(1956) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32 of 1954-55

M. Mathra Das APPELLANT

Vs

Hari Ram and others RESPONDENT

Date of Decision : 14-12-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 2, 2(10), 2(6), 2(6)(c)

Citation : AIR 1958 AP 76

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : A Ramaswami Alyangar and K. Venkatachar, for the Appellant; G.P.P. Tolani, for the Respondent

Judgement

Satyanarayana Raju, J.—This is an application, under Arts. 226 and 227 of, the Constitution, for the issue of a Writ of Prohibition or any other appropriate Writ directing the Tribunal appointed under the Displaced Persons (Debts Adjustment) Act (LXX of 1951) not to proceed with the claim made against the petitioner and respondents 2 and 3, or in the alternative, to set aside the order passed by the Tribunal, on the 20th April, 1954, in exercise of the powers of superintendence conferred on this Court by Art. 227 of the Constitution.

2. The facts giving rise to this Writ application are these: The 2nd respondent, the Indianese Silk Mills Limited, was a private Limited Company of which the 3rd respondent was the Managing Director, and the petitioner a Director. The 1st respondent was the applicant before the 4th respondent, which is the Tribunal notified under the Displaced Persons (Debts Adjustment) Act, 1951, (hereinafter referred to as ''the Act'').

3. On the 15th December, 1952, the 1st respondent, who is a merchant and a contractor residing at Kingsway, Secundrabad, filed an application under S. 13 of the Act before the Tribunal claiming that he was a displaced creditor within the meaning of the Act, for recovery of a sum of Rs. 4,668-5-0 from the petitioner

and respondents 2 and 3. In and by means of the said application he averred that on 31-3-1952, he had advanced a sum of Rs. 4,500/- to respondents 2 and 3 at Bombay on their executing and delivering to him two hundies for Rs. 2,500/- and Rs. 2,000/-respectively, both repayable on 27-6-1952, in consideration of a guarantee given to him by the petitioner and the 3rd respondent on the 15th November, 1950. By means of a petition for leave to amend his Original application, which application had been allowed, he alleged that the sum of Rs. 4,500/- represented the balance due in respect of a sum of Rs. 5,000/- which had been advanced and paid by the 1st respondent on 11-12-1951 on a hundi executed on that date, deducting a sum of Rs. 500/- paid towards the same on 31-3-1952.

4. The petitioner contested the claim of the 1st respondent on several grounds, one of which was that the application was not maintainable under the Act.

5. By its preliminary order, dated the 20th April, 1954, the Tribunal rejected the petitioner''s objection and held that the application was maintainable. It is this order of the Tribunal which is now challenged in this Writ application.

6. It is submitted for the petitioner that the transactions having taken place and the cause of action having accrued in Bombay, the Secundrabad Tribunal had no jurisdiction to entertain the claim made by the 1st respondent that the Act applies only to liabilities incurred and existing on the date of its commencement that the liability in respect of which the petitioner made his claim was one which came into being after the commencement of the Act. and that therefore the provisions of the Act could no be invoked by the 1st respondent; and that having regard to the language employed in S. 2 (6) (c), there was no scope for the application of the provisions of the Act.

7. Before I proceed to deal these contentions it is necessary to consider the scheme of the Act and its relevant provisions. The Act, a is indicated in the preamble, is designed for the adjustment and settlement of debts due by did placed persons, for the recovery of certain debt due to them and for matters connected there with or incidental thereto. The Act confers certain benefits on displaced debtors by making provision for scaling down their debts and by providing special mode for the repayment of the debts. So too, displaced creditors are allowed the use of a special and speedy machinery provide by the Act for the recovery of their debts.

The Act divides the displaced persons broad into two classes, under S. 2 (10): (a) those who had left or had been displaced from their place of residence in West Pakistan after March 1, 19(sic) on account of civil disturbances or the fear such disturbances and had come to reside India; and (b) persons who are residents in a place now forming part of India and who for that reason are unable or rendered unable manage, supervise or control any immovable property belonging to them in West Pakistan.

8. In S. 2 (6) the expression ''debt'' is defined as follows:

''debt'' means any pecuniary liability, whether payable presently or in future, or under decree of order of Civil or revenue court of (sic)wise, of whether ascertained or to be as(sic)ed which-

(a) In the case of a displaced person (sic) has left or been displaced from his place of (sic)ence in any area now forming part of West Pakistan was incurred before he came to res(sic) in any area now forming part of India;

(b) In the case of a displaced person who before or after the 15th day of August 1947, has been residing in any area now forming part of India, was incurred before the said date on the security of any immoveable property situate in the territories now forming part of West Pakistan;

Provided that where any such liability was incurred on the security of immoveable 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) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends;

and includes any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on and is solely by way of renewal of, any such liability as is referred to in sub-clause (a) or sub-clause (b) or sub-clause (c) :

Provided that in the case of a loan whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability;

but does not include any pecuniary liability due under a decree passed after the 15th day of August 1947, by any Court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an tral agreement.

9. Section 4 provides for the constitution of tribunals competent to exercise jurisdiction under the Act. Section 13 provides for claims by displaced creditors against persons who are not displaced debtors.

