

(1963) 04 AHC CK 0009
In the Allahabad High Court
Case No : F.A.F.O. No. 225 of 1957

Chiranjit Lal Gambir, Adv.

APPELLANT

Vs

Narang Industries Ltd. and Others

RESPONDENT

Date of Decision : 19-04-1963

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 15, 2(6), 21, 5

Citation : AIR 1964 All 364

Hon'ble Judges : R.S. Pathak, J; B. Dayal, J

Bench : Division Bench

Advocate : S.N. Misra, for the Appellant; S.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, J.—These are two appeals arising out of proceedings under the Displaced Persons (Debts Adjustment) Act, 1951.

2. Three brothers, Chiranjit Lal Gambir, Kishan Dev Gambir and Manmohan Gambir constituted a partnership firm, M/s. Dewan Chand and Sons, and carried on the business of forest contractors and timber merchants at Jhelum, Lahore, Havelian and Abbottabad, all situated, in what is now Western Pakistan. This business was carried on by the firm, which is the appellant before us, until partition of the country in 1947, when the three brothers migrated to Dehradun.

3. The Displaced Persons (Debts Adjustment) Act, 1951 was brought into force in the State of Uttar Pradesh on and from December 10, 1951, and on December 9, 1952 an application was made by the firm u/s 5 of the Act praying that its liabilities be adjusted and scaled down under the provisions of the Act. In that application reference was made to a loan taken from the Narang Bank of India Ltd., Lahore in respect of which a promissory note was executed by the appellant, and it was stated that the Bank subsequently transferred the promissory note in favour of the first respondent, M/s. Narang Industries Ltd., who instituted, a suit on the basis of the promissory note and obtained a decree

for Rs. 25,000/- on August 4, 1952 against the appellant. The appellant claimed that the decree was liable to be reopened and the liability under it reduced in accordance with the provisions of the Act. A number of other transactions were also set out in the application, and the parties to those transactions were impleaded as respondents. The application was registered as D. A. No. 692 of 1952.

4. The Additional Tribunal Judge, Dehradun framed two preliminary issues :

2. Whether in a proceeding u/s 5 of Act LXX of 1951 it is competent to determine" the amount due to this debtor petitioner from any respondent who is not a creditor of the petitioner?

7. Whether the decree in favour of respondent No. 1, 3, 4 and 6 can be reopened? if so, its effect?

These issues were disposed of by an order dated May 15, 1957, which has given rise to the present First Appeal From Order No. 225 of 1957. By that order the Additional Tribunal Judge held that the decree obtained by the first respondent, M/s. Narang Industries Ltd., could not be the subject-matter of the application, having been passed against the appellant after the Act had come into force. He also held that the respondents Nos. 9, 11, 12, and the legal representatives of the respondent No. 10 could not be impleaded as parties to the proceedings as they were not creditors but debtors of the appellant. As regards the eighth respondent, Dr. Gokal Chand Narang, the Additional Tribunal Judge found that he had been impleaded in two capacities, as an alleged debtor of the appellant and also as a joint debtor with the appellant in respect of a debt owing to the fourth respondent, and he held that he could not be impleaded as a party as a debtor of the appellant but could continue as a party in respect of his capacity as joint debtor with the appellant.

5. We have heard learned counsel for the appellant. No one appears for the respondents. Learned counsel for the appellant contends that even though the decree passed in favour of the first respondent was passed after the Act had come into force, the appellant was entitled to apply for the adjustment of the original liability under the promissory note. In our judgment, that contention cannot be accepted. The first respondent instituted a suit on the basis of the promissory note and obtained a decree. The result was that the original liability under the promissory note now merged into the decree. This result follows from the application of the Common Law doctrine that a security of a lower order merges into a security of a higher order for the same debt, the original cause of action being thus replaced by the decree. Upon the passing of the decree the appellant's liability under the promissory note ceased to exist, and it was under the decree that he was now liable.

