

(1957) 11 CAL CK 0004
In the Calcutta High Court
Case No : A.F.O.D. No. 10 of 1955

Parmanand Lokumal and Others

APPELLANT

Vs

Khudabadi Bhaibund Co-operative Credit Bank Ltd. and
Others

RESPONDENT

Date of Decision : 20-11-1957

Acts Referred:

Court fees Act, 1870 — Article 1, 11, 17

Displaced Persons (Debts Adjustment) Act, 1951 — Section 12, 2(10), 27, 3, 40

Citation : AIR 1958 Cal 675 : 62 CWN 820

Hon'ble Judges : P.N. Mookerjee, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Provash Chandra Basu, for the
Appellant;C.C. Ganguly, Noni Coomer Chakravartti and B.B. Mazumdar, for the
Respondent

Judgement

This Judgment has been overruled by : Diwan Bros. Vs. Central Bank of India, Bombay and Others, AIR 1976 SC 1503 : (1976) 3 SCC 800 : (1976) SCR 664 Supp

P.N. Mookerjee, J.—Three questions of first impression, -- and all of some interest and importance--arise for consideration in this appeal. The first is by way of a preliminary objection to the maintainability of the appeal; the other two relate to the competency of the proceeding itself, out of which the appeal arises. The latter two are points, touching the merits of the appeal and involving consideration of the correctness or otherwise of the relative decisions of the Tribunal below, and these we shall take up after deciding the question of maintainability of the appeal.

2. The facts, leading to the present appeal, may now be briefly stated as follows:

On or about 12-1-1944, respondents Nos. 3 and 4 Parasram Valiram and Mrs. Gianibai Valiram borrowed from the respondent No. 1 the Khudabadi Bhaibund Co-operative Credit Bank Ltd., a sum of Rs. 60,000/- carrying interest at the rate

of six per cent., per annum and payable in two years by six instalments. For the said loan Lokumal Satramdas, father of appellant Nos. 1 to 3 and grandfather of appellant No. 4 and father-in-law of appellant No. 5, and Jeramdas Menghraj, predecessor of respondent No. 2 Ramchand Vishindas, stood sureties. The loan was also secured by a mortgage of the principal debtors' house property in Hyderabad Sind which has since gone to West Pakistan. Admittedly, some payments were made towards the above loan, but, as to the amounts paid, the parties differ in some particulars. That difference, however is not material for our present purpose.

3. In December, 1950 Lokumal died. Jeramdas had died earlier, namely, in 1949.

4. In regard to the above debt arbitration proceedings were taken under the Bombay Co-operative Societies Registration Act and the said proceedings were pending before the Arbitrator under the said Act when the appellants applied u/s 5 of the Displaced Persons (Debts Adjustment) Act, 1951 (Central Act No. 70 of 1951) for adjustment and settlement of the debt. This application was filed before the learned Subordinate Judge, 8th Court, Alipore, who was the appropriate Tribunal for the purpose under the Act, and, under his orders, the proceedings before the Arbitrator were stayed and the Arbitrator's records were brought before the learned Subordinate Judge. Thereafter, the matter proceeded before this learned Subordinate Judge who, as stated above, was the appropriate Tribunal under the Act. In these proceedings which were founded upon the appellant's allegation that they were displaced persons within the meaning of the above Displaced Persons (Debts Adjustment) Act, that allegation was denied by the creditor respondent No. 1 and, thereupon, the issue, with which we are here directly concerned on the merits, arose, namely, whether the appellants were displaced persons within the meaning of the said Displaced Persons (Debts Adjustment) Act. That issue was answered by the Tribunal in the negative and the creditor respondent's objection to the maintainability of the appellants' application u/s 5 was upheld and the application was rejected as not maintainable by the Tribunal's order No. 53, dated September 4, 1954, on which a decree was made, the decree being actually signed on September 15, 1954. Against this decision of the Tribunal, the present appeal was preferred by the appellants.

