

(1961) 08 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Rev. No. 51-D of 1957

First National Bank Ltd.

APPELLANT

Vs

Industrial Oil Co. and Others

RESPONDENT

Date of Decision : 29-08-1961

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 53
Partnership Act, 1932 — Section 69, 69(1), 69(2), 69(3)
Presidency Small Cause Courts Act, 1882 — Section 19

Citation : AIR 1962 P&H 170 : (1962) 32 CompCas 994 : (1962) 1 ILR (P&H) 315

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Judgement

(1) This is a revision against the order dated 27-8-1956 passed by the learned Tribunal decreeing the claim of the respondents for the recovery of Rs. 3,520/14/- against the petitioner.

(2) An application was filed by the respondents u/s 13 of the Displaced Persons (Debt Adjustment) Act (Act No. 70 of 1951) for the recovery of Rs. 3,520/14/- against the petitioner, the First National Bank Limited. The allegations of the respondents were that respondent No. 1 was a duly registered firm at Karachi, or which respondents 2 and 3 were the partners; that this firm sent certain bills to the Branch of the petitioner-Bank collected these bills but failed to remit the amount to the respondent-firm; and that the respondent-firm had been dissolved and respondents 2 and 3 were displaced persons from Pakistan.

(3) This application was opposed by the petitioner-Bank, which pleaded that the respondent firm was not duly registered under the Indian Partnership Act; that the respondents were not displaced persons; that out of the bills in question, only some had been actually realized; and that the petitioner-Bank was under a scheme of arrangement as sanctioned by the High Court and, consequently, the application was not maintainable.

(4) On the pleadings of the parties, the following preliminary issues were framed--

1. Whether the petitioners are displaced persons?
2. Whether the respondents have principal office, carry on office and work for gain in Delhi and the Tribunal in Delhi has jurisdiction?
3. Whether the petition was not duly signed and presented?
4. Whether a dissolved partnership could not sue in the firm name?
5. Whether petitioners 2 and 3 were partners of firm No. 1?
6. Was the firm registered and if not with what effect?
7. Whether the respondents Bank is under scheme and the present petition is not competent in this Tribunal?

(5) Since under issue No. 2 it was held that the Tribunal at Delhi had not jurisdiction to try this application, the following additional issues on merits were settled--

1. What bills were given by the petitioners to the respondent-Bank for collection?
2. What collections were actually made by the respondent-Bank?
3. To what amount is the applicant entitled in the presence of the scheme?
4. Relief.

(6) It was found by the learned Tribunal that all the respondents were displaced persons; that the application was duly signed and presented; that a dissolved partnership could sue in the name of the firm; that respondents 2 and 3 were the partners of the respondent-firm; that the respondent-firm was duly registered, the registration of the firm under the Indian Partnership Act had no bearing whatsoever on the competency of a displaced person or persons, who constituted such a firm, to file an application under the Act; that the petitioner-Bank was under a scheme of arrangement, but this scheme did not disentitle the respondents to recover their claims in full; that the petitioner-Bank was liable to the respondents for a sum of Rs. 3,520/14/- ; and that since the respondents could not be regarded as "creditors" of the Bank within the meaning of this term as given in the scheme, it did not adversely affect their claims and they were entitled to recover the full amount. As a result of these findings, the claims of the respondents was decreed against the petitioner-Bank for Rs. 3,520/14/-. Against this order, the present revision has been filed by the petitioner-Bank.

(7) Learned counsel for the petitioner, in the first instance, submitted that the decision of the Court below on issue No. 6 was incorrect, because on the statement of respondent No. 2 it could not be held that the respondent-firm was duly registered under the Indian Partnership Act. He further contended that if the

firm was not registered, then it could not file an application u/s 13 of Act No. 70 of 1951 and the same should have been dismissed by the learned Tribunal on this ground alone.

(8) It is true that the respondent, Vardhaman Parbhu Das Turakhar, as A. W. 1, had at first stated that the firm was duly registered. But he later on deposed that he did not remember whether the firm was got registered or not. My attention was not invited to any other evidence on the record on this point. On this statement alone, it is difficult to hold affirmatively that the firm was duly registered under the Indian Partnership Act.

(9) The question then arises that if the firm was not registered could it file an application u/s 13 of the Act? According to the learned counsel for the petitioner, Section 69 of the Indian Partnership Act would be a bar to the bringing of this action by the firm without its being registered. Section 69 of the Indian Partnership Act is in the following terms:

"S. 69(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim or set off or other proceeding to enforce a right arising from a contract, but shall not affect:

(a) the enforcement of any right to sue for the dissolution of a firm or for account of a dissolved firm, or any right or power to realise the property to a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvency partner.

(4) This section shall not apply--

(a) to firms or to partners in firms which have no place of business in the State, or whose places of business in the States are situated in areas to which, by notification under Se. 55, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882, or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause

Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

Learned counsel basing himself on the provisions of sub-section (3) of Section 69 mentioned above, submitted that the application u/s 13 of the Act would be covered by the words "or other proceeding to enforce a right arising from a contract" occurring in this sub-section and the respondent-firm would be not entitled to file application as it was an unregistered one. This matter came up for decision in *Ram Lal Harnam Dass Vs. Bal Krishen and Others*, and *Bishan Narain, J.* held as under:

"The words "or other proceeding" in S. 69(3) relate to the proceedings of the nature of set-off and nothing else. And as section 69(3) does not relate to other proceedings as distinct from a suit, the proceedings taken under the Displaced Persons (Debts Adjustment) Act are not barred."

