
(1958) 12 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 25 of 1955

Hind Iran Bank Ltd.

APPELLANT

Vs

Ishar Singh Narain Singh

RESPONDENT

Date of Decision : 12-12-1958

Acts Referred:

Banking Companies Act, 1949 — Section 45A, 45B, 45C(1), 45D
Displaced Persons (Debts Adjustment) Act, 1951 — Section 11(2), 11(3), 15, 4, 5

Citation : AIR 1960 P&H 111 : (1960) 30 CompCas 219

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) This is a petition under S. 45D of the Banking Companies Act, 1949, made on behalf of the Hind Iran Bank Limited (in liquidation) for settling the list of debtors which includes joint Hindu family firm Messrs. Ishar Singh Narain Singh against whom the amount of Rs. 21,126/2/- is being claimed with interest.

(2) Ishar Singh died a considerable time ago, leaving his son Narain Singh. Narain Singh has two sons, Inder Singh and Sunder Singh. This joint family was doing business at Gujjar Khan, now in Pakistan, in the name of Messrs. Ishar Singh Narain Singh. A loan application was made to the Hind Iran Bank Limited on 9-2-1946 and on 18-5-1946, a loan of Rs. 15,000/- was sanctioned against the deposit of title deeds. On 9-4-1954, the Bank was ordered to be wound up.

(3) On 8-10-1954, a list of debtors was submitted under S. 45D of the Banking Companies Act and on 25-3-1955, a supplementary list of debtors was filed. This supplementary list included the name of the respondent-firm. On 29-2-1956, written statement was filed by the debtors. On the pleas taken in the petition and the written statement, the following issues were framed:

- (1) Has the petition been filed by a person duly authorized ?
- (2) Is the petition within time ?

(3) Is the claim of the petitioner Bank within time ?

(4) Is the petitioner Bank entitled to charge interest from 15-8-1947 up to 12-3-1950 ?

(5) Whether any and if so what amount is due to the petitioner Bank ?

(6) In case any amount is found due to the petitioner Bank, is it entitled to have a charge therefore on the amount of compensation in respect of the mortgaged properties ?

(7) Can the present proceedings proceed in presence of the proceedings on the application of Ch. Narain Singh and Ch. Ishar Singh under S. 5 of Act 70 of 1951 ?

(8) I may take up issue No. 7 first. The respondents in paragraph 8 of their written statement have pleaded as follows:

"That prior to the application under reply Ch. Narain Singh and Ch. Sunder Singh two out of the proprietors who were carrying on business under the style of firm Ch. Ishar Singh Narain Singh have applied under S. 5 of Act 70 of 1951, and in the Schedule "A" annexed with the application the Hind Iran Bank Limited is also mentioned as an alleged creditor. Those proceedings are still pending before the Tribunal at Simla and in view of S. 15(c) of the Act have to go on. In presence of those proceedings the present proceedings cannot go on."

(4) The debtors made an application under S. 5 of the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951 on 8-12-1952, before the Tribunal at Simla for adjustment of their debts including the debt in question. The file of the respondents' application was sent for from the Tribunal at Simla by order of Falshaw J., dated 26-10-1956.

(5) Shri Daulat Ram Manchanda, learned counsel for the respondents, has placed reliance upon S. 15 (a) and (c) of the Displaced Persons (Debts Adjustment) Act and has maintained that the Tribunal has the exclusive jurisdiction and not this Court. The relevant provisions run as under:

"15. Where a displaced debtor has made an application to the Tribunal under S. 5 or under sub-s.(2) of S. 11, the following consequences shall ensue, namely:

"(a) all proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject (except proceeding by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews, or revisions as aforesaid shall be transferred to the Tribunal and consolidated;

(b) X X X X X

(c) no fresh suit or other proceeding (other than any such appeal, review or revision as is referred to in clause (a) shall be instituted against a displaced

debtor in respect of any debt, mentioned by him in the relevant schedule to his application."

