(1959) 11 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 161-D of 1955

Ishar Singh APPELLANT

Vs

National Bank of Lahore Ltd. RESPONDENT

Date of Decision : 26-11-1959

Acts Referred:
Displaced Persons (Debts Adjustment) Act, 1951 — Section 16, 17

Citation : AIR 1960 P&H 421

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Judgement

(1) This appeal by a displaced person against the order of the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951, raises on interesting question. The appellant admittedly owes the respondent Bank, the National bank of Lahore Limited, a sum of Rs. 21116/1-as calculated upto 15th August, 1947 in an account which was opened with the Bank in Pakistan before the partition. The advances made by the Bank were secured both by an equitable mortgage of certain immovable property and by the pledge of movable property regarding the value of which the only available evidence is the statement of the appellant that it was worth Rs. 25,000/-. The Bank admits the pledge of moveable goods but has not been able to produce its own accounts to prove the value.

(2) The positions of displaced debtors whose debts were secured on immovable property and movable property are set out in Ss. 16 and 17 of the Act. Under S. 16 where a debt was secured on immovable property situated in West Pakistan the creditor can elect either to retain the security or to treat it as an unsecured debt, and in the former case, which the Bank has adopted in this case, the bank will be entitled to recover a sum calculated according to a certain formula out of the compensation to be received by the debtor in respect of his verified claim regarding the mortgaged property.

(3) On the other hand S. 17 has the effect of wiping out completely a debt

secured on movable property where the movable property is no longer available, as in the present case. The legislature has, however, completely omitted to make any provision in these sections regarding how a debt should be dealt with if it is secured on both kinds of property, and in these circumstances the Tribunal has passed an order in favour of the Bank in accordance with the provisions of S. 16.

(4) It might be argued on behalf of the displaced debtor that since, if the debt had only been secured on movable property, it would be completely extinguished, he ought not to be in a worse position if the debt was also secured on immovable property, particularly in view of the fact that the Act is generally intended to be for the benefit of the displaced persons. In this connection, however, it is also to be remembered that in very many of these cases the creditor is also a displaced person or, as in this case, a displaced Bank, which also has its own difficulties.

(5) My attention has been drawn to the fact that in later S. 22, which deals with the apportionment of joint debts and prescribes certain principles on which the Tribunal can apportion liability regarding such debts among the joint debtors, there is a provision which deals with the case of debts secured on both sorts of property. This is in Section 22(f) which reads:

"If the liability is secured by a mortgage of movable and immovable properties, the debt shall be appointed between the two properties in the same proportion as the value of each property bears to the total value of the properties.

Explanation:-For the purposes of this clause the value of the movable property shall be deemed to be the value thereof immediately before the date on which the debtor became a displaced person, and the value of the immovable property shall be deemed to be the value of the verified claim in respect thereof".

(6) In the case of Sections 16 and 17 it seems to me that the omission of some provision in these lines is a clear case of oversight, and in my opinion there can be little doubt that if it had occurred to the legislature that some such provision regarding Ss. 16 and 17 was necessary, it would have been exactly on the lines of the provisions of S. 22(f) and I am therefore of the opinion that it would both be legitimate and the fairest course to adopt to apply the principles of S.22(f) to the debt in dispute.

I accordingly accept the appeal to the extent of ordering that the debt in dispute of Rs. 21,116/1/- be reduced proportionately according to the ratio of the value of the movable property pledged to the immovable property. As no further evidence regarding the value of the movable property is available, and therefore a remand on this point would be useless, the figure of Rs. 25,000/- has been accepted as value of the movable property. After the reduction has been made in the amount of the debt according to this calculation the balance will be recoverable from the compensation payable to the appellant in respect of his verified claim regarding the property in accordance with the usual formula. The parties will bear their own costs.

(7) Appeal allowed.