
(1960) 08 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. Case No. 102-D of 1956

Gopal Dass and Another

APPELLANT

Vs

Roshan Lal Kapur and Others

RESPONDENT

Date of Decision : 11-08-1960

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11, 11(1), 11(2), 11(3)

Citation : AIR 1962 P&H 323 : (1961) 1 ILR (P&H) 91

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

(1) The question for determination in this appeal is whether the dismissal on ground of limitation of an application filed by a displaced debtor u/s 5 of the Displaced Persons (Debts Adjustment) Act, bars his right to make a similar application u/s 11(2) of the Act?

(2) The appellant, Gopal Dass, filed an application as a debtor u/s 5 of the Displaced Persons (Debts Adjustment) Act, 1951, at Lucknow. This section entitles a displaced person, at any time within one year after the date on which this Act comes into force, to make an application for the adjustment of his debts to the Tribunal. It is not disputed that Gopal Dass had included in this application the debt which he owed to Roshan Lal Kapur. There were three other creditors included in the application presented by Gopal Dass. The application was dismissed by the Tribunal at Lucknow as it was presented beyond the statutory period of one year after the enactment of the Displaced Persons (Debts Adjustment) Act. An appeal preferred to the High Court was also dismissed on 22nd of January 1960.

(3) In an application made by Roshan Lal Kapur, respondent, for recovery of sum of Rs. 1779/-, against the appellants Gopal Dass and Shiv Kumar u/s 10 of the Act, Gopal Dass made an application under sub-section (2) of Section 11 for

adjustment of his debt. Section 10 enables a displaced creditor to prefer a claim against a displaced debtor in an application in which a statement of the debts owed to the creditor with full particulars has to be furnished. The procedure on such an application is prescribed in Section 11 of the Act. Under sub-section (1) of Section 11, the Tribunal has to serve a displaced debtor with a notice on the application u/s 10 and the displaced debtor may either show cause, if any, against the application or he may make an application on his own behalf under S. 5.

Under sub-section (2), the Tribunal is required to adjudicate upon an application made by a displaced debtor u/s 5 in response to a notice of a displaced creditor's petition u/s 10. Sub-section (3) of Section 11 is important inasmuch as it specifically says that:

"the period of limitation specified in sub-section (1) of Section 5 in respect of an application by a displaced debtor shall not apply to an application made under sub-section (2)."

It is common ground that the application of the displaced debtor filed in the Lucknow Tribunal was dismissed because it was presented beyond the period prescribed in sub-section (1) of Section 5. A displaced debtor, when he files an application under S. 5 for adjustment of his debt in response to the notice of a creditor's petition u/s 10, does not suffer from the disability with regard to limitation which is prescribed by sub-s. (1) of S. 5.

(4) The provisions of one other section have to be noted before I deal with the respective contentions of the parties, u/s 44 of the Act.

"Where an application made by a displaced debtor u/s 5 or under sub-section (2) of Section 11, or by a displaced creditor u/s 13 has been dismissed, no further application for the same purpose shall lie."

(5) Gopal Dass and Shiv Kumar made an application under sub-section (2) of Section 11 in response to the show cause notice sent to them of the application of Roshan Lal Kapur u/s 10 of the Act for the recovery of Rs. 1778/-. The Tribunal has held that the Lucknow Tribunal having dismissed the application of Gopal Dass u/s 5, the present application filed by him under sub-section (2) of Section 11 is not maintainable on account of the statutory bar embodied in Section 44 of the Act. This view, in my judgment, is clearly untenable on account of the specific immunity given to the displaced debtor under sub-section (3) of Section 11. It is also worthy of note that Section 44 makes a distinction between orders made u/s 5 and sub-section (2) of Section 11, so far as a displaced debtor is concerned.

Mr. Kishori Lal Mehra, the learned counsel for the respondent, has contended that the right denied to the displaced debtor u/s 5 cannot become available to him under sub-section (2) of Section 11. In support of this submission, he has relied upon the Division Bench judgment of Gajendragadkar J. in Ramchand Tillumal

Vs. Khubchand Daswani and Others, . What the Division Bench of the Bombay High Court held in that case was that a displaced debtor whose claim has been found to be not maintainable as a debtor u/s 2(6)(a) or Section 2(6)(b) cannot reagitate this matter again under sub-section (2) of Section II. In other words, if a claim of a displaced debtor to be treated as a debtor under the Act is rejected, such a person cannot come up again with a similar plea under sub-section (2) of Section 11.

The ruling of the decision in Ramchand Tillumal Vs. Khubchand Daswani and Others, , in my opinion, is not applicable to the facts of the present case where an application of the displaced debtor was dismissed because it was found to be barred by time. Sub-section (3) of Section 11 makes a particular mention of such contingency and it is stated that an application dismissed beyond time u/s 5 would not provide a bar for the displaced debtor in presenting an application in response to the show cause notice by a displaced creditor.

Another decision, on which reliance has been placed by Mr. Mehra, is a Single Bench authority of Chief Justice Bhandari in Wadhwa Ram Kesar Singh and Another Vs. Gian Chand Ganesh Dass and Others, It was held by Chief Justice Bhandari that

"failure on the part of the debtor to make an application u/s 11(2) of the Displaced Persons (Debts Adjustment) Act at the proper time, bars such an application at a later stage."

The present case, in my opinion, is not at all attracted by the principle laid down in Wadhwa Ram Kesar Singh and Another Vs. Gian Chand Ganesh Dass and Others, It is only when a displaced debtor fails to avail of the remedy provided to him u/s 11(2) that the bar would operate. Again, I may mention that there are three different and separate situations which are covered by S. 44 of the Act.

- "(a) Where an application is made by a displaced debtor u/s 5,
- (b) Where it is made by him under sub-section (2) of Section 11, and
- (c) Where a petition of a displaced creditor is dismissed u/s 13."

Where an application is dismissed under any of the three clauses, then the bar u/s 44 operates only in respect of a future application under the same clause and not for others. If an application is dismissed u/s 5, it will not prevent another petition being brought under sub-section (2) of Section 11 as in the instant case. The petition under sub-section (2) of Section 11 is by way of defence and is specially provided for.

(6) It was the second bar with which Chief Justice Bhandari was dealing in Wadhwa Ram Kesar Singh and Another Vs. Gian Chand Ganesh Dass and Others, Indeed, it would be going against the provisions of the statute if it were to be held that the displaced debtor is debarred from pursuing his remedy under sub-section (2) of Section 11 after his original application u/s 5 has been dismissed

on the ground of limitation. I must, therefore, hold that, so far as Gopal Das is concerned, his application cannot be rejected under the provisions of Section 44 of the Act.

(7) No other point arises in this appeal which must accordingly be allowed. As the point involved is one with regard to construction of a statute, I would leave the parties to bear their own costs.

(8) Appeal allowed.