
(1962) 05 AHC CK 0012
In the Allahabad High Court
Case No : F.A.F.O. No. 147 of 1954

Balwant Singh

APPELLANT

Vs

Bishan Sahai Om Prakash and Others

RESPONDENT

Date of Decision : 18-05-1962

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 13

Citation : AIR 1963 All 52 : (1962) 32 AWR 678

Hon'ble Judges : S.N. Katju, J;A.P. Srivastava, J

Bench : Division Bench

Advocate : N.P. Asthana, for the Appellant; S.N. Misra and J. Swarup, JJ., for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—This is an appeal by a displaced creditor under the Displaced Persons (Debts Adjustment) Act, 1951. The appellant was a displaced person who was residing at Mathura. He alleged that a debt was due to him from firm Bishun Sahai Om Prakash which belonged to two persons Jagannath and his son Om Prakash. Alleging that the debtors were not displaced persons, the appellant filed a claim against the debtors firm and its two partners u/s 13 of the Displaced Persons (Debts Adjustment) Act. The claim was filed in the court of Civil Judge, Mathura. It was contested both by Jagannath and by Om Prakash. Both these persons denied their liability. Om Prakash said that he had nothing to do with the debt or the firm Bishun Sahai Om Prakash. He did not dispute that he was not a displaced person. Jagannath, on the other hand, said that he was himself a displaced person and that the claim against him was not maintainable in the Mathura court. He alleged that he was a resident of Amritsar and if the creditor had any claim against him it should have been preferred there.

2. The learned Civil Judge held that the appellant was a displaced creditor, that Om Prakash was a non-displaced person but that Jagannath was a displaced person. He was therefore of opinion that Section 13 of the Act did not apply and

the claim was not maintainable under its provisions. He, therefore, dismissed the claim with costs to Jagannath.

3. In appeal the claimant Sardar Balwant Singh contends that the view taken by the learned Civil Judge was erroneous, that his claim was maintainable u/s 13 of the Act and that in any case if it had been filed in a wrong Court it should have been returned to him for presentation to a proper court.

4. Section 13 of the Displaced Persons (Debts Adjustment) Act, 1951 provides :--

"At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one any of such respondents, actually and voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

Before advantage could be taken of this section by a displaced creditor and a claim filed under it was necessary that the debt should be due from a person who was not a displaced person. The term displaced person has been defined in Clause (10) of Section 2 of the Act in these words:--

" "Displaced person" means any person, who on account of the setting up of the Dominions of India and Pakistan, or on account of the Civil disturbance or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him In West Pakistan, but does not include a banking company;"

5. So far as the appellant was concerned it was not disputed that he was a displaced person. As he claimed that a debt was due to him and he was a displaced creditor within the meaning of the term as given in Clause (8) of Section 2 the question to be decided was whether the respondents were displaced persons or not. The firm which was impleaded as first respondent was not a legal entity or person and there was no question of its being a displaced or non-displaced person. The two persons who were said to be the owners were B. Jagannath and B. Om Prakash in respect of both of whom the appellant contended that they were not displaced persons. The contention has been accepted in respect of Om Prakash and that finding has not been questioned before us.

The learned counsel for the appellant has conceded before us that that finding is correct. In respect of Jagannath it has been found as a fact that he had acquired

certain property in Lahore (now in Pakistan) and on account of the partition and disturbance in his country he was not able to manage those properties. The definition of the term "displaced person" which we have already quoted above shows that persons who are residents in India but for some reason are unable to manage, supervise or control any immovable property belonging to them in Pakistan are also to be considered as displaced persons. If Jagannath had purchased some property in Lahore which he could not manage, supervise or control on account of the partition of the country on the creation of Pakistan he was a displaced person. The finding on this point cannot therefore be challenged and appears to be correct.

6. If B. Jagannath was not a displaced person the question is whether a claim against him along with his son could be filed u/s 13 of the Act.

7. The Act contains different provisions for filing claims against displaced persons and persons who do not fall in that category. Section 10 provides for claims by a displaced creditor against a displaced debtor. Section 13 provides for a claim by a displaced creditor against persons who are not displaced persons. There is no provision in the Act for filing a claim jointly against persons belonging to both the classes. It follows that if several persons are said to be liable for a debt Section 13 will apply if all of them are not displaced persons and Section 10 will apply if all of them are displaced persons. If some of the debtors are displaced persons and the others are not, the proper thing for a displaced creditor is either to make the claim against the displaced debtor u/s 10 of the Act, and against the non-displaced debtors u/s 13 or to follow the normal rule and file the claim at a place where one of the debtors resides. The Act does not permit him to combine a claim against a displaced person with a claim against a non-displaced person and to file such a joint claim u/s 13.

8. This conclusion is strengthened when it is borne in mind that Section 13 is a departure from the normal rule about the place of suing and confers a distinct advantage in this respect on the displaced creditor. The creditors will therefore have to comply strictly with the section in order to get that advantage. The normal rule is that a claim can be filed either at the place where the cause of action arises or at the place where the defendant resides. A plaintiff cannot file a suit at his own place of residence unless a part of the cause of action has also arisen there. In claims to which the Displaced Persons (Debts Adjustment) Act, 1951, applies the cause of action must have arisen in Pakistan. The venue in such cases cannot therefore be determined on the basis of the accrual of the cause of action.

9. In cases where the claim is made against displaced debtors Section 10 of the Act makes the normal rule applicable and the claim can be filed where the displaced person resides, carries on business or works for gain. In case the claim is to be filed against a non-displaced person, however, Section 13 gives a concession to the displaced creditor. In that case he can file a claim not only at the place of residence of non-displaced debtor but can file it even at the place of

his own residence. This advantage will, however, be available to him only if the claim is being made against a non-displaced debtor. Section 13 will therefore apply only if there is a single debtor who is a non-displaced person and if there are more than one debtors, all of them are non-displaced persons.

10. In the present case it having been found that one of the debtors namely Jagannath was a displaced person Section 13 did not apply and taking advantage of it was not open to the appellant to file a claim at his own place of residence viz., Mathura against Jagannath or Om Prakash.

11. The learned Civil Judge was therefore correct in his view that the claim made by the appellant was not maintainable u/s 13. Section 13 not only fixes the, place where the claim is to be filed but also confers" a right on the displaced creditor to make a claim. If the provisions of the section are not applicable at all the claim filed under it will not be maintainable. In that case there can be no question of its return for presentation to proper court. The claim will have to fail.

12. The rejection of the appellant's claim was thus perfectly justified. This appeal has no force. It "s dismissed with costs.