(1956) 04 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Revs. No''s. 18 and 19 of 1956

Neta Ram Dip Chand APPELLANT

Vs

Gopal Das and Others RESPONDENT

Date of Decision : 06-04-1956

Acts Referred:
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 13, 13(3), 2(10), 2(6)

Citation : AIR 1956 P&H 100

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : Ram Niwas, for the Appellant; Babu Ram and Mohan Lal, for the Respondent

Judgement

Chopra, J.—The only point involved in the above two petitions for revision is whether Section 10, Displaced Persons (Debts Adjustment) Act applies to a pecuniary liability incurred after the commencement of the Act. In each of the cases, the displaced debtor renewed the debt (advanceed to him before'' l-S-lf.47, when he resided in the territory now forming part of the Dominion of Pakistan) by executing a balance in favour of his displaced creditor after the Displaced Persons (Debts Adjustment) Act, (hereinafter to be referred to as the Act) had come into force.

Application of the creditor for realisation of this debt u/s 10 of the Act was returned by the Tribunal as incompetent on the ground that the liability -arose after the commencement of the Act. It is against this order of the Tribunal that each of these petitions is directed.

2. In Net Ram Petitioner''s case, a sum of Rs. 4,000/- was originally advanced to Sobh Raj, father of Gopal Dass Respondent, on 2nd Magh, 2002 (19-1-1946). Sobh Raj struck a balance for Rs. 4100/- on 24-4-2004 (8-8-1947) before his migration, and then for Rs. 4240/- on 14-6-2006 (29-9-1949) after he had migrated to and settled at Kuru- kshetra.

On 3-4-2009 (18-7-1952), the debt was once again renewed in the form of an agreement executed by Sobh Raj for payment of Rs. 4260/-. It is this pecuniary liability of his father which is the basis of the present application against Gopal Dass u/s 10 of the Act. The Act in this State came into force on 20-12-1951.

3. In the other case of Bhajna Mai Petitioner, the liability for payment of Rs. 1545/4/- was first incurred by Nebh Raj Respondent on 15-5-2003 (30-8-1946), before his migration to India. The amount increased to Rs. 1702/1/- and a balance therefore was executed by Nebh Raj on 1-5-2006 (16-8-1949) after his migration, and then again for Rs. 1725/- on 30-2-2009 (30-6-1952). The present application by Bhajna Mai u/s 10 of the Act is based upon this liability incurred by the Respondent after the commencement of the Act.

4. u/s 10, a displaced person having a claim against a displaced debtor may make an application, in the prescribed form, 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. The parties to the two cases are admittedly "displaced persons" as defined by Section 2(10) of the Act. A "displaced debtor" means a "displaced person from whom a debt is due or is being claimed."

Similarly, a "displaced creditor" means a displaced person to whom a debt is due from any other person, whether a displaced person or not. The term "debt", for the purpose of the Act, is defined by Section 2(8) of the Act. Counsel for the parties are agreed that Clause (a) and (b) of this Sub-section, which deal with debts due from the two classes of displaced persons, have no application to the cases in context and that it is only Clause (c), which relates to debts due ''to'' a displaced person, that applies.

According'' to this clause of Section 2(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 is due to a. displaced person from any other persons (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).

5. Now so far as the renewal of a previous liability is concerned that renewal must be shown to have taken place before the Act came into force, as provided by the second part of the above definition of the term "debt". Where, however a debt has been renewed after the Act came into force, the liability shall be excluded from the operation of the Act.

In other words, where the claim is based on a pecuniary liability incurred by way of renewal of an earlier debt, the liability must have been incurred before the commencement of the Act; it is only then that that liability will fall within the definition of "debt" and entitle the displaced creditor to the benefit of Section 10 of the Act. As already observed, the basis of claim in both these cases is the pecuniary liability incurred by way of renewal of an earlier debt after 20-12-1951, the date on which the Act came into force in this State, and therefore Section 10 would have no application.

6. Learned Counsel for the Petitioners, how ever, contends that the first part of the definition of ''debt'' in clause(c) of Section 2(6) is independent of what is stated to be included in it by the second part; the second part further extends the definition given in the first part and is not meant to circumscribe it. He further maintains that any pecuniary liability due to and displaced person, whether incurred before or after the commencement of the Act, amounts to a debt under the first part of Clause (c), and therefore, the Petitioners can base their claims on the balance struck in their favour after the Act had came into force. It is correct that the first part of Clause (c) does not expressly state as to when that pecuniary liability should have been incurred.

