
(1959) 12 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Case No. 266-D of 1956

Duncan Stratten and Co. Ltd.

APPELLANT

Vs

Firm Seth Sukhdev Baksh Roller Flour Mills and Others

RESPONDENT

Date of Decision : 17-12-1959

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 2(6)

Citation : AIR 1960 P&H 371

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

(1) In this petitioner for revision two points arise for decision. One is whether the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951, has the jurisdiction to entertain and decide the claims made in the petition filed by the respondent firm under S. 13 of that Act. The other is the question whether the application made to the Tribunal was not competent because of the effect of the Pakistan Laws of Administration of Evacuee Property.

(2) The learned counsel for the petitioner contends that the amounts which have been claimed by the respondent firm do not fall within the definition of the word "debt" as given in S. 2(6) of the Displaced Persons (Debts Adjustment) Act. It is submitted that the claims arise out of a contract and a claim for damages for breach of contract cannot fall within the definition of the word "debt". My attention has been invited to Milkha Singh. Gopala Krishna Mudaliar, AIR 1956 Punj 174, in which the question that came up for consideration was whether damages for breach of contract would be covered by the word "debt". The view that was expressed was that the remedies in regard to loans and in regard to damages were distinct and that damages were sums which the Court ordered to be paid as compensation for breach of contract or wrong. It was held that all debts were not covered by the provisions of the Act and that a breach of contract of warranty could not be said to be a pecuniary liability nor could the damages be considered to be included in the definition of the word "debt". The following

observations of Kapur J. at p. 176 may be referred to with advantage:

".... I have already discussed about the jurisprudential meaning of the word "damages". It is nothing more than the compensation which the Court determines in the circumstances of each case for the injury or loss which has been sustained by the other party. This does not arise because of any existing obligation by the person who breaks a contract but it arises as a result of the determination by the Court and its fiat, and pecuniary liability therefore does not arise till it has been determined that the complainer is entitled to compensation, and, therefore, what the court does is nothing more than to determine the value of the damage done to the other party to the contract but until that determination is given, there is no liability upon the defendant. The basis of a suit for damages is that on the date the suit is brought there is no pecuniary liability and it has yet to be established and the plaintiff comes to Court for that particular purpose."

In the present case on issue no. 1 the Court below came to the conclusion on a consideration of the relevant material on the record that the amounts as claimed by the respondent firm did not fall within the meaning of the word "damages" and they were not claimed as damages. Certain amounts were found to have been paid by way of advance in payment of price and even with regard to those amounts which were alleged to have been paid by way for earnest money, it was alleged that they had never been forfeited and the petitioner had all along been willing to refund the same to the respondent firm. In these circumstances there was no question of any damages being determined and the claim of the respondent firm rested on allegations which would bring them within the meaning of the word "debt" as given in the Act. So far as the jurisdiction of the Tribunal is concerned to adjudicate with regard to those claims, there can be little doubt. It will, of course, have to be determined on the merits as to what amounts the respondent firm is in fact entitled.

(3) There is one matter, however, which has not been specifically decided by the Court below and that relates to the amount of Rs. 7,935/7/6 claimed as damages by way of interest. The learned counsel for the petitioner contends that the aforesaid claim would fall within the meaning of the word "damages" as explanation in the case mentioned above. The amount of interest which is being claimed by way of damages could only be determined as compensation by the Court for the alleged withholding of the amounts which according to the respondent firm should have been paid or refunded to them. This claim, therefore, is nothing more than compensation which the Court has to determine in the circumstances of the case for the loss which has been sustained by the respondent firm. It would thus fall within the meaning of the word "damages" with the necessary result that such a claim would not be covered by the definition of the word "debt". In these circumstances it must be held that the Tribunal has no jurisdiction to decide about the aforesaid item. The learned counsel for the respondent says that he will move for amendment of the

application made before the Tribunal with regard to this claim. If that is done and the amendment is allowed, then it will be open to the Tribunal to decide according to the test laid down in the case mentioned before whether it has jurisdiction to entertain and decide the aforesaid claim as made after the amendment.

(4) As regards the second point covered by issue No. 5, the learned counsel for the petitioner submits that the proper law of the contract in the present case is the Pakistan law under which all the rights have vested in the Custodian of Evacuee Property in Pakistan. Advantage was sought to be taken of the observations of their Lordships of the Supreme Court in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, There the facts were altogether different and on those facts it was held that the elements of the contract in that case out of which the obligation to pay arose were most densely grouped at Lyallpur and that it was its natural seat and the place with which the transaction has its closest and most real connection. It was held that the proper law of the contract in so far as that was material was the Lyallpur Law. It is significant that in that case there was no determination or adjudication with regard to the question as to what would happen if the claims made fell within the meaning of the word "debt" as defined in the Displaced Person (Debts Adjustment) Act. in Paragraph 54 their Lordships made it quite clear:

"But we wish to emphasise that we decide this because payment was in fact made to the custodian and that we express no opinion about what would happen in a case where there is no payment and the defendant has no garnishable assets in Pakistan out of which the West Punjab Government could realise the debt by attachment of the defendant's property. Different conclusions might possibly arise in such a case."

In my opinion, in a case of the present type when a particular liability even though arising out of a contract falls within the definition of the word "debt" its determination would at once be governed by the provisions of the Act particularly in view of S. 3 which has an overriding effect. As the facts of the case which was decided by the Supreme Court were altogether different, it is not possible to hold in the present case that the proper law of the contract by which the party would be governed would be the law of Pakistan.

(5) In the result, this petition is allowed to the extent indicated above. On other points it is dismissed. The parties are directed to appear before the District Judge, Delhi on 31-12-1959 who will entrust the case to such Tribunal under the Act, which is competent to dispose of this matter.

(6) Petition allowed.