(6) Under this Act, "Tribunal" means any civil Court specified under S. 4 as having authority to exercise jurisdiction under this Act. S. 4 empowers the State Government, by notification in the Official Gazette, to specify any civil Court or class of civil Courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act.

Shri Manchanda has relied upon a Full Bench decision of this Court, *Parkash Textile Mills Ltd. v. M/s. Mani Lal* AIR 1955 Punj 197, for the view that the Tribunal is the only authority to adjust and settle all debts due to or by displaced persons. It was held by Bishan Narain J., with whom Falshaw J., concurred, that the Displaced Persons (Debts Adjustment) Act gave exclusive jurisdiction to the Tribunal created by it to decide all disputes pending before it, and that the jurisdiction of the Civil Court had been taken away to decide those matters. The question that was referred to the Full Bench in that case was-

"Whether, when there is an application by a person claiming to be a displaced debtor either under S. 5 or under S. 11(2) of Act 70 of 1951 pending before a Tribunal constituted under the Act, the status of the said person can only be determined by the Tribunal or can the matter be placed in issue and decided by an ordinary civil Court in which proceedings are pending to which he is a party?"

Bishan Narain J., answered the question as follows:

"That the status of a displaced debtor who has applied under S. 5 or under S. 11(3) of the Act can be determined only by the Tribunal and cannot be determined by a civil Court in which proceedings relating to that debt are pending."

Falshaw J., agreed with the above answer and Kapur J., dissented.

(7) The Full Bench referred to above does not really help the respondents. The question before me is not whether the special Act (Act No. 70 of 1951) overrides the general law, but whether as between two special Acts, the Displaced Persons (Debts Adjustment) Act of 1951, or the Banking Companies Act, 1949, as amended in 1953 by Act 52 of 1953, the earlier or the later enactment is to be preferred.

(8) Mr. D. N. Awasthy for the petitioner-Bank urges that the Banking Companies (Amendment) Act, 1953, overrides the Displaced Persons (Debts Adjustment) Act of 1951. He has placed reliance on Ss. 45A, 45B and 45C (1) of the latter Act. These provisions are reproduced below:

"45A. The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Indian Companies Act, 1956, or the Code of Civil Procedure, 1908 (Act 5 of 1908) or the Code of Criminal Procedure, 1898 (Act 5 of 1898) or any other law for the time

being in force, or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this part.

45B. The High Court shall save as otherwise expressly provided in S. 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking Company which is being wound up (including claims by or against any of its branches in India) or any application made under S. 153 of the Indian Companies Act, 1956, by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking Company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

45C. (1) Where a winding up order is made or has been made in respect of a banking Company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other Court immediately before the commencement of the Banking Companies (Amendment) Act, 1953 or the date of the order for the winding up of the banking company, which, over is later, shall be proceeded with except in the manner hereinafter provided."

(9) Section 45A in unambiguous language provides that the provisions of Part IIIA, i.e., from S. 45A to S. 45X, shall have effect notwithstanding anything inconsistent therewith contained in the Indian Companies Act, the CPC or the Code of Criminal Procedure of any other law for the time being in force etc. Section 45B confers exclusive jurisdiction upon the High Court to entertain and decide any claim made by or against a banking Company which is being wound up, save as otherwise expressly provided by section 45C.

Section 45C provides, that saving certain exceptions, after a winding up order has been made in respect of a banking Company, no suit or other legal proceedings can continue where the High Court has been given jurisdiction under the Act.

(10) The Courts as a rule do not favour repeals of earlier statutes by implication, except where the repugnancy between the two enactments is manifest and irreconcilable. Where, however, the conflict between two statutes cannot be reconciled, the earlier Act yields to the later. The later laws abrogate prior contrary laws (*Leges posteriores priores contrarias abrogant*).

In such an eventuality the elementary rule is that an earlier Act must give place to a later, although the later Act contains no repealing clause. In this case the inconsistency or repugnancy is plain and unavoidable and it is not possible to harmonize the two Acts. The provisions of both cannot co-exist, operate, or be

given effect to at the same time. No other reasonable construction to make the two Acts compatible seems to be possible.