Learned counsel for the petitioner submitted that this authority did not lay down good law. He invited my attention to decision of the Division Bench of the Allahabad High Court in *Abdul Jabbar and Others Vs. Audhesh Singh Ram Agyan Singh and Others*, where a contrary view was taken and it was held:

"The first point that we had to consider in connection with this appeal was whether the proceeding under the Encumbered Estates Act for determination of a claim of a creditor were at all governed by the provisions of Section 69 of the Indian Partnership Act. This argument had to be considered in view of the language of sub-sections (1) and (2) of Section 69 wherein a bar was placed against the institution of a suit only. Our attention has, however, been drawn to sub-section (3) of Section 69 which makes the provisions of sub-sections (1) and (2) of that section applicable even to a claim of set-off or other proceedings to enforce a right arising from a contract. It is obvious that the claim by the appellants in these Encumbered Estates Act proceedings for determination of the liability of the landlord to them and for passing a decree in respect of the amount found due is a proceeding to enforce a right arising from the contract and is fully covered by the language used in sub-section (1) of Section 69."

This authority was noticed by *Bishan Narain J.* in his judgment mentioned above and this is what the learned Judge said about the same:

"There is no discussion in this judgment and the provisions of the U. P. Act have not been brought to my notice. It may be that under that Act the proceedings are deemed to be a suit and this may be borne out by the fact that the learned Judges had applied Section 69(1) to the case and not section 69(3)."

As at present advised, I am in respectful agreement with the decision of *Bishan Narain J.*, and would hold that the provisions of Section 69(3) of the Indian Partnership Act would be no bar in the filing of the application by the respondent-firm, even though it was not registered.

(10) Learned counsel for the petitioner then submitted that in *Ram Lal Harnam*

Dass Vs. Bal Krishen and Others, it was wrongly conceded that these proceedings were not a "suit" and S. 69(2) of the Indian Partnership Act had no application to the same. He argued that the respondent-firm, therefore, could not file the present application against the petitioner-Bank, unless it was registered.

(11) The word "suit" is not defined in the Indian Partnership Act. In Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 it was observed by their Lordships of the Privy Council as under:

"The word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint."

Under the provisions of Act No. 70 of 1951 only an application, as distinct from a plaint, is filed. Besides, Section 53 of the Act specifically mentions that every application made under this Act shall be deemed to be a "suit" for the purpose of the Indian Limitation Act. This clearly shows that the Legislature intended that an application under this Act should be considered to be a "suit" only for the purposes of the Indian Limitation Act. This view of mine finds support in Krishan Gopal v. Sant Ram 1954 PLR 9, where Khosla J. (as he then was) held as under:

"Section 53 of the Displaced Persons (Debts Adjustment) Act, 1951, provides that for a certain limited purpose, namely for the purpose of applying the Limitation Act, an application under Act 70 of 1951, must be deemed to be a suit for the purpose of "that Act". That Act here means that Indian Limitation Act and therefore, it is clear that according to Section 53 of Act 70 of 1951, the application is to be deemed a suit only for the purpose of the Indian Limitation Act and for no other purpose.

.....that an application under the Displaced Persons (Debts Adjustment) Act, 1951, is not to be treated as a suit for all purposes, nor are the proceedings always governed by the provisions of the Code of Civil Procedure. The Act throughout makes mention of an application and not a plaint or suit and refers to the proceedings consequent upon the application or proceedings under the Act and not as if they were proceedings in a suit."

I would, therefore, hold that Section 69(2) of the Indian Partnership Act does not apply to the present application under Act No. 70 of 1951.

(12) Learned counsel for the petitioner then submitted that the decision of the Court below on issue No. 7 was wrong.

(13) In the present case, in the months of June, July and August 1947 in Karachi Branch of the respondent-firm had delivered to the Phillaur Branch of the petitioner-Bank several bills along with the demand drafts for collection only from Messrs. Nath Brothers, Phillaur (Punjab). The money had been realized by the petitioner-Bank, but the same was not remitted to the respondent firm. In similar circumstances, in First National Bank Ltd. Vs. Pioneer Commercial Bank, , and In the matter of New Bank of India Ltd. 1948 PLR 173: (AIR 1949 EP 88), it was held that the money so realised was in the nature of a trust with the Bank

and the relationship between the parties was not that of a banker and a customer, but that of a principal and an agent. Therefore, even if the Bank had suspended business was under a scheme of arrangement, it was liable to pay the amount in full to the respondents.

(14) Lastly, it was submitted by the learned counsel for the petitioner that the respondents would be "creditors" within the definition of this word as given in the scheme of arrangement and they would, therefore, be entitled not to their full amounts, but would get pro rata along with the other creditors of the Bank.

(15) The scheme of arrangement sanctioned by the High Court mentions:

"For the purposes of this scheme the word "creditors" includes holders of Fixed Deposits. Current Accounts, Deposits at call, Savings Fund Accounts, amount lying in sundries, or in decree or in any other kind of credit account, Bank Drafts, Cash Orders, Pay Orders and documents of the like nature and amounts due to the Bankers over and above the value of securities lying with them in such accounts, after adjustment of loans, if any, against any or all the credits in these accounts whether pledged specifically or not."

As I have already held that the amount in question was lying with the petitioner-Bank to the nature of a trust, and the relationship between the parties was that of a principal and an agent, the respondents would not come within the definition of "creditors" as given above. They are, therefore, entitled to get their full amount.

(16) In view of what I have said above I find no force in this revision petition, which is hereby dismissed. In the circumstances of this case, however, I would leave the parties to bear their own costs throughout.

(17) Revision petition dismissed.