

(1956) 03 BOM CK 0008
In the Bombay High Court
Case No : First Appeal No. 722 of 1954

Karamchand Pessumal

APPELLANT

Vs

Madhavdas Savaldas and Others

RESPONDENT

Date of Decision : 15-03-1956

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11, 13, 2(6), 5
Partnership Act, 1932 — Section 48

Citation : AIR 1956 Bom 669 : (1956) 58 BOMLR 754 : (1956) ILR (Bom) 839

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : A.S. Motwani, for the Appellant; Khanchand Gopaldas, Suganlal Hassanand and Bahanlal Suganlal, for the Respondent

Judgement

Chagla, C.J.—A short but rather interesting question as to the proper construction of Section 10, Displaced Persons (Debt Adjustment) Act, 1951 arises on this appeal, and the only facts that are necessary to state for the determination of this question are that the appellant filed an application u/s 10 before the Tribunal, who was the Judge of the City Civil Court, claiming partnership account from the respondents who were his partners, on the basis of the partnership being dissolved in July 1949, and also claiming to receive moneys found due and payable to him on taking such accounts. Now, if this had been a suit the suit would have been obviously described as a suit for taking partnership accounts of a dissolved partnership, and the question that falls to be determined by us is whether u/s 10 an application can be made of the nature made by the appellant in this case. The learned Judge below took the view that the petition did not lie and dismissed it, and the appellant has now come in appeal.

2. Section 10, which calls for construction at our hands, is in the following terms :

"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."

Admittedly the appellant is a displaced person as defined under the Act and the contention of Mr. Motwani is that he being a displaced person he has made a claim against a "displaced debtor" Who happens to be the other partners, the respondents in this case, and therefore his application is a proper application which falls u/s 10.

"Displaced debtor" has been defined in the Act and the definition is that it means a displaced person from whom a debt is due or is being claimed, and what is contended is that although a debt as defined by the Act may not be due from the respondents, if a debt is only claimed it would be sufficient to bring the displaced debtor within the ambit of the Act and of Section 10 and an application would lie against him by the displaced person if he has any claim against him.

3. In order to understand this contention it is necessary to look at the purpose for which the Act was enacted and the machinery set up by the Act. As the preamble states, the Act is to make certain provisions for the adjustment and settlement of debts due by displaced persons, for the recovery of certain debts due to them and for matters connected therewith or incidental thereto. Therefore, the main and principal object of the Act is the adjustment and settlement of debts due by displaced persons and also to enable displaced persons to recover debts due to them.

Now, it is not all debts that form the subject of this legislation. "Debt" has been defined and the definition is that it is 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. The rest of the definition is not material for the purpose of this argument.

Therefore, in order that there can be a debt which can be adjusted or with regard to the recovery of which the special facility provided by this Act can be afforded to a displaced person, it must be not only any liability but a pecuniary liability and the pecuniary liability must be an existing obligation although it may not be payable in present and even though it may not be ascertained at the relevant date. But the emphasis that the Legislature has placed is upon the word "pecuniary" which qualifies "liability", thereby ruling out other kinds of liability which although based upon an existing obligation are not pecuniary in their nature.

4. Section 5 deals with application by displaced debtors for adjustment of debts and under that section it is clear that what can be adjusted is debts as defined in the Act. Sub-section (2) provides for the particulars to be mentioned in the application, and Sub-section (3) provides :

"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 the 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 will be noticed that the expression here used is not "debts" but "claims" and these are claims against the displaced debtor who makes an application u/s 5 for the adjustment of his debts. But this word "claim" is clearly equated to "debts" because when we look at the first annexure which has got to be filed, it is a schedule containing particulars of all the debts of the applicant, whether owed jointly or individually together with the names and addresses of the creditors and joint debtors, and Sub-section (3) obviously refers to this schedule.

Therefore, at least in this section the Legislature has made no distinction between a claim and a debt. The claim against the displaced debtor must be a claim to a debt as defined by the Act, It is only if we read the expression "claim" to mean that that we can reconcile the provisions of Section 5(1) and the schedule that the debtor has to file along with his application.

5. Then comes Section 10 with which we are concerned, and what is urged is that the claim in this section is wider than the debt as defined by the Act, and what is very strenuously pressed upon us is that when we look at Section 13 which deals with claims by displaced creditors against persons who are not displaced debtors, the expression that the Legislature has used is a "displaced creditor" whereas in Section 10 the expression used is a "displaced person".

As already pointed out, "displaced debtor" is defined, and although the Legislature may not have used the expression "displaced creditor" when it used the expression "displaced debtor" against whom the claim is made, it indicates the nature of the claim, because by reason of the definition of a "displaced debtor" he must be a person from whom a debt is due or is being claimed. But what has to be claimed against the displaced debtor is a debt as defined by the Act.

Therefore, whether a debt is due by him or whether the debt is claimed from him, the position is the same that the subject matter of the dispute u/s 10 between the displaced person and the displaced debtor must be a debt as defined by the Act.

