(1955) 02 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 217-D of 1953

Bal Kishan Das APPELLANT

Vs

Jhanumal and Others RESPONDENT

Date of Decision : 08-02-1955

Acts Referred:
Displaced Persons (Debts Adjustment) Act, 1951 — Section 15, 2(6), 5

Citation : AIR 1955 P&H 253

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : H.L. Sabharwal and H.C. Jain, for the Appellant; Gurbachan Singh and M.L. Jain, for the Respondent

Judgement

Bishan Narain, J.—The facts relevant for the decision of Civil Revision No. 217-D of 1953, First Appeal from Order No. 13-D of 1954 and Execution First Appeal No. 137-D of 1954 are briefly stated as follows:

2. On 28-10-1947 one Jhunnu Mal who is alleged to have been carrying on business in Lahore mortgaged his property situated in Delhi with Balkishan Das for Rs. 40,000/-. The mortgage executed in this transaction was admittedly a simple mortgage. Balkishan Das filed a suit on the basis of this mortgage and on 1-4-1950 the Court passed a decree and ordered Jhunnu Mal to pay the decretal amount in instalments.

It appears that Jhunnu Mal made defaults in the payment of these Instalments and on 6-10-1950 Balkishan Das filed an application for execution of his decree in the Court of Shri P. N. Thukral. After certain proceedings had been taken the judgment-debtor applied to the executing Court on 15-1-1952 u/s 5, Displaced Persona (Debts Adjustment) Act, 1951. Shri P. N. Thukral framed two preliminary issues with a view to find whether the judgment-debtor was a displaced person or not and whether the decretal debt in question was a debt within the Act or not.

After taking evidence by his order dated 24-11-1952 Shri P. N. Thukral held that he had no jurisdiction to entertain the petition, but on the merits he gave his findings that Jhunnu Mal was a displaced person but that the debt was not a debt within the Debts Adjustment Act. While this petition was pending the judgment-debtor made another application u/s 5 and this time this application was made to a Tribunal under the Act and was made over to Shri Banwari Lal.

While this petition was pending the judgment-debtor made a third application under the same section on 25-7-1952 but that application was dismissed on 13-11-1952 on the ground that a previous application was still pending before a Tribunal. In the application of 6-2-1952 an issue was framed reading:

"Whether the liabilities of which adjustment is sought in this petition are debts as defined in Act 70 of 1951 according to the allegations in this plaint and the statement of the petitioner recorded today?"

Shri Banwari Lal decided this issue against the petitioner by his order dated 7-6-1953 and framed the issue on the merits, the first of which is "Whether the petitioner is a displaced person"? The decree-holder has filed a petition for a revision (Civil) Revision No. 217-D of 1953) against this order which will be decided by this order.

3. It appears that later on Balkrishan Das decree-holder filed another application and the Tribunal framed the following issue arising out of this new petition:

"Whether in view of the facts that the mortgage is in respect of property situated in India and that the applicant has not got any claim registered, can the present petition proceed against the decree-holder?"

This application was decided by Shri G. K. Bhatnagar by order dated 6-2-1954 when he held that the mortgage debt of Balkrishan Das does fall within the purview of the Debts Adjustment Act, and dissatisfied, with that order Jhunnu Mal has filed an appeal in this Court (First Appeal from Order No. 13-D of 1954).

4. While these proceedings were pending before the Tribunal Jhunnu Mal made an application to the executing Court u/s 15, Debts Adjustment Act, and S. 151, Civil P. C., but the executing Court holding that the debt was not a debt within the Debts Adjustment Act refused to stay execution proceedings and the sale of the property by his order dated 7-12-1954 and against this order Jhunnu Mal has filed an Execution First Appeal (No. 137-D of 1954).

5. This narration of facts makes it clear that the one substantial point involved in all these matters is whether a mortgage debt is a debt within the Debts Adjustment Act or not. The order which is the subject-matter of the Civil Revision was passed on the assumption of the correctness of the allegation in the application and in those proceedings no evidence was recorded with a view to find out whether" Jhunnu Mal was in fact a displaced person or not as defined in the Act, and that matter, as I have pointed out above, is subject matter of an issue on merits and will be decided after the disposal of this revision, and the appeals. It is therefore convenient to decide Civil Revision No. 217-D of 1953,

First Appeal from Order No. 13-D of 1954 and Execution First Appeal No. 137-D of 1954 by this judgment.

