
(1958) 01 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Ex. Second Appeal No. 366 of 1956

Parma Nand

APPELLANT

Vs

Kalyan Dass and Another

RESPONDENT

Date of Decision : 29-01-1958

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 59
Displaced Persons (Land Acquisition) Act, 1949 — Section 7, 8
General Clauses Act, 1897 — Section 6

Citation : AIR 1959 P&H 610

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Advocate : H.I. Sarin, for the Appellant; Rup Chand, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Gosain, J.—This second appeal arises in the following circumstances: The appellant Parmanand obtained a decree for the recovery of Rs. 820/- and costs from the Court of the District Judge, Multan, against Kanhaiya Lal, father of respondent 1 Kalu Ram and grand-father of respondent 2 Faqir Chand. The decree was passed on 18-1-1947 and does not appear to have been put into execution at Multan. As a result of the partition, the appellant as well as the respondents came over to India as displaced persons.

After the Displaced Persons (Legal Proceedings) Act XXV of 1949 came into operation, the decrec-holder, filed an execution application on 3-1-1950 in the Court of the Subordinate Judge at Sonapat and obtained a transfer certificate for Panipat. On 3-11-1951, the execution application was filed at Panipat and although a process was ordered to issue, the decree-holder committed default in paying the process fee with the result that the execution application was consigned to record room on 3-5-1952. The decree-holder then made the present application for execution on the 29th of March 1954 in the Court of the Subordinate Judge at Panipat.

The judgment-debtors raised objections u/s 47, Civil Procedure Code, to the executability of the decree and urged that Act XXV of 1949 having been repealed the execution application could not proceed. The learned Subordinate Judge gave effect to the objections and on the 22nd of Juno 1955 dismissed the execution application. The decree-holder went up in appeal to the Court of the District Judge, Karnal, but the appeal was also dismissed on 4-2-1956. The decree-holder has now come up to this Court in execution second appeal.

2. Mr. H. L. Sarin, learned counsel for the decree-holder appellant, submits that Section S of Act XXV of 1949 expressly lays down that upon the expiry of the Act, the provisions of Section 6 of the General Clauses Act (X of 1897) shall apply as if the Act had then been repealed by a Central Act, He then refers to Clauses (c) and (e) of Section 6 of the General Clauses Act and urges that the repeal of the Act does not affect any rights, privileges, obligations or liabilities acquired, accrued or incurred under the same and further that the repeal of the Act does not affect any legal proceedings or remedies in respect of any such rights, privileges, obligations and liabilities. His contention is that the Act had given him a right or privilege to execute the decree in India and that the repeal of the Act did not take away his said right and privilege. Mr. Roop Chand, learned counsel for the respondents, has drawn my attention to Section 59 of the Displaced Persons (Debts Adjustment) Act (LXX of 1951) which lays down as under:

"Save as otherwise provided in Section 36, the Displaced Persons (Institution of Suits) Act, 1948 (47 of 1948) and the Displaced Persons (Legal Proceedings) Act, 1949 (XXV of 1949) shall cease to apply to displaced persons as defined in this Act."

His contention is that Act 25 of 1949 was originally to expire on 31-3-1952. Before it could expire on the said date, the Displaced Persons (Debts Adjustment) Act (LXX of 1951) came into operation on the 10th of December 1951 and by means of Section 59 of this Act, Act XXV of 1949 ceased to apply to the displaced persons as defined in Act LXX of 1951. His contention is that Section 8 of Act 25 of 1949 ceased to apply and therefore the effect of its expiry, as given in that section, did not at all come into existence.

3. In Act XXV of 1949 "Displaced Person" had been defined as meaning

"any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the 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 1-3-1947, and who has been subsequently residing in India."

In Act LXX of 1951 a "displaced person" had been defined as under:

" "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 the fear of

such disturbances in any area now forming part of West Pakistan, has, after 1-3-1947, left, or been displaced from, his place of residence in such area, and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a banking company."

Comparison of the definitions of "displaced person" in the two Acts clearly shows that Act XXV of 1949 applied to all the displaced persons, whether coming from East or West Pakistan, but the later Act LXX of 1951 applied only to displaced persons coming from West Pakistan, Section 59 of Act LXX of 1951 could only apply to displaced persons as defined in this Act and it did not therefore amount to total repeal of Act XXV of 1949. The displaced persons coming from territories now comprised in East Pakistan still remained subject to Act XXV of 1949 and as a result of Section 59 of Act LXX of 1951 the previous Acts only ceased to apply to displaced persons coming from the territories now comprised in West Pakistan.

As Act 25 of 1949 had not been totally repealed, the provisions of Section 6 of the General Clauses Act could not possibly be attracted to the case. The Debt Adjustment Act had consolidated all the rights and liabilities of displaced persons qua the legal proceedings by and against them. It had provided a complete machinery for the adjustment and realization of all debts due from and to displaced persons and had made comprehensive provisions for the said purpose. Section 10 and 13 of the Act had allowed all the creditors to make proper applications to the Tribunal for realization and adjustment of their debts and Section 5 enabled all the debtors to make applications for the adjustment of debts. Section 21 made provision for bringing the previous decrees in accordance with the provisions of the Act.

It was in these circumstances probably thought fit by the Legislature to cease to give any further protection to the displaced persons in respect of realization of their debts and decrees and the provisions of Section 59 were enacted to take away the applicability of the Institution of Suits Act and the Legal Proceedings Act to the displaced persons who were covered by the provisions of the Displaced Persons (Debts Adjustment) Act. It would be attributing an absurdity to the Legislature to say that they provided for a complete machinery for realization and adjustment of debts due to and from displaced persons in the various provisions of Act LXX of 1951 and yet they left open the previous remedies given to them by the Displaced Persons (Institution of Suits) Act or the Displaced Persons (Legal Proceedings) Act.

In determining either the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, should, in all cases of doubtful significance, be presumed to be the true one. It is a well-known maxim of interpretation of statutes that an interpretation which

attributes absurdity to the Legislature must, if possible, be avoided. I am definitely of the opinion that as a result of Section 59 of the Debts Adjustment Act, all the provisions of the Displaced Persons (Legal Proceedings) Act ceased to apply to the displaced persons as defined in Act LXX of 1951 with the result that they were disabled from making use of the provisions of Section 7 of Act XXV of 1949.

The execution application in question has been filed in pursuance of Section 7 of the said Act, and as the said section along with all other sections of the Act has ceased to apply to the displaced persons, the decree-holder cannot take advantage of that section any more. His rights and remedies are now determined by Act LXX of 1951 and he can take advantage of that Act for the purpose of realization of his decretal amount.

The decretal amount clearly falls within the definition of "debt" as given in the said Act, and there are ample provisions in the said Act for the realization of the debt, subject of course to limitations placed by that Act. Mr. Sarin relied upon a Division Bench judgment of the Allahabad High Court reported in Tilok Chand Vs. Mer Chand and Others, In the said case, however, an application for leave to sue in forma pauperis had been instituted before the enforcement of Act 70 of 1951 and the Division Bench of the Allahabad High Court simply said that there was nothing in Section 59 of the Act which affected the cases already pending at the time.

In the present case, however, the execution application in question was instituted long after Act LXX of 1951 had come into operation and there was no proceeding pending on the date of its enforcement. The ruling of the Allahabad High Court is therefore inapplicable to the facts of the present case.

4. AS a result of the above, this appeal fails and is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

5. Mr. Sarin prays that a certificate of fit-ness may be granted to him for filing a Letters Patent Appeal. As the point is not covered by any previous authority, I grant him the necessary Certificate.