

(1951) 06 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision Case No. 477 of 1950

Jawala Dass Ram Narain

APPELLANT

Vs

Nand Lal

RESPONDENT

Date of Decision : 13-06-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Displaced Persons (Institution of Suits) Act, 1948 — Section 4

Citation : AIR 1951 P&H 128

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : K.L. Gosian, for the Appellant; P.C. Pandit, for the Respondent

Judgement

Kapur, J.—This is a rule directed against an order passed by the learned Senior Subordinate Judge, Hissar, holding that the suit brought by the Plaintiff Nand Lal was triable in the Courts of Hissar because of the common law rule that "the debtor must seek the creditor."

2. A suit was brought on 16-6-1950 for the recovery of Rs. 14,462 on the basis of a Fixed Deposit Receipt dated 2-12-1946 for a sum of Rs. 16,000 which was in the following terms:

Received from L. Nand Lal, son of L. Bahadur Chand, Lyallpur, the sum of Rupees Sixteen Thousand only per L. Nand Lal for one year at 0.50 on account of deposit.

In para. 9 of the plaint the ground given for the jurisdiction being in Hissar Courts was that:

according to law and equity the Defendant had to pay to the Plaintiff the sum sued for at his place of residence and the Plaintiff was a refugee and was residing at Hissar, that the cause of action in the absence of payment arose at Hissar and therefore the civil Courts at Hissar had jurisdiction to try the suit and that the Defendant even before the partition used to have business in that part of India which is now in India.

In reply the Defendant stated that before the partition he was carrying on business in Lyallpur in Pakistan and was a displaced person and that he was residing at Hoshiarpur and was carrying on business there. In para. 9 of his written statement he denied the allegation of the Plaintiff and stated that:

he was not bound to pay the money at Hissar, that the Court at Hissar had no jurisdiction to try the suit, nor did any cause of action arise within the jurisdiction of the Hissar civil Court and that it was absolutely wrong that the Defendant was carrying on business before the partition in what is now India.

He also stated that he was a displaced person and was registered as a refugee. In the statement before issues Bhiwani Das, the Mukhtar-i-am of the Defendant, stated that the Defendant was not carrying on business before the partition in any place which is now in India and their entire business was in what is now the territory of Pakistan. Upon this the following issue was raised:

1. Assuming the statement of Bhiwani Dass Mukhtar dated 17-7-1950 to be correct, have the Hissar Courts jurisdiction to try the suit?

3. It appears that neither of the parties nor the judge took the trouble of first establishing or enquiring into the point as to whether the Defendant is or is not a displaced person. It seems to have been taken for granted that whether he is a displaced person or not, the cause of action would arise within the jurisdiction of the Hissar Court if the common law rule applied.

4. The term "displaced person" has been defined in the Displaced Persona (Institution of Suits) Act 1948:

..."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 fear of such disturbances in any area now forming part of Pakistan, has been displaced from, or has left his place of residence in such area after the 1st day of March 1947, and who has subsequently been residing in India.

According to Section 4, suits by displace persons can be brought at the place where they are residing provided the Defendant resides or carries on business or personally works for gain of India and is not a displaced person. According to the Plaintiff, the jurisdiction of the Hissar Court was based (1) on the common law principle that the debtor must seek the creditor and (2) that the Defendant had business within what is now India even before the partition. It was never alleged in the plaint that the Defendant was not a person who had been displaced from Pakistan or had not left his place of residence in Lyallpur after the 1st day of March 1947, due to disturbances in Lyallpur. As I have said before, the Court did not take the trouble of ascertaining what the correct position was and contented itself by assuming that even if that were the position the suit would be triable at Hissar if the common law rule applied.

5. It has been held by a Division Bench of this Court in Piyara Singh v. Bhagwan Das 53 P.L.R. 98, that the common law rule that the debtor must seek his

creditor does not apply to promissory notes. It was also held that the CPC is an exhaustive Code and to Section 20 any other technical rule that the debtor must seek the creditor cannot be engrafted. I am of the opinion, therefore, that the learned Judge was in error in holding that the Court at Hissar had jurisdiction simply on the basis of this rule.

6. Mr. Pandit has then submitted that no irreparable injury is likely to be caused to the Defendant by the finding which has been given and that therefore this Court should not interfere in revision. I am unable to agree with this submission because if the Court had no jurisdiction this itself will amount to injury that the Defendant should be dragged to come and defend the suit at Hissar.

7. It was next submitted by Mr. Pandit that in this case the Defendant is not a displaced person. I have already set down in extenso the pleadings of the parties. The only thing which was alleged by the Plaintiff was that the Defendant had business in what is now India before the partition also. That does not come within the definition of the term "displaced person". The term "displaced person" as I have said before, means a person who has been displaced from the territory of what is now Pakistan or has left his residence in the territory of Pakistan due to disturbances. The only allegation made was that he had business in what is now India. That would not take him out from the definition of the term "displaced person". I therefore hold that the Hissar Court had no jurisdiction to try the suit and I set aside the order of the trial Court, allow the revision and make the rule absolute, but there will be no order as to costs as there were a certain number of cases in support of the rule which was followed by the Senior Subordinate Judge.

8. As a result of this the plaint will be returned to the Plaintiff for presentation in a proper Court. If the question of limitation arises, I have no doubt that the provisions of the Limitation Act will be made use of by the Court to which the suit is sent for trial.