6. As I have stated above the only matter that requires consideration in these cases is whether a mortgage debt is a debt within the Debts Adjustment Act or not. The contention of the learned counsel for Balkrishan Das is that a mortgage debt and particularly a debt secured by property in Delhi is not covered by this Act. No Section 2(6) of the Act defines ''debt'' as meaning pecuniary liability and is cleanly wide enough cover a debt secured by a mortgage. In the present case the mortgage is a simple mortgage.

Section 58, T. P. Act defines a mortgage as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or further debt or the performance of a engagement which may give rise to a pecuniary liability. Therefore such a transaction in substance amounts to a debt secured by immovable proper and It is to be noticed that in this Act at various places the mortgage has been described as a its ability on the security of immovable property (sic) am therefore clearly of the opinion that (sic) word ''debt'' in this Act covers a pecuniary liability on the security of immovable property.

7. The argument that if the security is of the Delhi property then it is not covered by the definition given in the Act has no force. The learn ed counsel''s argument before me in substance was that In the other provisions of this Act the Legislature has dealt with debts which were incurred" on the security of immovable property situated in West Pakistan and has not dealt with any such transaction involving property in India and therefore it must be assumed that the Legislature did not intend to include such transactions in the Act.

Now the proviso to Section 2(6)(b) lays down that where a pecuniary liability was incurred on the security of immovable properties situated both in India and in West Pakistan the liability shall be apportioned according to the rules laid down therein and Section 16 lays down that the Tribunal nay require the creditor to elect to retain the security or to be treated as an unsecured creditor, and then certain proceedings are allowed to be taken which refer to the value of the verified claim of the mortgaged property in Pakistan.

There is no doubt that this Act makes specific mention of the debts secured on property situated in Pakistan, but that is due to the fact that in 1950 the Legislature had enacted the Displaced Persons (Claims) Act No. 64 of 1950 enabling the displaced persons to get their claims relating to the properties left in Pakistan verified and valued and the underlying idea was that the displaced person would receive certain proportion of the value of that property and the Legislature considered it only proper that the mortgagees should be allowed to participate if they so chose in the amount paid to the mortgagors for the properties (sic) in Pakistan.

It is true that Sections 32 and 33 which deal with scaling down of debts and grant of instalments to displaced persons do not mention mortgaged properties specifically but that is due to the fact that the definition of the word ''debt'' is wide enough to cover mortgage debts. The mere fact that the mortgages relating to Pakistan properties are specifically mentioned and separately dealt with in Section 2(6)(b) and Section 16 does not mean that the word ''dealt'' which is widely expressed in Section 2(6) should be given restricted meaning so as to exclude debts secured on immovable properties situated in India.

I am therefore of the opinion that the decision of the Tribunal dated 7-6-1953 was correct with the consequence that Civil Revision No. 217-D of 1953 must be dismissed and First Appeal From Order No. 13-D of 1954 must be accepted.

8. The only point now left to bo decided is (sic)ther the executing Court was justified in re-(sic)ng to stay execution proceedings after an ap-(sic)cation had been made before a Tribunal u/s 5, Debts Adjustment Act. Section 15 of the Act specifically lays down that where a displaced person has applied u/s 5 all proceedings pending in any Civil Court in respect of any debt to which (sic) displaced debtor is subject shall be staye$ and records shall be transferred to the Tribunal.

It was the duty of the executing Court as soon (sic) came to know that the displaced debtor had (sic)e an application to the Tribunal u/s 5 (sic)he Act to stay the proceedings and send the (sic)rds to the Tribunal. The executing Court had (sic)urisdiction to enquire into the matter whether (sic) debt which was due to Balkishan Das was a (sic)bt covered by the Act. That matter has to be (sic)ded, by the Tribunal and not by the executing Court. I must therefore accept Execution First appeal No. 137-D of 1954 and order that all execution proceedings relating to the decree obtained by Balkishan Das against Jhunnu Mal be stayed.

9. The records will now be sent to the Tribunal or decision on the issues framed by the Tribunal (sic)y order dated 7-6-1963. I have directed the parties appear before the Tribunal on 28-2-1956.

10. The parties will bear their own cost in Civil Revision No. 217-D of 1954, First Appeal from Order No. 13-D of 1954 and Execution first Appeal No. 137-D of 1954.