
(1967) 10 DEL CK 0018

In the Delhi High Court

Case No : Letters Patent Appeal No. 52-D of 1965

K.C. Machanda

APPELLANT

Vs

Murree Brewery Co., Rawalpindi

RESPONDENT

Date of Decision : 20-10-1967

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 28

Citation : AIR 1968 Delhi 167 : (1985) 2 ILR Delhi 770

Hon'ble Judges : I.D. Dua, C.J;T.V.R. Tatachari, J;S.K. Kapur, J

Bench : Full Bench

Advocate : R.L. Tandon, for the Appellant; C.L. Khanna, for the Respondent

Judgement

(1) We are called upon to answer the following question which had been referred to us by a Bench consisting of Hegde, C. J. and Shankar, J.

"Whether the "court" referred to in section 28 of the Displaced Persons (Debts Adjustment) Act, 1951, can consider the validity of the decree passed by it as a Tribunal?" The Letters Patent Appeal is directed against the judgment of a learned Single Judge of the Punjab High Court in first appeal from order of Shri M. L. Verma, Subordinate Judge 1st Class, Delhi, made in the course of execution of an order made by a Tribunal at Amritsar under the Displaced Persons (Debt Adjustment) Act, 1951 (hereinafter called the Act). In order to understand the precise controversy giving rise to the question referred, it may be pointed out that Shri K. C. Manchanda (appellant in this Court) made an application u/s 13 of the Act before the Tribunal constituted under the Act at Amritsar against M/s Murree Brewery Company Rawalpindi (Pakistan) (hereinafter described as the Company). On 16-2-1955, an ex parte decree of Rs. 54,400/- was passed by the said Tribunal. An application made by the Company under Order 9, Rule 13, Code of Civil Procedure, for setting aside the ex parte decree was dismissed. Thereafter the decree was transferred from Amritsar to Delhi Courts for execution. In the course of these proceedings, the Company presented objections u/s 47 of the Code and objection which concerns us at this stage

related to the plea that the decree made by the Tribunal at Amritsar being a nullity and the Tribunal having no inherent jurisdiction over the company and the subject matter of the proceedings, the executing Court at Delhi which is a civil Court, should decline to execute it. Both the executing Court and the learned single Judge upheld the objection. Before the learned Single Judge, it was conceded on behalf of the appellant decree-holder that if the Tribunal which passed the decree had no inherent jurisdiction to pass it, then the objection to the execution of such a decree can be taken before the executing Court and all that was urged on behalf the appellant was that the Tribunal at Amritsar did not lack inherent jurisdiction since it was competent for that Tribunal to decide whether or not the amount claimed before it was a debt. The decision on this point arrived at by the Tribunal was contended to be final and conclusive. This contention was sought to be supported on the basis of the majority view of a Full Bench decision of the Punjab High Court in *Parkash Textile Mills Ltd. Vs. Mani Lal and Others*, . The learned Single Judge, however, distinguished the Full Bench decision and considering the ratio of two Supreme Court decisions in *Kiran Singh and Others Vs. Chaman Paswan and Others*, and *Seth Hiralal Patni Vs. Sri Kali Nath*, , to be more directly applicable, dismissed the appeal upholding the order of the executing Court.

(2) Before us also, it is not disputed that a decree made by a Tribunal wanting inherent jurisdiction to make the decree, would be a nullity and that the executing Court would, in such a case, be fully justified to decline to execute such a decree. The submission which has been strongly pressed before us is that the tribunal has been given the power to decide whether or not a particular transaction is a debt or whether or not a particular party is a debtor or a creditor as that any opinion expressed by the Tribunal on these questions would be final and conclusive, thereby ousting the jurisdiction of the civil Courts to reopen those conclusions. Support for this submission has primarily been sought from the majority view of the Full Bench decision of the Punjab High court in the case of *Parkash Textile Mills Ltd. Vs. Mani Lal and Others*, and some other decisions. Before dealing with those decisions, we consider it proper to point out that thought at the initial stage of the arguments the learned counsel for the appellant was inclined to urge that the Court executing the decree made by the Tribunal only functions as a Tribunal and not as a civil Court, but after going through the decision of the Supreme Court in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, , it was conceded that the civil Court executing a decree or order passed by a Tribunal under the Act is a civil Court. In view of this express concession, we do not consider it necessary to go into the scheme of the act and we are proceeding on the assumption that the Court while executing the decree or order made by a Tribunal under the Act, functions as a civil Court.