6. The question which next arises for consideration is whether the liability under a decree passed after the Act had come into force could be scaled down under the provisions of the Act. Section 2(6) defines a "debt" for the purposes of the

Act, and according to the definition, in the case of a displaced person who has now left or has been displaced from his place of residence in any area now forming part of West Pakistan the liability must have been incurred before he came to reside in any area now forming part of India. In the present case, upon the allegations contained in the application, the appellant claimed that the partners had migrated upon partition to the territories now constituting India.

Consequently, in order that the liability under the decree should be a "debt" within the meaning of Section 2(6), the decree should have been passed before August 15, 1947. The decree in question having been passed after that date, the provisions of Section 5 cannot be invoked in respect of it. See *Ramchand Tillumal Vs. Khubchand Daswani and Others*, , *Parkash Textile Mills Ltd. Vs. Mani Lal and Others*, and *Mathra Das v. Hari Ram*, AIR 1958 AP 76 . The Act has made provision for cases where a decree is passed before the Act was brought into force and also where proceedings in respect of a debt were pending before a civil Court on the date of an application u/s 5 of the Act. Where a decree has been passed by a Civil Court before the commencement of the Act in respect of any "debt", the displaced debtor can apply to the Tribunal Judge u/s 21 for revising the decree so as to bring it into accord with the provisions of the Act. An application u/s 5 must be made within one year of the date on which the Act comes into force, and if on the date of that application proceedings are pending before a Civil Court to respect of any debt to which the displaced debtor is subject, Section 15(a) provides that they shall be stayed.

We find, however, no corresponding provision in respect of decrees passed after the Act was brought into force. Indeed, the provisions of Section 15(a) appear to contemplate that a displaced debtor may anticipate the passing of a decree by applying in time u/s 5 so that the proceedings in the suit would be consequently stayed by reason of Section 15(a). By virtue of Section 15(a) the record of the proceedings in the suit would also stand transferred to the Tribunal, and the Civil Court would have no jurisdiction thereafter in the matter. It was, therefore, open to the appellant either to apply u/s 5 and have the proceedings thereby stayed in the suit upon the promissory note or to allow the proceedings to continue and culminate in a decree.

It will be remembered that the Act came into force in the State of Uttar Pradesh on December 10, 1951 and if the appellant had applied u/s 5 before the decree was passed on August 4, 1952 the proceedings in the suit would have been stayed and no decree could have been passed. The liability under the promissory note would then have been the subject of adjustment under the Act. The appellant did make an application u/s 5, but it was made on December 9, 1952, long after the decree had already been passed. We are therefore, unable to accede to the contention of learned counsel that the appellant was entitled to have the liability under the decree scaled down under the Act.

7. Learned counsel for the appellant states that he does not press the grounds relating to the question whether the respondents Nos. 9, 11, 12 and the legal

representatives of respondent No. 10 could be impleaded as respondents to the application. Nothing has also been urged on behalf of the appellant against the finding of the Additional Tribunal Judge in respect of the eighth respondent.

8. We, therefore, see no force in this appeal which must accordingly fail.

9. First Appeal from Order No. 19 of 1958 has been filed by Chiranjit Lal Gambir and arises out of his application u/s 5 of the Act made on December 9, 1952 which was registered as D. A. No. 691 of 1952. In that application he sought the revision of a decree made on August 4, 1952 long before his application u/s 5 was made. The decree was also not made before the commencement of the Act. The Additional Tribunal Judge held that the decree in question cannot be the subject of the application u/s 5 made by the appellant. For the reasons which we have stated above, we endorse this finding. No other ground is pressed before us in this appeal. The appeal must, therefore, be dismissed.

10. Both the appeals are dismissed. There will be no order as to costs in First Appeal From Order No. 255 of 1957 as no one has appeared to contest it. First Appeal From Order No. 19 of 1958, however, was contested on behalf of the second respondent, and we, therefore, make an order of costs in that appeal in favour of the second respondent.