5. To the hearing of the appeal a preliminary objection was taken by the contesting respondent No. 1. It was directed against the competency of the appeal as filed. The appeal, we may state here, was filed with a court-fee stamp of Rs. 5/- only as an appeal from an order, though, in the memorandum, it was described as an appeal from Order No. 53, dated September 4, 1954, and decree, dated September 15, 1954. It was valued for purposes of jurisdiction at Rs. 49410-12-9 pies which was stated to be the amount that was claimed by the creditor but no value was given for purposes of court-fee. On the objection of the Stamp Reporter, the appeal was described as an appeal from decree and registered as such and a further court-fee of Rs. 10/- was paid on the

memorandum, making up a total of Rs. 15/-, under Schedule II, Article 17(vi) of the Court Fees Act upon the view that the subject-matter of the appeal was incapable of valuation. This was accepted by the Stamp Reporter.

6. The propriety of the above view was challenged by the Respondent No. 1 and his learned Advocate Mr. Charu Chandra Ganguly contended that the appeal which would be competent only as an appeal from a decree, -- and so registered by the Stamp Reporter in the correct category, -- must have for its validity ad valorem court-fee on Rs. 49,410-12-9 pies which should be not merely its value for purposes of jurisdiction but for court-fee as well. It was urged, accordingly, that the memorandum of appeal in the present case was insufficiently stamped and should be rejected. In any event, it was submitted, the appeal could not be heard and decided on the merits until and unless the defect was removed and the deficit court-fee was paid.

7. In answer to the Respondent's above contention, Mr. Gupta, appearing for the appellants, made first an extreme submission. Eventually, however, he chose to support the Stamp Reporter's view.

8. As the point was not altogether free from difficulty, we reserved consideration of the matter and, the parties consenting, we proceeded with the hearing of the appeal subject to this that, if, ultimately, we agreed with the respondents' contention on the point of court-fee, we would call upon the appellants to pay the deficit court-fee within a certain time and, in default, we would reject the memorandum of appeal without expressing any opinion on its merits.

9. We shall now deal in brief with the merits of the respective submissions on the preliminary point. We may, however, indicate here that we are inclined to agree with the Stamp Reporter's view.

10. Turning to the rival contentions on the question of court-fee, we may state at once that we do not agree with Mr. Gupta's extreme submission that the appeal should have been registered as an appeal from an order on a court-fee stamp of Rs. 5/- only under Schedule II Article 11 of the Court-Fees Act and that, if the appeal was to be regarded as an appeal from a decree no court-fee was at all leviable on the memorandum, as such an appeal would not come within any of the provisions of the Court-Fees Act.

In support of the latter submission Mr. Gupta maintained that Schedule I Article 1 of the Court-Fees Act would not apply to the instant case as the subject-matter of dispute in the present appeal was incapable of valuation and Article 17 Schedule II also would not apply to it as it was not an appeal, arising out of a suit and, there being no residuary article in the Court-Fees Act for appeals from decrees, as in the case of appeals from orders (vide Article 11 Schedule II), applying to appeals incapable of valuation, no court-fee would be payable. We cannot accept either of these two extreme contentions.

11. The proceeding in the present case was started on an application u/s 5 of the

Displaced Persons (Debts Adjustment) Act. In that Act, the appeal provision is contained in Section 40 and the right of appeal, contained therein, is subject to the restrictive provisions of Section 41, which restrictive provisions, however, are not material for our present purpose. u/s 40, an appeal lies from any final decree or order of the tribunal (vide Clause (a)) which alone is relevant here. Mr. Gupta contended that the tribunal's decision in the present case, dismissing the appellants' application u/s 5 of the Act, was not a decree but a final order and was appealable as such under the latter part of Section 40(a) of the Act on a court-fee stamp of Rs. 5/- only under Schedule II Article 11 of the Court-Fees Act. As we have already stated, we are unable to accept this contention.