Taken disjunctively, the clause may be interpreted to include a liability which is incurred after the commencement of the Act. But when one reeds the clause as a whole and in the light of the object of the Act and its other provisions it becomes abundantly clear that the clause is not capable of any such interpretation. That interpretation of the clause would lead to an anomalous position; while a displaced person advancing a loan after the enforcement of the Act would be entitled to recover the debt u/s 10 or Section 13, he would not be so entitled if he has got his old debt renewed after the commencement of the Act. That could never be the intention of the Legislature.

7. In case of a "debt" due from a displaced person, it is limited to the liability incurred before he came to reside in any area now forming part of India, or before 15-8-1947, on the security of any immovable property situate in the territories now forming part of West Pakistan.

The proviso added to the extended definition of debt'' in Section 2(6) further lays down that in 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. That again makes the intention of the Legislature sufficiently clear. It is the old debt for which certain relief''s are provided. In the case of a displaced creditor the benefit is extended up to the time when the Act came into force.

8. The object of the Act is to provide facilities to displaced persons in the matter of adjustment of their debts or realization of the debts due to them. An application by a displaced person for adjustment of his debts Incurred before his migration to India or before 15-8-1947 (according to the category of displaced persons in which he falls) lies u/s 5. A displaced creditor can put forth his claim against his ''displaced creditor'' or any other person who is not a displaced person, u/s 10 or Section 13 of the Act. He is thus saved of the protected and

expensive trial of a regular suit The facility is given because of his forced migration to India and the heavy loss suffered by him as a result thereof. But I do not think it was intended to be given to him for all times and also for his future dealings. Section 13 lays down a limitation of one year, counted from the date on which the Act came into force, for an application by the displaced creditor. It places a limit within which the application may be presented and that leads to the inference that the debt must already exist when the Act came into force.

There does not appear to be any particular reason why preference should have been given to debts advanced within a period of one year after the commencement of the Act, while the same facility was denied to a displaced creditor who got his old debt renewed within that period. Clause (c) of Section 2(6) describes the debt as one "which is due to a displaced person and not as one which1 may become due to him at any future time.

I am, therefore, of opinion that pecuniary liability mentioned in Clause (c) of Section 2(6). whether it be by way of a fresh advance or only a renewal of an old debt, must be shown to be due to the displaced creditor at the time when the Act came into force so as to make it i all within the definition of a "debt". It is only then that he can be deemed to be entitled to the benefit of the provisions of Section 3 or Section 13 of the Act.

9. The above view of mine gets some sup port from the Division Bench judgment of the Bombay High Court in '' Ramchand Tillumal Vs. Khubchand Daswani and Others, I am aware of the fact that the question whether a displaced creditor would be entitled to avail himself of the provisions of the Act in respect of debts which become due to him subsequent to the commencement of the Act was not directly involved in that case. But certain observations made by the learned Judges may be helpfully quoted. Gajendragadkar J. dealing with the above category of debts observed:

For the recovery of such debts the displaced creditor would have to take recourse to the ordinary law and not to the special machinery provided by this Act. The scheme of the Act in regard to displaced creditors in its broad features appears to be fairly clear. In regard to displaced persons who on their migration to India may have advanced loans after they came to India, legislature thought protection was due to them in respect of loans thus advanced by them, but the same should be limited to loans advanced before the commencement of the Act. In my opinion it is fairly clear that the legislature did not intend to extend the assistance of the provisions of this Act to the monetary dealings of .displaced creditors subsequent to the commencement of this Act.

Vyas J. in a separately recorded judgment also took the same view and observed:

In this connection, it is to be remembered that the debt which is covered by Clause (c) of Section 2, Sub-section (6), is the debt which is due Lo a displaced person from any other person ordinarily residing in the territories to which the

Act extends. In using the words "the debt is due" in Clause (c) of Section 2, Sub-section (6), the Legislature obviously intended that the debt must be due at the time when the Act came into force.

10. This is exactly how, I think, the definition of debt in Clause (c) of Section 2(6) of the Act can reasonably be interpreted and I am, therefore, in agreement with the conclusion arrived at by the Tribunal. The revisions consequently fail and are dismissed, but the parties are left to bear their own costs.

11. Shri Ram Niwas has orally prayed for leave to appeal to a Division Bench u/s 52 of Ordinance No. 10 of 2005. In view of the general importance of the question of law involved, which has not been shown to be covered by any direct authority, the case is certified to be fit for appeal.

