

**(1952) 12 P&H CK 0007**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : First Appeal No. 72 of 1952**

|                                            |            |
|--------------------------------------------|------------|
| Delhi Cloth and General Mills and Co. Ltd. | APPELLANT  |
| Vs                                         |            |
| Harnam Singh and Others                    | RESPONDENT |

---

**Date of Decision :** 06-12-1952

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 20

**Citation :** AIR 1955 P&H 129

**Hon'ble Judges :** Eric Weston, C.J;Bhandari, J

**Bench :** Division Bench

**Advocate :** Sohan Lal Sethi, for the Appellant; K.L. Gosain and R.S. Narula, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Weston, C.J.—This is an appeal from a decree passed in favour of the respondents by Madan Mohan Singh, Subordinate Judge 1st Class, Delhi.

2. The facts of the case are that prior to partition the plaintiffs were carrying on business as cloth dealers at Lyallpur. The plaintiffs" obtained a quota from the Central Government entitling them to make purchases of cloth from the Delhi. Cloth Mills which then and now had and has its registered office at Delhi. At Lyallpur there was a cotton mill which was and still is a subsidiary concern of the Delhi Cloth Mills, Delhi. On 28-7-1947, the plaintiffs deposited a sum of Rs. 55,000/- in the Imperial Bank at Lyallpur in the account of Delhi Cloth Mills as advance to which the price, of future takings of cloth should be debited. There was still a small balance of Rs. 79/6/0 unspent from a previous deposit made by the plaintiffs.

Cloth to the value of Rs. 43,583/- was supplied to the plaintiffs in August 1947, leaving an unexpended balance of Rs. 11,494/6/6 and in addition to this there was an amount of Rs. 1,000/- also in deposit to the account of Delhi Cloth Mills as security furnished by the plaintiffs.

After partition the plaintiffs found" themselves unable to continue to reside at Lyallpur and came to India. There can be no dispute that they became evacuees under the law relating to evacuees and evacuee property in Pakistan. The plaintiffs were unable to recover the unexpended balance due to them and the security from the Delhi Cloth Mills, and filed the present suit to obtain the amount together with interest. The trial Court granted a decree for the principal amount claimed but refused interest. The Delhi Cloth Mills have now appealed from this decision.

2a. After the institution of the suit it appears the Custodian of Evacuee Property, Pakistan, enforced payment of the amount to him by the Lyallpur Cotton Mills on the ground that the money was a debt due to an evacuee which debt vested in him (the Custodian) under the Pakistan Administration of Evacuee Property Ordinance, 1949, The question is whether under these circumstances the plaintiffs are entitled to a decree against the Delhi Cloth Mills.

3. We have heard considerable arguments on the probable intention of the parties as to the law which should govern their relationship. It is pointed out on behalf of the Delhi Cloth Mills that as the deposit was made at the end of July 1947 and the cloth was taken by the plaintiffs in August 1947 the plaintiffs must have been aware that Lyallpur would become a part of Pakistan and they must be deemed to have agreed to be governed by the Pakistan laws. It seems to me, however, that this argument does not touch the real point in the case. It may well be said that as part of the cause of action arose in Lyallpur so therefore a suit in the Lyallpur Courts would be competent.

I think, however, that the proper location of the debt must be taken to be at Delhi and not at Lyallpur. As already stated the Delhi Cloth Mills has and had its registered office at Delhi and must therefore be taken to reside in India, and a right "in personam" against them must be taken to have existed in India". When a matter turns upon the situation of the debt it is an impossible position that "the debt can be held to have two different locations. Support for this view I think is to be found in the decision of -- "New York Life Assurance Co. v. Public Trustee" (1924) 1 Ch 15 (A).

4. If then location of the debt must be taken to have always been at Delhi the applicability of any Pakistan law requiring vesting of evacuees' debts in the Pakistan Custodian must be taken to be of the nature of penal legislation which at least so far as this debt is concerned could neither be enforced nor recognised by the Court in this Country. On this short ground I think that the action of the Custodian in compelling payment to be made in Lyallpur by the Lyallpur Mill or other person on behalf of the Delhi Cloth Mills was action which cannot be recognised and which gave no valid discharge of the suit debt. I consider therefore that the decision of the Court below was correct. This appeal should be dismissed. I would make no order as to costs.

Bhandari, J.

5. I concur in the order proposed.