If the intention of the Legislature was to give a wider connotation to the expression "claim" in Section 10 as including something more or something other than a claim to a debt as defined in the Act, then it is difficult to understand why a displaced debtor was defined as a person from whom a debt is due or a debt is being claimed, and when we look at the statutory form which has been prescribed and in which the application has got to be made the position is made

even clearer, because Section 10 says that the application has got to be submitted with a statement of the debts owed to the creditor with full particulars thereof, and when we turn to the statutory form in item (d) what has got to be stated is the amount of the debt or debts due to the applicant from the displaced debtor and full particulars relating thereto. Therefore, the displaced person is not called upon to mention any other liability under which the displaced debtor is, except the liability or liabilities which constitute a debt within the meaning of the Act.

6. When we turn to Section 11, the argument that the expression "claim" used in Section 10 can only mean a claim to a debt as defined by the Act is further reinforced. Section 11 gives an option to the displaced debtor against whom an application is made u/s 10.

A show cause notice has got to be issued against him and the notice calls upon him either to show cause against the application u/s 10 or to make an application on his own behalf u/s 5. If he does not wish to make an application u/s 5 then he has a right to contest the claim on merits made in the application u/s 10. But -- and this is the important aspect of the matter -- he has a right on an application being made u/s 10 to make an application on his own behalf u/s 5.

In other words, he could ask the Court to adjust the claim made by the displaced person u/s 10 and such an adjustment could only be made provided the adjustment relates to a debt as defined in the Act. As already pointed out, Section 5, only contemplates adjustment of debts as defined by the Act.

Therefore it is clear that the claim made by a displaced person u/s 10 must be a claim to a debt with regard to which it would be open to the debtor u/s 11 to make an application u/s 5 and to have that claim adjusted. Section 13 admittedly refers to claims made by a displaced creditor which are claims to a debt or debts as defined by the Act, because there the very expression "displaced creditor" has been defined as a displaced person to whom a debt is due from any person, whether a displaced person or not.

7. Therefore, looking to the scheme of the Act and the various provisions contained in the Act, it is quite clear that whether an application is made for the adjustment of debts due by the debtor or whether a claim is made u/s 10 by a displaced person against a displaced debtor or a claim is made by a displaced creditor against a person who is not a displaced debtor, the subject matter of the debt or the claim must be as defined by the Act, viz.. a pecuniary liability, and if the debt is in respect of a liability which is not pecuniary or if the claim is to enforce a liability which is not a pecuniary liability, then neither the debt nor the claim would come within the ambit of the Act and no proceedings can be taken either with respect to the debt or the claim.

8. Mr. Motwani strongly relied on an observation made in Baburao K. Pai Vs. Dalsukh M. Pancholi, , where this Court was considering the provisions of Section 15 of the Act and in considering the scheme it was observed in passing that :

"Section 10 deals with claims by creditors against displaced persons, and it is rather significant to note that as between displaced creditors and displaced debtors what has to be investigated is a claim made by the creditor and not a debt due by a displaced debtor as defined by the Act."

The observation is clearly obiter and It is clear that although the investigation is with regard to a claim made by the creditor, the claim must be in respect of a debt as defined by the Act.

9. The next contention urged by Mr. Motwani is that even if the claim to be made by a displaced person u/s 10 has to be a claim in respect of a debt, this present claim is in respect of a debt as defined by the Act. In our opinion, that contention is Clearly untenable. The only existing obligation upon the respondents at the date of the application was a liability to render accounts to the appellant. There was no existing pecuniary liability at that date.

It is well settled that there is no relationship as of debtor and creditor between partners unless and until the partnership has been dissolved and accounts have been taken and it is ascertained what amount is due by one partner to another. Until the accounts are taken, the only right that a partner has is to call upon the other partners to render accounts to him. Therefore, what the appellant was seeking to enforce against the respondent, was not any existing pecuniary liability, but he was seeking to enforce the obligation which lay upon the respondents to render accounts to him, and that is precisely why the application was to compel the respondents to render accounts and for the relief that the applicant should be paid whatever was found due on the taking of the accounts.

Mr. Motwani says that because the appellant has asked for an amount being paid to him on the accounts being taken he is enforcing a pecuniary obligation. That contention is contrary to the principles underlying the law of partnership. The relationship of creditors and debtor would only arise after the accounts were taken. It is only then that it could be said that there was a financial liability upon one partner or another.

The position would have been different if the accounts had been made up and on the accounts being made up a certain amount was found due to one partner. Then if that partner files a suit he is enforcing a pecuniary liability which has arisen and which the other partner is under obligation to discharge. But till the accounts are taken there is no pecuniary liability which the other partner has to discharge because it is not known whether in fact there is any pecuniary liability upon him and that could only be known after the partnership accounts have been taken.

Therefore it is clear that the claim made by the appellant is a claim to a liability which is not a pecuniary liability, or, to put it in a different language, the claim made by the appellant is not a claim to a debt as defined by the Act, and although a claim is made against a displaced person the claim is not that a debt is due by the displaced person.

10. We therefore agree with the learned Judge that the application was not maintainable. The Appeal fails and is dismissed. No order as to costs.

11. Appeal dismissed.