10. Now I shall proceed to consider the contentions raised on behalf of the petitioner (sic)eriatune.

11. It is argued that the Act came into force in Bombay on the 10th December 1951 and in Hyderabad on the 20th December 1951 and the application was made by the 1st respondent on the 15th December 1952, and if the petitioner had made his application before the Tribunal at Bombay, his application would have been beyond the period of one year provided by Section 13, and therefore

the respondent had adopted the expedient of thing his application before the Secunderabad Tribunal. It is no doubt true that of the application had been made in Bombay, it would have been beyond the period of one year provided by Section 13 of the Act, the Act having come into force in that area a little earlier. Section 13, above extracted, provides a period of one year for making applications by displaced creditors to the Tribunal. The essential pre-requisites for the assumption of jurisdiction by the Tribunal are that the displaced creditor or the person against whom he makes the claim must be actually or voluntarily residing or carrying on business or personally working for gain within the local limits of the jurisdiction of the Tribunal. The claim must be made within one year after the date on which the Act comes into force within that local area. The application must be made in the form prescribed. Section 13 does not contain a further requirement that the cause of action for recovery of the debt should have arisen within the local limits of the jurisdiction of the Tribunal before which the application is made.

It is undisputed that the 1st respondent resides within the limits of the local area in respect of which the Secundrabad tribunal exercises jurisdiction under the Act. Giving the words used by the legislature in Section 13 of the Act their plain meaning, the conclusion becomes irresistible that the 4th respondent, the Tribunal at Secunderabad, had jurisdiction to entertain the application made by the 1st respondent.

12. It is then argued that the Act applies only to liabilities incurred and existing on the date of the commencement of the Act. Now, clauses (a), (b) and (c) of sub-section (6) of Section 2 of the Act provide for a time limit. In clause (a) the limit provided is that the debt must have been incurred before the debtor came to reside in any area now forming part of India. In clause (b) the time limit is the 15th day of August, 1947. In clause (c) the time limit is the date on which the Act came into force. Clause (c) provides for a case of a debt due to a displaced person from any other person whether displaced or not and includes any pecuniary liability, incurred before the commencement of the Act by any such person as is referred to in that clause which is based on and is solely by way of renewal of, any such liability as is referred to in sub-clause (a) or sub-clause (b) or sub-clause (c).

The debt must therefore be due. The word "due" means "what is owing". If a debt is not owned on the date of the commencement of the Act, obviously the Act cannot be called in aid. The same result flows from a consideration of the general scheme of the Act, which has been made to meet an extraordinary situation arising by reason of the setting up of the Dominions of India and Pakistan and on account of the civil disturbances which followed in its wake and cannot obviously apply to liabilities incurred after the commencement of the Act. There is therefore no scope for invoking the provisions of the Act to a debt incurred after its commencement.

This is the view taken by a Division Bench of the Bombay High Court consisting of Gajendragadkar and Vyas JJ., in Ramchand Tillumal Vs. Khubchand Daswani and Others, . I am in respectful agreement with the reasoning and the conclusions reached by the learned Judges on the Interpretation of the sections of the Act. In my opinion having regard to the intendment, the object and the language employed in S. 2 (6) of the Act, it must be held that the debt, the recovery of which is sought, must be due at the time when the Act come into force, and all debet which become due subsequent to the commencement of the Act are outside its purview. This is also the view taken by the Tribunal and is this part of the order there is no error manifest or otherwise in the conclusion reached by the Tribunal.

13. This leads me to the third contention urged before me and that is, whether the debt for the recovery of which the 1st respondent made his claim was incurred before the commencement of the Act. While it is argued for the petitioner that the hundies on which the petitioner founded his claim were drawn on the 31st March, 1952, long after the date of the commencement of the Act, it is contended for the 1st respondent that the amounts due under these hundies represented the balance due in respect of the loan of Rs. 5,000/- which was advanced and paid by the 1st respondent on the 11th December 1951, on a hundi executed on that date.

In this context it may be mentioned that the 1st respondent filed a petition in October, 1953 for amendment of his original application, in and by which he averred the above-mentioned facts. That petition was ordered by the Tribunal notwithstanding the fact that it was opposed by the petitioner. The learned counsel for the petitioner also contends that the Tribunal should not have allowed this amendment. Initially it may be mentioned that S. 25 of the Act makes the provisions of the CPC applicable to all proceedings under the Act. That section reads thus:

Save as otherwise expressly provided in this Act or in any rules made thereunder, all proceedings under this Act shall be regulated by the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908).

14. By reason of S. 25, C. P. C. - and there is no express provision in the Act or the rules made thereunder to the contrary - applications made under the Act should be regulated by the provisions contained in the Code.

If so it was open to the Tribunal to allow the amendment if it was in order. It is not now open to the petitioner to canvass the validity of the order allowing the amendment, in this Writ petition.

15. It is contended for the petitioner that on a proper construction of clause (c) of S. 2 (6) the present claim cannot be deemed to have been incurred before the commencement of the Act inasmuch as the liability was due on the hundies which were admittedly executed after the commencement of the Act and that the Tribunal was in error in allowing the amendment. I am unable to accept this contention. On a fair reading of the provisions of the section, it cannot be said

that the claim made by the 1st respondent before the Tribunal is outside its ambit. In any view, it cannot be said that the order of the Tribunal is vitiated by an error apparent on its face which would Justify the interference of this Court under Art. 226. It must, therefore, be held that the petitioner is not entitled to any relief in this writ application which accordingly falls and is dismissed with costs. Advocate''s fee Rs. 100/-.