12. The instant case clearly comes u/s 9(1) of the Displaced Persons (Debts Adjustment) Act, which contemplates the passing of an appropriate decree following, inter alia, the tribunal's decision {vide in this case the Tribunal's Order No. 53, dated September 4, 1954) on the dispute as to whether the applicant u/s 5 is a displaced person or not. That is what the Tribunal has actually done in the present case and, as a matter of fact, it has actually drawn up a decree and the appeal, as it now stands in form, is an appeal from this decree. In view of the terms of Section 9, we are unable to regard the order, dated September 4, 1954, as a final order as mentioned in Section 40 and appealable as such. Those final orders are orders of the type, mentioned in Section 12 of the Act, which dispose of some particular matter finally but where no decree is required or contemplated under the Act in pursuance of or following the particular order. That is not the position u/s 9 which clearly contemplates decisions on certain matters to be followed by decrees. The appeal before us must, therefore, be regarded as an appeal from the final decree, prepared in this case,--the decree being, of course, a decree of dismissal of the application -- and it has been rightly registered as such.

13. In support of his above argument that the decision in the present case is not a decree but only an order, Mr. Gupta drew our attention to Section 27 of the Act which prescribes a form of decree and contended that, "as, in the present case, there has been and can be no compliance with that form the Tribunal's decision cannot be regarded as a decree". Apart from the fact that mere non-compliance with form does not change the character of the decision and that, even if it does, the decision, in the present case will be simply an order and not a final order and so not open to appeal, thus placing Mr. Gupta's client in a worse position, we do not think that Mr. Gupta's argument on the point can be accepted as sound. Section 27 prescribes the form of a decree on an application by a displaced person and it will not apply to a case where the applicant is held not to be a displaced person and thus the application, at the moment of or on the Tribunal's decision, cannot be regarded as an application by a displaced person. We do not, therefore, agree with Mr. Gupta's contention" on this point.

14. It follows from what we have stated above that Article 11 Schedule II of the Court-fees Act can have no application to the present case and Mr. Gupta's

contention that the Court-fee, payable for the appeal, will be a fixed court-fee of Rs. 5/- cannot be accepted.

15. Nor do we think that Article 1, Schedule 1 of the Court-fees Act would apply to this case, as urged by the respondent. To that extent, we agree with Mr. Gupta's submission on the point though we do not accept this extreme contention that no provision of the Court-fees Act would apply to this appeal to make the memorandum, chargeable with any court-fee whatsoever. Normally, as contended by the respondent, Article 1, Schedule I of the Court-fees Act, is the Article applicable to cases of appeals from decrees and ad valorem court-fee is payable on the memorandum on the value of the subject-matter in dispute. That, however, presupposes that the subject-matter in dispute in the appeal is capable of valuation. In the instant case before us, it is difficult to say that the subject-matter in dispute in the appeal is capable of valuation. Strictly speaking, -- and looking at the substance of the thing, -- the dispute is with regard to the status of the appellants, namely, whether they are displaced persons under the Displaced Persons (Debts Adjustment) Act. That that is, in substance, the real subject-matter of the appeal will follow from the nature of the impugned decree. That decree has been made u/s 9(1) of the Act which contemplates and expressly authorises the passing of a decree upon, inter alia, a decision on the question of the applicant's status. It is to be remembered further that the Act is intended to afford relief to displaced persons and that purpose may well be frustrated, if, in cases of preliminary dismissals of the applications, the appeals are to be filed with ad valorem court-fee on the disputed amount, even assuming that it is capable of ascertainment at the particular stage. Bearing that in mind and having regard to the scheme and structure of the Act and the nature of the impugned decree, namely, of dismissal on the preliminary finding of the failure of the appellants to prove the necessary status, and, the propriety of that finding being the sole question for consideration in the appeal, so far as the appellants are concerned, we do not think that it would be improper to hold that the subject-matter in dispute in the appeal is that question of status which plainly is incapable of money value. The appeal thus would come under Schedule II, Article 17, of the Court-fees Act, provided, of course, the memorandum of appeal is in a "suit" as contemplated in the opening paragraph of the Article. About that, however, there is not the slightest difficulty as, so far as this State is concerned, the amended definition of suit includes an appeal (vide the definition in Section 2(4) of the Act) and thus the memorandum of appeal which is undoubtedly in an appeal "where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act, would be in a suit of that description and thus well covered by Clause (vi) of the Article.

