribunal set up u/s 4 of the Act.

In setting up a Tribunal a Legislature may follow one of two methods. It may provide that a Tribunal shall have jurisdiction provided certain conditions exist and those conditions would be jurisdictional conditions going to the very jurisdiction of the Tribunal. It would not then be for the Tribunal to decide whether those conditions exist or not, because the very existence of the Tribunal, its very authority, depends upon; those conditions existing. Or the Legislature may set up a Tribunal and confer upon that Tribunal jurisdiction to decide all questions which arise in respect of a particular subject matter for which the Tribunal has been set up. In our opinion it is not possible to contend that it is left to the civil Court to decide whether a person is a displaced person or not and whether a debt exists as defined by the Act before the Tribunal can exercise its jurisdiction.

With respect to Mr. Justice Desai, that is exactly the view that he has taken in -- ''Bombay Radio Co. Ltd. v. N. N. Murajani'', O.C.J. Suit No. 511of 1953 (Bom) (A). His view is that before a suit can be stayed u/s 15, it is for the Court to decide whether the person who applies for a stay is a displaced person or not and whether the debt which the plaintiff claims against him is a debt covered by the definition under the Act. Again, with respect to Mr. Justice Desai, what he has overlooked is that the Legislature has set up the Tribunal under the Act to try these very questions which Mr. Justice Desai says the civil Court has the right to try before it grants a stay of the suit.

Section 9 is unqualified in its operation and ambit. It provides that if there is a dispute as to whether the applicant is a displaced person or not and as to the existence of the amount of the debt, the Tribunal shall decide the matter. Therefore, the Legislature has set up the Tribunal to determine the questions mentioned in Section 9, and by reason of Section 15 it is provided that the only authority that can try those questions is the Tribunal and not the civil Court.

What is urged is that u/s 15(a) all proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject shall be stayed, clearly indicates that the application must be in respect of a debt to which the Act applies and it must be by a displaced debtor as defined by the Act. It is only when those two conditions are satisfied that the pending proceedings are to be stayed, and it is contended that it is for the civil Court to decide that these two conditions are satisfied before the proceedings should be stayed.

4. Now, it is clear that u/s 15 the Legislature was not contemplating that proceedings should be stayed after there is an adjudication as to whether there is a debt within the meaning of the Act and whether the application is made by a displaced debtor as defined by the Act. The provision as to slay has to come into operation as soon as an application is made to the Tribunal u/s 5. At that stage

there can be no adjudication either as to the existence of the debt or as to whether the applicant is or is not a displaced person.

At that stage there is only an allegation by the person making an application that he is a displaced person and that debts contemplated by the Act are due by him to various persons. The language of Section 5 also makes it clear what the position is. That section provides, as already pointed out, that a displaced person may make an application for the adjustment of his debts. Here again, when he makes an application, there is no adjudication that he is a displaced debtor or that debts are due by him as defined by the Act.

What is material and relevant for the purpose of Section 15 is not an adjudication that a person is a displaced person and debts defined by the Act are due by him. What is material and relevant is the presenting by a person of an application to a Tribunal set up by the Act.

Once such an application is presented, it is for the Tribunal u/s 9 to adjudicate both on the question of debt and on the status of the person who makes the application. The matter is taken out of the hands of the civil Court. If a suit is pending, u/s 15(a), the suit must be stayed. If no suit is pending, then u/s 15(c) no fresh suit or other proceeding can be instituted against a displaced person in respect of the debt mentioned by him in the schedule. Then the only right that the creditor has is to proceed under the Act in appeal or in revision.

5. Therefore, the Act constitutes a self-contained code with regard to adjustment of debts by displaced persons. It sets up a Tribunal, it provides for appeal, and it provides for revision, and the jurisdiction of the civil Court is completely ousted, and it is fallacious to urge that that ouster only commences after the civil Court itself has determined whether the applicant is a displaced person or not and whether the debt due by him is a debt falling within the definition of that expression given in the statute. If the civil Court were to determine those questions, then it is difficult to understand what function is the Tribunal expected to perform under the Act.

The Tribunal cannot divest itself of the mandatory obligation under which it is placed u/s 9 to determine the issue as to the status of the applicant or the nature of the debt. Therefore, we would have this rather anomalous situation that the civil Court, in order to decide whether the suit should be stayed or not, will first try whether the applicant is a displaced person and whether the debt claimed from him is a debt to which the Act applies. Simultaneously it would be open to the Tribunal u/s 9 to try and determine those very questions, and no suggestion is made as to how, if there is a conflict between the decisions of the two authorities, that conflict is to be resolved.

In our opinion it is precisely in order to avoid such a conflict that Section 15(a) and (c) were enacted. Parliament wanted only one authority to decide these questions, and that authority is the Tribunal set up under the Act.

6. Mr. Justice Desai has taken the view that the expression in Section 9 "the existence or the amount of the debt due to any creditor" does not apply to the case of an application made by a debtor u/s 5. According to him this expression only applies to the case of an application made by a creditor, with respect to the learned Judge, he has overlooked the fact that up to Section 9 the Act is only dealing with applications made by a debtor u/s 5.

It is in Section 10 that we have applications by displaced creditors against persons who are not displaced debtors. As already pointed out, Section 10 does not refer to a debt at all. u/s 10 a displaced creditor may make a claim which may not be a debt against a displaced debtor.

But when we have cases in Section 13 of a displaced creditor making a claim in respect of a debt against a person who is not a displaced debtor, Section 14(2) expressly provides:

"If there is a dispute as to whether the applicant is a displaced creditor or not or as to the existence of the debt or as to the amount thereof, the Tribunal shall decide the matter, after taking such evidence as may be produced before it, and pass such decree in relation thereto as it thinks fit."

Therefore, with regard to a debt due to a displaced creditor by a non-displaced person, the provision with regard to its adjudication is in Section 14(2) and not in Section 9(1).

The existence of the amount of the debt due to any creditor referred to in Section 9(1) is the debt shown by the debtor in his schedule annexed to his application u/s 5. It is with regard to this debt that the Tribunal has got to adjudicate whether the debt as contemplated by the Act exists and what is the amount of the debt.

7. Mr. Justice Desai is right when he observes in his judgment that provisions in the law which oust the jurisdiction of a civil Court must be strictly construed, and any civil Court will be loath to come to the conclusion that its jurisdiction in a civil matter has been taken away. But when we are dealing with an Act passed for special reasons, applying to special persons setting up a special Tribunal, it is not difficult to appreciate the object which Parliament had in mind in placing certain matters solely within the jurisdiction of the special Tribunal set up and preventing the civil Courts from dealing with those matters.

In our opinion, on a careful consideration of the relevant sections and the object of the Act it is clear that as soon as an application is made by a debtor u/s 5 to the Tribunal set up under the Act, it is obligatory upon the civil Court to stay proceedings in respect of any debt which is covered by that application.

8. The result is that we must answer the issue submitted to us in the negative. The plaintiff must pay the costs of this issue.

9. Issue answered in negative.

