

(1980) 03 DEL CK 0047
In the Delhi High Court
Case No : L.P.A. No. 113 of 1970

Jammu and Kashmir Bank Limited

APPELLANT

Vs

Rawindan

RESPONDENT

Date of Decision : 21-03-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47, 48

Displaced Persons (Debts Adjustment) Act, 1951 — Section 17, 2, 2(10), 31, 37

Citation : AIR 1981 Delhi 121

Hon'ble Judges : Sultan Singh, J;Prakash Narain, J

Bench : Division Bench

Advocate : Mohinder Narain, for the Appellant; G.S. Vohra, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Narain, J.—The principal question which arises for determination in this appeal is whether the respondent is a displaced person within the meaning of the Displaced Persons (Debts Adjustment) Act, 1951, hereinafter referred to as the Act. If it is held that he is a displaced person within the meaning of the Act, he may be entitled to certain benefits of the benevolent legislation in question. If not, he must be regarded as an ordinary debtor subject to all the rights and obligations of such debtor. Incidentally it has to be construed as to what is the meaning of the term "debt" within the meaning of the Act and what is the effect of the Act not being in force in the State of Jammu and Kashmir.

2. The facts giving rise to the present appeal may briefly be stated. The appellant, the Jammu & Kashmir Bank Ltd., filed a suit for the recovery of Rupees 81,487.50 in the court of the District Judge, Jammu, on 3rd Baisakh 2005 (Bikrami Samvat) against the defendants, Ravinandan and Kripal Chand, proprietors of Hindustan Trading Company, Jammu. The contention of the appellant-Bank was that the aforesaid defendants had opened an account with it on March 18, 1940 declaring themselves to be partners of Hindustan Trading Company. Certain advances were made to the said defendants against demand

pronotes by way of collateral security. Inasmuch as there was an overdraft which the defendants failed to liquidate despite demand, hence the suit. The suit was decreed ex parte on 27th Kar. 2005 but later the ex parte decree was set aside on a motion of only Kripal Chand who contested the suit. It is not clear from the record whether the respondent before us was ever served. Be that as it may, the appellant's suit was decreed by the District Judge, Jammu on 11th Maghar, 2006. It seems, part of the decretal amount was recovered by the appellant but for recovery of Rs. 54,472.91 the appellant applied for and obtained a transfer certificate for the courts at Delhi. An execution application was then moved in the courts at Delhi on November 18, 1961. The District Judge, Delhi, to whom this application was moved, assigned the matter to a Sub Judge, 1st Class. On January 9, 1969 the respondent filed objections u/s 47 of the Civil P. C. contending that the decree could not be executed against him as it was passed ex parte against him, that the Court which passed the decree was a foreign Court and so, its decree could not be executed unless it was established that the respondent had submitted to the jurisdiction of the foreign Court. It was contended that the decree was a nullity. It was further pleaded that in any case the decretal debt was a debt which fell within the ambit of the Act and the respondent being a displaced person, Section 37 of the Act barred the execution of the decree against him. The appellant resisted the objections. On the pleadings of the parties the following issues were settled:-

- "1. Is the applicant a displaced person within the meaning of Displaced Persons (Debts Adjustment) Act, 1951?
2. Is the liability in dispute a debt within the meaning of the Act?
3. Is the execution application barred by limitation u/s 37 of the Displaced Persons (Debts Adjustment) Act?
4. Is the decree a nullity on account of its being ex parte?
5. Relief?"

The executing Court came to the conclusion that the respondent was a displaced person within the meaning of the Act and the decree was also a debt which fell within the ambit of the Act. Therefore, Section 37 was a bar to the execution of the decree or realisation of the debt. It was also held that the debt was a nullity because the respondent never submitted himself to the jurisdiction of the Jammu Court which at the time when it passed the decree was a foreign Court. In consequence the execution application was dismissed. Aggrieved by the order, the appellant filed an appeal to this Court.

3. The learned single Judge on a concession made by the learned counsel for the appellant came to the conclusion that the decree of the District Judge, Tammu was a decree of a foreign Court. The learned Judge, however, went on to hold that the decree was not a nullity despite its being that of a foreign Court. Reliance had been placed on certain principles of Private International Law to be

found in Cheshire's book on Private International Law and the observations of Dicey in his "Conflict of Laws". A number of authorities were also noticed in this regard. It was held that the decree was executable in Indian Courts.

4. On the question as to whether the respondent is a displaced person within the meaning of the Act it was held that the respondent was a displaced person because he shifted from the territory falling in the Dominion of Pakistan to the territory falling in the Dominion of India on account of the partition of the country and for that reason was unable to manage his properties in Lahore falling in the Dominion of Pakistan. The learned Judge repelled the contention that a debt incurred in a foreign country was not covered by the definition of that term in the Act. As a result of these findings the appeal filed by the appellant was dismissed. The aforesaid Bank has now preferred a second appeal under Clause X of the Letters Patent, as applicable to this Court.