16. Even if the subject-matter in dispute in the appeal be held to be the relief or reliefs, claimed by the appellants in their original application, the decree impugned being one of dismissal of the same, we do not think that any other view on the question of its valuation should be taken. Relief claimed is in the following terms :

"(a) That this Honourable Tribunal will be pleased to adjust the said debt of Rs. 49,410-12-9 according to the Provisions of the Displaced Persons (Debts Adjustment) Act of 1951. (b) that this Honourable Tribunal will be pleased to stay the arbitration proceedings, pending before the above-said arbitrator Sri L.D. Jagia at 211, Nagdevi Street, Jamal Building 3rd Floor, Bombay-3, and order the said proceedings to be transferred to this Honourable Tribunal and consolidated with the present application."

The second relief is merely incidental and ancillary but, even taking it to be otherwise, it is undoubtedly incapable of valuation. About the first relief also the position would not be materially different. No money value has, indeed, been given for the reliefs in the application u/s 5. Nor is it possible to estimate it at this stage, having regard to the nature of the reliefs, contemplated by the Act. The respondent's claim is stated to be Rs. 49,410-12-9. The Bank apparently is claiming more. Be that as it may, this much at least is clear that, so far as the creditor is concerned, the claim has a specific money value but, on the present materials, no money value can be put on the debtor's claim of relief. That claim, as we have stated above, is for adjustment or settlement of the debt in accordance with the provisions of the Act but no particular figure has been mentioned in that connection and the figure at which the debt may be settled or adjusted is plainly uncertain at this stage.

17. Under the Act, the debtor may be entitled to one or more of the following reliefs, viz. :

- (i) "Cesser of accrual of interest on and from August 15, 1947" (Vide Section 29),
- (ii) Scaling down of debt and
- (iii) Instalments, (Vide Section 32)

leaving aside reliefs by way of protection against arrest (vide Section 30) and attachment (Vide Section 31) which are irrelevant for our present purpose. Of the above reliefs, again, it is impossible to say or anticipate now what relief will be available to the applicants in the present case on account of cesser of interest. It depends on so many uncertain factors, for example, period (which cannot be ascertained now) and discretion of the Tribunal, and the applicability or otherwise of Section 16 of the Act to this case and the effect thereof, that being one of the questions, raised between the parties hereto, and it would be unreasonable to require the appellants to put a particular money value on this claim of relief and to pay ad valorem court-fee on it. About scaling down of debt also the position, as the relevant section (Section 32) clearly shows, is plainly uncertain and, at the present moment, no money value can be put on this particular relief and the relief for instalments, too, is incapable of a money valuation. It is, therefore, difficult to bring the case under Schedule I, Article 1 of the Court-Fees Act which requires ascertainment of the money value of the subject-matter in dispute in the appeal for calculation and payment of ad valorem court-fee and, on the present position, the case would come (under Schedule II Article 17 (vi) of the

Act. If that Article, namely. Schedule II. Article 17 (vi), applies, the present case may, at the worst, be one of two reliefs, both incapable of money value from the appellant debtor's point of view., which means that the subject-matter in dispute in this appeal by the debtors would be incapable of valuation and the memorandum of appeal would be properly stamped with a court-fee of Rs. 15/-. That is what has actually been done in this case and, accordingly, the memorandum must be held to have been properly stamped. The respondent's preliminary objection to the maintainability of the appeal must, accordingly, be overruled.