(11) One of the fundamental canons of statutory construction is to ascertain and if possible to give effect to the intention and purpose of the Legislature. In all such cases legislative intent is a controlling factor. It is the duty of the Courts to carry out the intention and policy of the Legislature, if it does not run counter to some constitutional inhibition.

The determination of legislative intent depends upon the adoption of certain aids in the construction of statutes. There are several presumptions resorted to by the Courts with this end in view. The Courts presume that the Legislature in passing an Act is aware of the rules of statutory construction and that it acts with deliberation and with knowledge of the effect of its act and with a purpose in view.

It is also presumed that the Legislature had, and acted with, full knowledge and information, not only as to the subject-matter of the statute, but also, as to prior existing law and legislation, and, as to the construction placed on the previous law by the Courts. There is also a presumption against a construction which would render a statute ineffective. Courts also presume against contradictory provisions or enactments. The above and numerous other presumptions are applied when there exists some doubt as to the intention of the Legislature which cannot be otherwise ascertained.

(12) The Courts ordinarily lean against repeal by implication, but where the contradiction is unavoidable, then "the latest expression of the will of Parliament must always prevail" vide *Goodwin v. Phillips* (1908) 7 Austr. CLR 1 (16). In such cases the prior statute is repealed on grounds of mutual incompatibility of the two statutes.

(13) This is not really a case to which the principle *Generalalia specialibus non derogant* applies. Special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together. It is not a case of a contest between a prior special Act and a subsequent general Act. Both Acts, the Displaced Persons (Debts Adjustment) Act of 1951, and the Banking Companies (Amendment) Act of 1953, are special Acts and a special Act may be impliedly repealed by a subsequent special Act.

(14) The distinguishing feature of a special law is, that it relates to particular persons or things, or a portion of a class of persons or things, or to particular places. Neither or the two legislative enactments can operate generally, as each one is intended to serve a particular need and to promote a special interest. Referring to these two Acts, the Supreme Court observed-

"Each being a Special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case." (*Shri Ram Narain Vs.*

The Simla Banking and Industrial Co. Limited,

(15) Both counsel have rested their arguments in support of their respective contentions upon the judgment of the Supreme Court in the case cited above. In that case, the appellant Shri Ram Narain was a displaced creditor and had filed an application before the Tribunal at Benaras under S. 13 of the Displaced Persons (Debts Adjustment) Act against the Simla which was not a displaced person, for the recovery of Rs. 1,00,000/- paid to the Bank on a fixed deposit.

During the pendency of that case, an application for winding up of the Bank was made at the instance of some creditors and the High Court passed an ex parte interim order under S. 171 of The Indian Companies Act, 1913, staying proceedings in all suits and applications pending against the Bank. The application of Ram Narain before the Benaras Tribunal was also mentioned therein. But before the order of the High Court was communicated to the Tribunal, a decree was passed against the Bank.

The appellant then filed an application before the Tribunal for execution of the decree and on this the High Court passed another order u/s. 171 staying execution of the decree. The Tribunal had transferred the decree for execution to the Bombay High Court under S. 39 of the Code of Civil Procedure. In the meanwhile the Official Liquidator of the Bank, after the order for winding up had been passed, obtained from the Punjab High Court an order under S. 45C of the Banking Companies Act transferring from Binaries Tribunal the execution proceedings before it.

But the Tribunal, on receipt of this order, informed the High Court that the execution proceedings had already been transferred to the High Court at Bombay. Thereafter the Liquidator made an application to the Punjab High Court for setting aside the order of Bombay High Court directing attachment of the shares and securities belonging to the Bank. The main controversy centered round the question whether the Punjab High Court had exclusive jurisdiction in view of the Banking Companies (Amendment) Act, 1953, and whether those provisions could override the provisions of the Displaced Persons (Debts Adjustment) Act.