5. We would first like to take up the question of the judgment of the Jammu Court being a judgment of a foreign Court. Everyone seems to have been under a mistaken impression. The suit was filed by the appellant in the Samvat Year 2005, which would be equivalent to 1948. The suit was filed in the month of Baisakh, which is equivalent to month of March/April. Therefore, the suit was filed in March/April, 1948. It was finally decreed in the Samvat Year 5006, which means in 1949. The State of Jammu and Kashmir acceded to the Dominion of India by an Instrument of Accession dated October 22, 1947. For certain political reasons which are now a part of history, the accession was ratified a couple of years later. Whatever may be the political implications and the understandings with regard to enforcement of laws, geographically and politically the State of Jammu and Kashmir became a part of the Dominion of India on October 22, 1947. Therefore, neither on the date when the suit was filed nor on the date when the decree was passed by the District Judge, Jammu, was his Court a foreign Court. All the arguments, therefore, based on this faulty premise are of no avail to the respondent. It cannot be disputed that the question of submitting to the jurisdiction of a foreign Court does not arise for consideration. The decree was of an Indian Court and on its being transferred to the District Judge, Delhi it was being executed as the decree of a competent Indian Court. The question of nullity, therefore, did not arise and we hold accordingly.

6. The next question is whether the the respondent is a displaced person within the meaning of the Act. Section 2 (10) defines this term as under:-

" "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st March, 1947, left, or been displaced from his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a banking

company."

7. It is a finding of fact given by two Courts that the respondent is a displaced person. Nevertheless statement of the respondent made as J.D.W. 2 was brought to our notice wherein he has stated in cross-examination that he used to generally reside in Jullundur. This statement has to be read in the context in which the answer has been given. the question that appears to have been asked was whether he used to reside in Jammu. What he has stated is that he used to visit Jammu for business but used to generally reside in Jullundur and also in Lahore. We cannot from this statement infer that the respondent did not reside in Lahore. All that can be said is that he used to reside both in Jullundur and Lahore. A person can Have two residences (See Sukh Lal and Others Vs. State Bank of India and Others, . Exhibits J. D. 1 to J. D. 4 are respondent's verified claims. These show that he had properties which were left in West Pakistan. So, apart from the question of residence, it is appellant that on account of the partition of the country he was rendered unable to manage, supervise or control properties belonging to him in West Pakistan. The respondent, therefore, clearly falls within the ambit of the definition of the term "displaced person" in clause (10) of Section 2 of the Act. We are in entire agreement with the learned single Judge on this aspect.

8. It has been urged on behalf of the appellant that there is no direct proof that the respondent came to reside in India from areas now forming part of Pakistan on account of or for fear of disturbances. We have already noticed the statement of the respondent which goes unrebutted He used to live in Lahore as well as in Jullundur. At best, as we have said, he had two residences. He is deprived of residence in Lahore on account of the partition of the country. Therefore, it does not avail the appellant to urge that there is no proof that the respondent came to reside in India after or due to partition. In any case, as has been held by us, the respondent clearly falls within the ambit of the term "displaced person" postulated by clause (10) of Section 2 of the Act by reason of his incapacity to manage his Lahore property.

9. The next question which arises for consideration is whether the debt in suit is a debt within the meaning of clause (6) of Section 2 of the Act. The term "debt" is defined as under:-

"(6) "debt" means 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 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) in the case of a displaced person who, before and after the 15th August, 1947 has been residing in any area now forming part of India, was incurred before the said date on the security of any immovable property situate in the

territories now forming part of West Pakistan;

Provided that where any such liability was incurred on the security of immovable properties situate both in India and in West Pakistan, the liability shall be so apportioned between the said properties that the liability in relation to each of the said properties bears the same proportion to the total amount of the debts as the value of each of the properties as at the date of the transaction bears to the total value of the properties furnished as security, and the liability, for the purposes of this clause, shall be the liability which is relatable to the property in West Pakistan.

(c).....

but does not include

any pecuniary liability due under a decree passed after the 15th August, 1947, by any Court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement."

The decree which is sought to be executed by the appellant was no doubt passed after August 15, 1947 when the partition of the country took place and in the wake of which the respondent has been displaced from his place of residence in areas now forming part of Pakistan. The debt for the recovery of which the decree has been passed was, however, incurred prior to August 15, 1947. As is apparent from a reading of the judgment of the trial Court dated 11th Maghar 2006 (November 26, 1949) the overdraft account was opened on March 18, 1940, debits and credits were made in it from time to time and a substantial part of the debit entries are of the period prior to August 15, 1947. The decretal debt would, therefore, be covered by the relevant provisions of the Act.

