
(1953) 11 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 76 of 1953

Gokal Singh and Others

APPELLANT

Vs

Bakshi Ram and Another

RESPONDENT

Date of Decision : 18-11-1953

Acts Referred:

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

Citation : AIR 1954 P&H 192

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : D.K. Mahajan, for the Appellant; H.L. Sibal, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This appeal is brought against an order passed by Mr. Sheo Parshad, Senior Subordinate Judge, Gurdaspur, acting as a Tribunal dated 5-6-1952, awarding against original respondents Nos. 2 and 3 a decree for Rs. 13,000/-.

2. The facts of the case are that a firm, Krishana Wholesale Cloth Syndicate Group (A)", was carrying on business in Sheikhpura. It had three partners -- Firm Bakshi Ram -- Roshan Lal, -- Firm Surain Singh-Gokal Singh and Firm Sohna Mal--Des Raj. On the partition of the country the partners of this syndicate came to Amritsar and an award, Exhibit A. 1, was given by which the partnership was dissolved and the assets of the firm were divided and a cheque for Rs. 13,000/- was given to firm Bakshi Ram-Roshan Lal. It was signed by Bakshi Ram and Gokal Singh. The cheque is not on the present record as I am informed that it is missing. On 1-11-1947 the cheque was transferred by the firm to Roshan Lal and when presented it was dishonoured on the ground, which is not accepted by the appellants, that the Bank account had not been transferred to India from Sheikhpura.

3. On 28-10-1950 Roshan Lal brought a suit at Pathankot for recovery of Rs. 13,000/- but as the suit was in "forma pauperis" and it was not shown that the

petitioner was a pauper, he was, on 2-1-1952, given time to make up the court-fee.

4. On 20-3-1952 Bakshi Ram filed an application under S. 5 of the "Displaced Persons (Debts Adjustment Act, 1951 (Act 70 of 1951)" which I shall term as the Act in this judgment. The defence raised was that the tribunal had no jurisdiction, that the amount was not debt, that under the award, A. 1, the respondents were not liable and that the debt was barred by time. The learned Judge decided all these issues in favour of the petitioner and passed the decree for Rs. 13,000/-. The original respondents Nos. 2 and 3 have come up in appeal to this Court.

5. In order to determine the points that arise in appeal I may set out the provisions which are relevant. u/s 2(6) "debt" has been defined to mean

"any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained which

(a) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India;

(b)* * * * * (c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends; & includes any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in Sub-clause (a) or Sub-clause (b) or Sub-clause (c):

Provided that in the case of a loan, whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability; but does not include any pecuniary liability due under a decree passed after the 15th day of August, 1947, by any court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement."

6. It is clear that Sub-clause (a) has no application to the facts of this case, nor has Sub-clause (b). The only question is whether the case is covered by Sub-clause (c). The cheque on the basis of which a liability is sought to be placed was given in this country after accounts had been gone into and an arbitrator had given an award as to how the assets were to be divided. Sub-clause (c) deals with pecuniary liability which is due to a displaced person from any other person (that other person may be a displaced person or not) ordinarily residing in the territories to which this Act extends. In the other portions of this sub-section, the words used are "who came to reside in any area now forming part of India." In order to give it a proper construction it appears that this "ordinarily residing in the territories to which this Act extends" must mean persons who are displaced

but were before the partition ordinarily residents of what is now India. There is no other reason why a different phraseology should have been used. Therefore in my opinion this is not a pecuniary liability that arises.

7. The learned Judge has not given due weight to Bakshi Ram's statement as A. W. 1. He has stated that a cheque for Rs. 13,000/- might have been issued to the firm before migration to India and the cheque must have been realised before the migration. Towards the end of his statement he says:

"I do not remember the date or the month of the cheque for Rs. 13,000/- given to me on the Bharat Bank in Pakistan. We reached India after coming from Pakistan on 2-9-1947. I do not remember how many days before coming to India I received the amount of the cheque".

Reading the two portions of the statement together it appears to me that it cannot be said that this Rs. 13,000/- was really due from the firm to the petitioner. This also explains the long delay in bringing the suit in the Pathankot Court. No other explanation has been given to me for the delay.

8. It is next submitted that this claim against the original respondents was barred by time. The cheque which is the basis of the pecuniary liability was given on 27-10-1947 and it may be that on 28-10-1950 the suit was brought and it might have been within time or not I do not decide. But on 20-3-1952 when the application was made it could not be said that there was any liability on the basis of this cheque which could be called a debt payable as the liability to pay, arose if it did at all, on 27-10-1947 and the application was made about four and a half years after the liability could arise. In my opinion as against the present appellants the claim was barred by time.

9. It is then submitted that if the cheque was not paid the liability of the firm could not be enforced by a decree for payment of money against the other partners and reliance is placed on -- Mohammed Siddiq Vs. Mohamed Akbar and Others, where it was held in the case of a dissolved firm that a "hundi" by the firm in favour of one of the partners does not create any liability as between the partner and the firm and the partner is not entitled to enforce that liability by a suit against the firm. All that he can do is that he should ask for taking partnership accounts. It is not necessary for me to give any opinion in this question because in my view the points that I have decided are sufficient to dispose of this appeal. I would therefore allow this appeal, set aside the order of the Tribunal and dismiss the petition with costs.