It was held by the Punjab High Court, that Court, and not the Tribunal, had exclusive jurisdiction, in view of the overriding effect of the provisions of the Banking Companies (Amendment) Act, 1953. Shri Ram Narain, the displaced creditor, appealed to the Supreme Court which appeal was dismissed. The Supreme Court inter alia held:

"Now the question as to which of the provisions of these two Acts has got overriding effect in a given case, where a particular provision of each is equally applicable to the matter is not altogether free from difficulty. In the present case, prima facie by virtue of S. 28, Displaced Persons (Debts Adjustment) Act to the jurisdiction to execute the Tribunal's decree is in the Tribunal."

"But it is equally clear that the jurisdiction to decide any of the claims which must necessarily arise in the execution of the decree is vested in the High Court by virtue of S. 45-B, Banking Companies Act. Each of the Acts has a specific provision, S. 3 in the Displaced Persons (Debts Adjustment) Act and S. 45-A in the Banking Companies Act which clearly indicates that the relevant provision, if applicable, would have overriding effect as against all other law in this behalf. Each being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case." (Page 620).

"On the other hand, if the rule as to the later Act overriding an earlier Act is to be applied to the present case, it is the Banking Companies (Amendment) Act, 1953, that must be treated as the later Act and held to override the provisions of the earlier Displaced Persons (Debts Adjustment) Act, 1951. It has been pointed out, however, that S. 13, Displaced Persons (Debts Adjustment) Act, uses the phrase "notwithstanding anything inconsistent therewith in any other law for the time being in force" and it was suggested that this phrase is wide enough to relate even to a future Act if in operation when the overriding effect has to be determined.

But it is to be noticed that S. 45-A, Banking Companies Act, has also exactly the same phrase. What the connotation of the phrase "for the time being" is and which is to prevail when there are two provisions like the above each containing the same phrase, are questions which are not free from difficulty. It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intent conveyed by the language of the relevant provision therein.

Now so far as the Banking Companies Act is concerned its purpose is clearly, as stated in the heading of Part III-A, for speedy disposal of winding up proceedings. It is a permanent statutory measure which is meant to impart speedy stability to the financial credit structure in the country in so far as it may be effected by banks under liquidation.

It was pointed out in *Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In Liquidation)*, that the pre-existing law relating to the winding up of a Company involved considerable delay and expense. This was sought to be obviated so far as Banks are concerned by vesting exclusive jurisdiction in the appropriate High Court in respect of all matters arising in relation to or in the course of winding up of the Company and by investing the provisions of the Banking Companies Act with an overriding effect. This result was brought about first by the Banking Companies (Amendment) Act, 1950, and later by the Banking Companies (Amendment) Act, 1953.

Sections 45A and 45B of Part III brought in by the 1950 Act vested exclusive jurisdiction in the appropriate High Court to decide all claims by or against a Banking Company relating to or arising in the course of winding up. But Ss. 45A

and 45B of the Part III-A substituted by 1953 Act are far more comprehensive and vest not merely exclusive jurisdiction but specifically provide for the overriding effect of other provisions also.

Now, the Displaced Persons (Debts Adjustment) Act is one of the statutory measures meant for relief and rehabilitation of displaced persons. It is meant for a temporary situation brought about by unprecedented circumstances. It is possible, therefore, to urge that the provisions of such a measure are to be treated as being particularly special in their nature and that they also serve an important national purpose. It is by and large a measure for the rehabilitation of displaced debtor.

Notwithstanding that both the Acts are important beneficial measures, each in its own way, there are certain relevant differences to be observed. The first main difference which is noticeable is that the provisions in the Displaced Persons (Debts Adjustment) Act are in a large measure enabling and not exclusive. There is no provision therein which compels either a displaced debtor or a displaced creditor to go to the Tribunal, if he is satisfied with the reliefs which an ordinary civil Court can give him in the normal course.

It is only if he desires to avail himself of any of the special facilities which the Act gives to a displaced debtor or to a displaced creditor and makes an application in that behalf under S. 3 or 5(2) or 13, that the Tribunal's jurisdiction comes into operation." (Pages 622-623.)