10. It is next contended on behalf of the appellant that since the Act has no application to the State of Jammu and Kashmir, it must be held that it has no application to debts incurred in that State or decrees passed by Court's of that State. There is a fallacy in this argument. The Act is a benevolent piece of legislation and intended to give relief to "aggrieved persons, who fell victim to unusual and abnormal circumstances due to the partition of the country as displaced persons," as was observed by a Bench of the Calcutta High Court in *Parmanand Lokumal and Others Vs. Khudabadi Bhaibund Co-operative Credit Bank Ltd. and Others*, . Those benefits are available to displaced persons wherever they may be settled in our country except the State of Jammu and Kashmir. If the debt is sought to be enforced against such displaced debtors the Act must come to their rescue. Having held that the respondent is a displaced person within the meaning of the Act and so. a displaced debtor, he would be entitled to invoke the provisions of the Act. That is how we feel reliance on Sections 17 and 37 of the Act is relevant.

11. Section 17, so far as it is relevant .reads as under:-

"17. Debts secured on movable property. - (1) Where in respect of a debt

incurred by a displaced debtor and secured by the pledge of movable property belonging to him. the creditor had been placed in possession of such property at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely:-

(a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale;

(b) the creditor shall not be entitled, In any case where the pledged property it no longer in his possession or is not available for redemption by the debtor to recover from the debtor the debt or any part thereof for which the pledged property was security;

(c) the debtor shall not be liable, in the case of a sale by the creditor or any pledged property, whether under clause (a) or otherwise, to pay the balance where the proceeds of such sale are less than the amount of the debt due;

(d)..... "

Section 37, so far as it is relevant, reads as under:-

"37. Curtailment of period of limitation for execution of certain decrees.--

Notwithstanding anything contained in Section 48 of the Civil P. C. 1908, or in any other law for the time being in force, no order for the execution of a decree in respect of a debt against a displaced person" shall be made upon an application presented after the expiration of -

(a) in the case of decrees passed before the commencement of this Act, six years from such commencement;

(b) & (c)....."

12. It was the case of the appellant in the trial Court as is apparent from the statement of its Manager, K. Sewa Ram, that the goods of the respondent's firm were pledged with the Bank though there was no written document executed in that regard. The Bank was treating these goods as pledged to it. In the execution application for recovery of Rs. 55,427.69 from the respondent, moved by the appellant on November 18, 1961, it was admitted that part of the decretal amount of Rs. 81,487.50 was settled by sale of some of the pledged goods. The provisions of Section 17 are, therefore, clearly attracted and the respondent being a displaced debtor is not liable to pay the balance.

13. The decree in this case was passed on November 26. 1949. The execution application was moved on November 18, 1961. Clearly, therefore, the execution application was barred by Clause (a) of Section 37 of the Act having been moved more than six years after the commencement of the Act, the Act having come into force in the Union Territory of Delhi on December 10, 1951, vide Central Government's Notification No. 68 (21)/51-Prop. dated December 7, 1951

published in the Gazette of India, Parti, Section 1 Page 503.

14. Lastly, it is contended on behalf of the appellant that the respondent cannot avail of the provisions of the Act as he has not had his status determined, as required by Section 5. This section reads as under:-.

"5. Application by displaced debtors for adjustment of debts.

(1) At any time within one year after the date on which this Act comes into force in any local area, a displaced debtor may make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain.

(2) Every application by a displaced debtor shall contain the following particulars, namely:-

(a) the place where he resides;

(b) the trade, calling, profession or other employment in which he is now engaged and in which he was engaged in West Pakistan before he became a displaced person;

(c) his average annual income in India during the three years immediately preceding the application;

(d) the income tax and super-tax, if any, to which he has been assessed for the three years immediately preceding the application;

(e) such other particulars as may be prescribed; and shall be accompanied by the following schedules, namely:

(i) a schedule containing full particulars of all his debts, whether owed jointly or individually, with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him;

(ii) a schedule of all his properties, both movable and immovable (including claims due to him) which are not liable to attachment either under the Civil F. C, 1908, as amended by Section 31 of this Act or under any other law for the time being in force, a specification of the values thereof and of the places where the same may be found;

(iii) a schedule of all his properties, both movable and immovable (including claims due to him) which are not included in the schedule under item (ii) of this clause; and

(iv) a schedule of all his properties in respect of which a claim has been submitted to the registering officer under the Displaced Persons (Claims) Act, 1950, "and, where any order has been passed in relation to the verification and valuation of the claim under that Act, with a certified copy of the order.

(3) All persons whose names are shown in any schedule as having claims against the displaced debtor and all persons whose names are shown as joint-debtors shall be deemed to be respondents to the application and there shall be filed along with the application, or with the permission of the Tribunal at any later stage of the proceedings, as many copies of the application and as many envelopes and notices in the prescribed form duly addressed to the respondents as there are respondents."

It is obvious on a reading of this section that an application u/s 5 of the Act is contemplated when a displaced debtor seeks adjustment of his debts. In such a contingency he moves the application to the Tribunal to secure adjustment of his debts. The section has no application where a debt is sought to be enforced against a displaced debtor.

15. We, accordingly, find no force in this appeal and dismiss the same with costs.