(3) Now, it is axiomatic that an order or decree made by a Court lacking in inherent jurisdiction is a nullity because the Court could not have seizing of the case. If the decree or order is a nullity in the sense just stated, then it would be

non set and the executing Court would, for obvious reasons, be entitled to go into the question of want of inherent jurisdiction of the Court making the decree or order and decline to execute it if it holds it to be a nullity, In *Ledgard v. Lord Bull* (1887) 9 All 191 Lord Watson, speaking for the Board, observed as follows :

"When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert, it into a proper judicial process, although they may constitute the Judge their arbiter, and he bound by his decision on the merits when they have submitted to him." In AIR 1933 61 (Privy Council) , Sir Dinshah Mulla, expressing the opinion of the Board, said:

"The Act does not contain any provision for making a decree on an award such as is contained in Sch. 2, para 21 of the Code of Civil Procedure. Such a decree, if made, is one without jurisdiction, and Therefore a nullity. Their Lordships agree with the view taken by the Courts in India that the decree of 14th February 1919, was passed without jurisdiction and was Therefore incapable of execution as such." In *Abdul Ghani v. Anjuman Imdad Qarza*, Air 1942 Lah 237, Tek Chand, J., speaking for the Bench, made the following instructive observations:-

"It has already been stated that under sub-s. (5) of S. 42, the order of a liquidator civil Court as if it were a decree passed by that Court itself. The powers of the Court in such a case are, Therefore, the same as those when it is executing a decree passed by itself. It is common ground that the general rule is that an executing Court cannot go behind the decree. It must take the decree as it is and must proceed to execute it. It might have been correctly passed, or it might be erroneous or not according to law, but it is nonetheless binding on, and conclusive as between the parties unless set aside on appeal, revision or other appropriate proceedings. The function of the executing Court is to enforce and execute it and not to question its correctness. To this general rule, however, there is a well-established exception that if there was a lack of inherent jurisdiction in the Court which had passed the decree is a nullity, the executing Court must refuse to execute it. This matter is now concluded by the highest authority, the latest pronouncement being that of their Lordships of the Privy Council in AIR 1933 61 (Privy Council) affirming the decision of the Calcutta High Court in *Rabindra Nath Chakravarthi Vs. Jnanendra, Mohan Bhaduri and Others*, . This ruling has set at rest an old standing controversy in the Courts in India and it may be taken as settled law that the executing Court can inquire whether the Court which passed the decree had, or had not ,inherent jurisdiction to pass it." In *Mahbub Hussain Shah v. Anjuman Imdad Qarza*, Air 1942 Lah 129, another Bench of the Lahore High Court, speaking through Dalip Singh, J., stated the Court's view thus:

"There can be no doubt now in view of the decision of their Lordships of the Privy Council in AIR 1933 61 (Privy Council) that the executing Court can always decide whether the Court which passed the decree had or had not inherent jurisdiction to pass the decree in question. This proposition can now no longer be disputed." Recently, the Supreme Court has in *Seth Hiralal Patni Vs. Sri Kali*

Nath, authoritatively affirmed the above view in these words:

"The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it." Indeed, at the bar, the learned counsel for the appellant, Shri R. L. Tandon has not seriously disputed that a decree made without jurisdiction is a nullity as was observed in *Kiran Singh and Others Vs. Chaman Paswan and Others*, . In that case, it is noteworthy, it was added that the invalidity of a decree passed by a Court without jurisdiction can be set up whenever and wherever it is sought to be enforced or relied upon, even if it be at the stage of execution and even in collateral proceedings.

(4) In view of the foregoing discussion, we are firmly of the view that the "Court" referred to in Section 20 of the Act is competent to consider the validity of the decree passed by it as a Tribunal in the sense of its being within or outside the inherent jurisdiction of the Tribunal. It is in the circumstances unnecessary for us to refer to the other decisions cited at the bar.

(5) An attempt has been made before us to show that the order made by the Tribunal is not a nullity, but that it was within the Tribunal's competence to finally decide the question of its jurisdiction and that its order being final, the validity of the decree in the sense mentioned above is not open to question in the executing Court. After having answered the question referred to us, we think it would be now for the Letters Patent Bench to decide this question and dispose of the appeal on the merits. We, however, consider it appropriate to reproduce the following oft quoted passage from the well-known judgment of Lord Esher. Mr. in the *Queen v. Commr. For Special Purposes of the Income Tax (1888)* 21 Qbd 319:

"When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for then conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may in trust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited

jurisdiction, they also have to consider, whatever jurisdiction they give them whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exerts of their jurisdiction." We would also like to reproduce the following passage from the judgment of the Privy Council in the case AIR 1940 105 (Privy Council) , which decision has often been approvingly referred by the Supreme Court:

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." These two passages have been quoted by us because they were referred to in some of the decisions relied upon at the bar before us and because they embody the well-recognised principles applicable to cases to Tribunal's of special jurisdiction. The question which normally baffles the Court is the application of these principles to the facts of given cases. That matter is, however, for the Letters Patent Bench to consider on the merits of this case.

(6) With the following observations, we direct that the case may now be placed before the Letters Patent Bench for final disposal. Costs of this reference would be costs in the cause.

(7) Answered accordingly