(16) The above observations were relied upon by the learned counsel for the Bank. On the other hand, Mr. Daulat Ram Manchanda pressed for my consideration the succeeding passage which is also reproduced below:

"At this point it is necessary to notice the further difference that exists in the Displaced Persons (Debts Adjustment) Act between applications by displaced debtors and applications by displaced creditors against persons who are not displaced persons. So far as the applications by displaced debtors are concerned, S. 15 in terms provides for certain consequences arising, when the application is made to the Tribunal by a displaced debtor under S. 3 or S. 5(2), i.e., stay of all pending proceedings, the cessation of effect of any interim orders or attachment, etc., and a bar to the institution of fresh proceedings and so forth.

But the terms of S. 13 relating to the entertainment of an execution proceeding by the said Tribunal on a decree so obtained, do not appear to bring about even the kind of consequences which S. 15 contemplates as regards applications by displaced debtors. S. 13 is, in terms, only an enabling section and S. 28 merely says that "it shall be competent for the civil Court to execute the decree passed by it as a Tribunal". They are not couched in terms vesting exclusive jurisdiction in the Tribunal.

Whatever, therefore, may be the inter se position in a given case, between the provisions of the Banking Companies Act and the provisions of the Displaced

Persons (Debts Adjustment) Act, in so far as such provisions relate to displaced debtors, we are unable to find that the jurisdiction so clearly and definitely vested in the High Court by the very specific and comprehensive wording of S. 45B, Banking Companies Act, which reference to the matters in question, can be said to be overridden or displaced by anything in the Displaced Persons (Debts Adjustment) Act, 1951, in so far as they relate to displaced creditors." (Page 623).

(17) After giving my anxious thought to the arguments of the learned counsel and to the passages in the judgment of the Supreme Court, I am inclined to the view that the provisions of the Banking Companies Act override those of the Displaced Persons (Debts Adjustment) Act in matters of jurisdiction on the principle that later laws prevail over those which precede them (*Constitutiones tempore posteriores potiores sunt bis quae ipsas prae accesserunt*).

When Courts are confronted with two statutes so contradictory to each other, as in this case, it is a safer rule to give preference to later laws and to abrogate earlier laws.

(18) On issue No. 7, I therefore, hold that the present proceedings can proceed in this Court in the presence of the proceedings under S. 5 of Act No. 70 of 1951, before the Tribunal.

(19) Issue No. 1.--Under this issue it was contended on behalf of the respondents that the petition had not been presented by a duly authorized person in so far as no power-of-attorney in favour of the counsel had been filed along with the petition. This petition C. O. 25 of 1955 made under S. 45D of the Bnking Companies Act had stated that a list of debtors had been filed in October 1954 along with a petition dated 8-10-1954.

That list contained names of 143 debtors, but by oversight the names of certain debtors including the respondents could not be included. A prayer was made for the inclusion of those debtors in the list of debtors and for passing of the payment orders against them. A note was attached to the effect that power-of-attorney was already on the file. There is no doubt that the power-of-attorney of the counsel for the Bank had been filed with the main petition C. O. 102 of 1954. I do not think that this omission is fatal to the case of the Bank. There is no denying the fact that the petitioner Bank had engaged the counsel for filing the main petition and had retained his services for acting on their behalf in the supplementary petition C. O. 25 of 1955. My attention has been drawn to a Full Bench decision of Allahabad High Court reported in *Kanhaiya Lal Vs. The Panchayati Akhara*,

It was held therein that if a duly authorized agent or duly appointed pleader did not present the document it was open to the Court or the officer concerned to refuse to take it, but if it had been taken and Court had acted on it, the presentation of the document could not lose its legal character simply because the actual physical Act of handing over the particular document had been done

by other persons, when the Court was satisfied that the application was, as a matter of fact, intended to be filed by the decree-holder and it was he, who had it presented before the officer appointed for receiving such applications through the hands of another.