18. We ought to mention here that, in the course of discussion of the above preliminary objection to the maintainability of the appeal, Mr. Ganguly cited and relied upon two reported decisions *Sita Ram Vs. Mool Chand and Others*, (A), and *Kishandas v. Parasram* AIR 1955 Raj 81 (B), in support of his contention that the memorandum of appeal in the present case must bear ad valorem court-fee on Rs. 49,410-12-9 under Article 1, Schedule I of the Court-fees Act. The decisions cited, prima facie, lend support to Mr. Ganguly's contention but, on closer reading, they are distinguishable and cannot apply to the present case. The Allahabad case was a creditor's appeal where the claim appears to have been put at a certain figure and the only contention urged was that the decision of the tribunal was an order and not a decree. There was no contention that the claim was incapable of valuation. In such circumstances, the demand of ad valorem court fee appears to have been justified.

In the Rajasthan case AIR 1955 Raj 81 (B), the dispute that was decided by the Tribunal appears to have been as to the existence and/or of the amount of debt (vide the later case of that Court *Punjab National Bank Ltd., Delhi Vs. Firm Isardas Kaluram*, (C), and it was possible to put a money value on the dispute-- and that appears to have been done in the case -- and in such circumstances, the demand for ad valorem court-fee on the said value may well be justified.

19. Apart from the two decisions cited by Mr. Ganguly, we have ourselves examined several other decisions on similar or allied matter, namely. *Taxing Officer, Taxing Officer, High Court Vs. Jamnadas Dharamdas and Others*, (D), *Ram Lubhaya Bhatia Vs. Divisional Supdt. Northern Railway, New Delhi*, (E); *Punjab National Bank Ltd., Delhi Vs. Firm Isardas Kaluram*, (C), and, while in some of them, there are observations, supporting our point of view, and others apparently express a different view, they are all distinguishable as apart from any thing else, none of them appears to be directly in point they not having taken into consideration the particular aspect which we have noticed and discussed in this judgment. All the decisions were, practically, wholly concerned with the question whether the Tribunal's decision was a decree or an order. In this state of the reported decisions and in view of the divergence of judicial opinion, we have preferred to examine the matter afresh and, having regard to the nature of the dispute in the present appeal, we have reached the conclusion that the memorandum has been properly stamped with a court-fee of Rs. 15/-

under Article 17 (vi), Schedule II of the Court-fees Act.

20. On the merits, the respondent's objection u/s 70 of the Bombay Co-operative Societies Act may shortly be disposed of. Section 3 of the Displaced Persons (Debts Adjustment) Act is an overriding provision and, in view of that section, the reliefs, claimable under the Act, and the methods and, points of time for applying for such relief cannot be affected or altered by any other law. The Act entitles the debtor to apply for relief -- and that, indeed, is the application u/s 5, and such application can be made at any time after the Act had come into force. It thus entitles the debtor to apply immediately for such relief and that right cannot be affected by anything in any other Act and no condition precedent to the exercise of that right can be recognised on the strength of any other statute. Section 70 of the Bombay Act is really in the nature of a condition precedent to the exercise of the right of suit and, even assuming for this purpose that "suit" would include a proceeding u/s 5 of the Displaced Persons (Debts Adjustment) Act, the bar or the impediment to its institution under the Bombay Act (Section 70) cannot be operative in the case of such proceeding in view of Section 3 of the Act (Displaced Persons (Debts Adjustment) Act). It is also doubtful whether the "suit" in the present case, assuming that the application u/s 5 is a suit for purposes of Section 70 of the Bombay Act, would be in respect of an Act, touching the business of the respondent Society. It is an application -- call it a suit -- for settlement and adjustment of the applicant's debt and it would require some straining of language to hold that the bar of Section 70 should apply to this case. In the above view, we overrule the respondent's objection u/s 70 of the Bombay Co-operative Societies Act.

21. Last comes the crucial question whether the appellants are displaced persons within the meaning of the Displaced Persons (Debts Adjustment) Act. The Tribunal below has held that they are not and, on that ground, it has dismissed the appellants' application. To us, that decision does not seem to be correct. Leaving aside the controversial part of the evidence, this much at least is clear that Hyderabad (Sind) was the home town of the applicants where they had their family house and also an office before the Partition and that every two or three years the applicants used to go to Hyderabad and stay there for 10 or 15 days. It is also clear from the evidence that Lokumal, predecessor of the appellants, generally lived in Hyderabad (Sind) and went out very infrequently but that, on account of riots, he left the place (Hyderabad (Sind)) in October 1947 and came to Calcutta. It is also fairly clear from the evidence that neither the applicants nor Lokumal ever went back to Hyderabad or to their family house there after October 1947. The testimony of the respondent's witness further shows that disturbances actually broke out in Hyderabad in December 1947 but that the fear of disturbance was there right from the time of Partition of the country. This witness further says, that he himself left Hyderabad on account of the partition of the country and disturbance and fear of disturbance. In the context, it is difficult to accept his statement that "the applicants can go and settle at Hyderabad if they so like" and it would be quite reasonable to hold that the applicants had to

give up going to their family house at Hyderabad (Sind) and living there, as they used to do, on account of riots and disturbances and fear of disturbance. That would, in our opinion, be sufficient to bring them within the relevant words "any person who on account of civil disturbance or the fear of such disturbance in any area, now forming part of West Pakistan, has, after the 1-3-1947, left, or been displaced from, his place of residence" in such area" in the definition Clause (Section 2(10)). As to subsequent residence in India, as further required by the said definition clause, the evidence sufficiently supports the applicants. There can be no question that applicants Nos. 1, 2 and 5 have been so residing and, as to the applicants Nos. 3 and 4 also, the evidence is reasonably plain that they have their residence in India, although, for business purposes, they had to go abroad and live overseas for some years, On this point, we prefer to accept the evidence of the applicants' witness and that leaves no manner of doubt as to their subsequent residence in India. The above findings are sufficient for holding that the applicants are displaced persons within the meaning of the Displaced Persons (Debts Adjustment) Act. But we may add further that, notwithstanding the absence of any direct evidence on the part of the applicants on the point, it is reasonably clear from the evidence of the respondent's witness himself, that the applicants who, as found above, are residents in India, are also, for that reason, unable or have been rendered unable to manage, supervise or control their property in Hyderabad (Sind) and that would clearly bring them within the second Part of the definition too.

22. We hold, therefore, that the applicants are displaced persons within the meaning of the Displaced Persons (Debts Adjustment) Act and the Tribunal's finding to the contrary is erroneous. No other conclusion seems to be just or reasonable, on the materials before us, particularly when it is remembered that the Act being intended to give relief to aggrieved persons, who fell victim to unusual and abnormal circumstances due to the partition of the country, as "displaced persons", those words, namely, "displaced persons" should receive a liberal construction.

23. In the above view, this appeal must be allowed and the case must go back to the Tribunal below for consideration of the other points, arising in the proceeding, and for a final decision in terms of the Act. We may observe in passing that the Tribunal, in disposing of the application on the present occasion, also recorded a finding on the appellants' plea u/s 16 of the Act and rejected the same but that decision does not appear to have been made on a consideration of all the relevant aspects of the matter. That matter also should, therefore, be reconsidered by the Tribunal at the rehearing which will now take place before it in pursuance of this order.

24. The appeal is allowed as above and the case is sent back to the Tribunal below to be dealt with in accordance with law in terms of this judgment in the light of the observations made and the directions given herein,

25. Costs of this appeal will abide the final result.

P.K. Sarkar, J.

26. I agree.