(20) In *Machireddi Narappa Vs. Proddatur Subbarayadu and Others*, it was held that presentation of an execution petition by a vakil who has no vakalat from the decree-holder was a mere irregularity. I do not think that in this case filing of additional power-of-attorney was at all necessary and in any case this omission cannot be visited with a penalty so as to deprive the litigant of all his rights by treating the petition as not having been filed at all. I, therefore, decide the first issue against the respondent.

(21) Issue No. 2.--The contention of the learned counsel for the respondent under this issue is that the period of limitation for filing the petition had expired on 9-11-1954, when 6 months had elapsed from the date of the winding up order as required by S. 45D of the Banking Companies Act. Apart from the statutory provisions, the Court has no inherent power to relieve a litigant from the bar of limitation.

The proviso to sub-s. (2) of S. 45D contemplates the filing of a time-barred petition with the leave of the High Court. Such leave of the High Court was neither sought nor granted. It was argued for the Bank that even if no leave of the Court was asked when filing the lists of debtors, it should be granted *ex post facto*, especially when the petition was in the nature of continuation of the previous petition for settlement of list of debtors by inclusion of additional names which were omitted by oversight and that it would be inequitable to hold it otherwise.

(22) The proviso certainly envisages filing of time-barred lists of debtors, with the leave of this Court, and the discretion so conferred is not restricted or inhibited by any words of the statute. A discretion, howsoever wide or untrammelled, should not be exercised without regard to the equities of the case, against a party who has acquired valuable rights on the expiration of the period of limitation. Law of limitation is a law of repose, and after efflux of the time provided for litigating the rights, there is *finis litium* and in this lies the interest of the State.

The law of limitation is founded on the old maxim that *interest reipublicae ut sit finis litium*. Unless a suitor is vigilant he runs the risk of forfeiting his rights howsoever valuable, by lapse of time *vigilantibus non dormientibus jure subveniunt*. The Courts in the exercise of their discretionary power to excuse delay, will disturb vested and power to excuse delay, will disturb vested and valuable rights not without sufficient and just cause.

A party failing to justify the exercise of a concession or an indulgence in his favour, cannot justly claim extension of time by condonation of delay in his favour. If delay could have been avoided by exercise of due care and caution,

case for the exercise of discretion is not made out. No such reason has been assigned by the Official Liquidator. Failure to file the additional lists of debtors has been attributed to an "oversight" and in the absence of any further explanation, it connotes want of diligence.

No substantial reason has been shown for allowing the period of limitation to elapse and no good ground has been suggested for not seeking the leave of the Court when lists were filed after the termination of the time allowed u/s 45D(2) of Banking Companies Act. Even if it be deemed permissible for the Official Liquidator to ask for leave at this stage--which in my opinion it is not no plausible grounds are shown for the grant or this indulgence. The petition is not within time and the period cannot be extended. This issue is, therefore, decided against the petitioner.

(23) Issue No. 3.--It was contended on behalf of the respondent that the claim of the petitioner Bank of the recovery of the amount had become time-barred. Exhibit P. B. is a promissory note dated 18th February, 1956 executed by the debtors in favour of the Bank for Rs. 1,00,000/- and the amount was payable on demand. Exhibit P. 7 is a copy of the debtors' account with the Bank from the 28th December 1946 to 1st August, 1947.

The debit balance on 1st August 1947 was Rs. 21,126/2/- inclusive of interest. In this case the view of the provisions of Art. 57 of the Limitation Act a period of 3 years is allowed for bringing a suit for money payable for money lent. The period of limitation is counted from the date when the loan is made. A suit for the recovery of the money based on a loan, in the circumstances of this case, would obviously be barred by limitation.

The fact that immovable property was mortgaged as a collateral security for a loan advanced would not render a suit for the recovery of the loan personally against the debtor of a different description than one contemplated under this Article. Issue No. 3 does not really arise in this case and in any case not at this stage. The relief is sought by the Bank in this case for payment order chargeable on compensation due to the debtor for property which had been mortgaged with the Bank.

When the sale proceeds held under O. 34 R. 5 C. P.C. are found insufficient to pay amount due to the plaintiff the Court may on application by him pass a decree for such balance if it is legally recoverable from the defendant otherwise than out of the property sold. Such a contingency in this case can arise only after payment order is passed and the sale proceeds are found insufficient to pay the amount. The taking of this plea at this stage is premature though in this case it is obvious that the claim will be time barred.

(24) Issues Nos. 4 and 5.--Issues 4 and 5 may be taken together. In this case the interest amounting to Rs. 2,866/9/3 has been calculated up to 12th of March, 1950, by the petitioner as mentioned in the statement of the claim. Under provisions of Section 29 of the Displaced Persons (Debts Adjustment) Act (70 of

1951), no interest can accrue from 15th day of August, 1947, in respect of any debt owed by a displaced person. In view of the clear provision the petitioner Bank is not entitled to charge any interest from 15th of August, 1947, and therefore the claim of the Bank must be reduced by Rs. 2,866/9/3.

(25) Issue No. 6.--Shri D. R. Manchanda, learned counsel for the respondent has referred me to section 6 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), and has contended that this provision allow relief to certain Banking Companies as defined in sub-section (3) (a) and that the Hind Iran Bank (in liquidation) does not fall within the definition of "Banking Company". The name of this Bank is neither specified in the schedule nor has the Central Government by any notification specified this Bank as "Banking Company" for purposes of this Act.

Shri D. N. Awasthy, learned counsel for the Bank, concedes this but submits that apart from the provisions of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), the provisions contained under sections 16 and 52 of the Displaced Persons (Debts Adjustment) Act (70 of 1951), are attracted and they are independent of section 6 of the Displaced Persons (Compensation and Rehabilitation) Act. Shri Awasthy maintains that u/s 16 of Act 70 of 1951 the petitioner Bank has elected to retain its security and has prayed for passing of payment order chargeable on compensation due to debtors for property mortgaged with the Bank.

In such a case the creditor is entitled--where the compensation is paid in cash--to a first charge on the amount, provided that he is entitled only to so much of the amount as bears to the total debt the same proportion as the compensation paid in respect of the property bears to the value of the verified claim. Under this provision the debt is pro rata reduced. Section 52 of the last mentioned Act contains provisions for communication of contents of decree to the prescribed authority for the scaling down of the debt u/s 32(6) and for meeting the prior charge of secured creditor u/s 16 of the Act.

(26) It is true that provisions of S. 6 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), do not take away the petitioner's right of seeking relief under any other law, if available. But in my view the Displaced Persons (Debts Adjustment) Act provides no remedy for the petitioning Banking Company. u/s 16(2) of the last mentioned Act, "if the creditor elects to retain the security, he may apply to the Tribunal, having jurisdiction in this behalf as provided in Section 10, for a declaration of the amount due under his debt."

Section 10 of the Act enables a "displaced person" to make a claim against a "displaced debtor" by applying in a prescribed form to the Tribunal. It reads:

"Any displaced person having a claim against a displaced debtor may make an application in such form as may be prescribed, for the determination thereof to the Tribunal within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides or carries on business, or personally works for

gain, together with a statement of the debts owed to the creditor with full particulars thereof."

(27) Section 2(10) while defining a "displaced person" expressly excludes from its purview a banking Company. The Bank is, therefore, barred from making any application to the Tribunal in respect of any claim against a displaced debtor. On issue No. 6, I hold that the petitioner Bank is not entitled to have a charge on the amount of compensation in respect of the mortgaged properties.

This issue is decided against the Hind Iran Bank. The Hind Iran Bank cannot call to its aid the provisions of the Displaced Persons (Debts Adjustment) Act (70 of 1951), or of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954). This issue is decided against the petitioner.

(28) In view of my findings on issues Nos. 2 and 6 of the petition fails and is dismissed. There will be no order as to costs.

(29) Petition dismissed.