
(1968) 09 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 92 of 1958 and Civil Miscellaneous 2476-C of 1968

Piara Singh and Others

APPELLANT

Vs

Balwant Singh Sethi and Others

RESPONDENT

Date of Decision : 18-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11(2), 11(3), 16, 16(1)

Citation : (1970) 1 ILR (P&H) 46

Hon'ble Judges : Mehar Singh, C.J;H.R. Sodhi, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; D.S. Nehra, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, C.J.—The Appellant, Piara Singh, mortgaged his share of 135 Kanals and 3 Marias of land, out of 202 Kanals and 15 Marias, in Chak No. 141/10R in tehsil Khanewal of Multan District, for a consideration of Rs. 10,000 to Nihal Singh, father of Balwant Singh, Nirmal Singh and Sant Singh, Respondents 1 to 3, and husband of Chattar Kaur, Respondent 4, by a registered mortgage deed, Exhibit P. 2, of December 18, 1944. He delivered possession of the mortgaged land to the mortgagee. A term of the mortgage contract was that "interest and the produce shall counter-balance each other", and another term (Clause 5 of the deed) was that if the amount due under the mortgage is not covered in full from the mortgaged property, then the person and other property of any description of mine, the executant, shall be liable for the amount due to the mortgagee".

2. After the partition of the country both the parties came over to this side. It has been accepted during the hearing of this appeal on both sides that both the parties are displaced persons. It is in the evidence of the Appellant (D.W. 4) that the mortgaged land was assessed by the Rehabilitation Authorities as 17?

standard acres and, after applying the necessary cut, an allotment of 7 standard acres in lieu of that land was made to him as owner. He delivered possession of that land to the Respondents as mortgagees on March 26, 1951. So the Respondents have been in possession of the allotted land, under mortgage by the Appellant.

3. On December 17, 1956, the Respondents sued the Appellant to recover the amount of the mortgage by sale of the mortgaged land, also making a prayer that should the sale proceeds of the land be insufficient to meet the decretal amount, a personal decree be passed against the Appellant. A number of pleas in defence were taken by the Appellant including (a) that no personal decree could be passed against him and in the terms of the contract of mortgage the land could not be put to sale, and (b) that in view of Section 16 of the Displaced Persons (Debts Adjustment) Act, 1951 (Act 70 of 1951), the mortgage amount be reduced to such amount as bears the same proportion to the mortgage amount as the value of the land allotted in lieu of the mortgaged land left behind. The learned trial Judge negatived the other pleas, and on those two pleas his conclusion was that this was not a merely usufructuary mortgage but a simple mortgage combined with a usufructuary mortgage, implying personal liability of the mortgagor and that Section 16 of Act 70 of 1951 gives jurisdiction to the Tribunal, under the Act, to give relief in the terms of that section, which is not available to a party in a suit like the present before an ordinary civil Court, and following the decision of their Lordships of the Supreme Court in *Ram Narain v. The Simla Banking and Industrial Co. Limited* ILR 1956 P&H 1321 : 1957 P.L.R. 1, the learned Judge pointed out that there is no provision in Act 70 of 1951 which compels either a displaced debtor or a displaced creditor to go to the Tribunal if he is satisfied with the reliefs which an ordinary civil Court can give him in the normal course. He, therefore, by decree of January 18, 1958, decreed the claim of the Respondents against the Appellant. This is an appeal against the decree of the learned Judge by the Appellant.

4. An argument in the wake of the decision of their Lordships in *Ram Narain's* case is not available to the Appellant that the Respondents could not have had recourse to enforce their mortgage through a civil Court because of Act 70 of 1951. This matter is thus concluded that civil Court has jurisdiction in the claim of the Respondents. Sections 30 and 31 of Act 70 of 1951 lead to the same conclusion for those sections refer to protection from arrest and attachment of property "in relation to the execution of any decree for a debt against a displaced person (whether passed before or after the commencement of this Act)". The suit of the Respondents has been a suit competent in an ordinary civil Court.

5. An application could be made within one year of the enforcement of Act 70 of 1951 by a displaced debtor for adjustment of his debts in the wake of the provisions of Section 5. Similarly, according to Section 10, a displaced person has been given a right to place his claim before the Tribunal against a displaced debtor for determination. When a displaced person as a creditor moves u/s 10,

then, according to Sub-section (2) of Section 11, the displaced debtor can move under the provisions of Section 5. It does not appear that any limitation has been prescribed for an application by a displaced person as creditor u/s 10, and it follows that when he does make such an application, by virtue of Sub-section (3) of Section 11 the limitation provided in Section 5 does not apply to the application of the displaced debtor under that provision. Neither party in the present litigation has made a move before the Tribunal under the provisions of Act 70 of 1951.

6. It is contended by the learned Counsel for the Appellant that the mortgage in this case was a usufructuary mortgage, but the terms of the mortgage as reproduced above clearly establish that the opinion of the learned trial Judge is correct that it is not a merely usufructuary mortgage but it is a usufructuary mortgage and a simple mortgage combined, hence an anomalous mortgage. No doubt possession of the mortgaged land was delivered by the mortgagor to the mortgagee and the produce was to meet the interest on the mortgage money, but the mortgage deed has further provided that the amount of the mortgage would be recoverable from the mortgagor and if it should fall short of the value of the mortgaged property, then the Appellant has been made liable for the mortgage amount, meaning a personal liability on his part to meet the balance of the mortgage debt remaining uncleared by the sale of the mortgaged property. So this argument on the side of the Appellant does not prevail.

7. It has next been urged by the learned Counsel for the Appellant that as the Respondents-creditors, being displaced persons, would not move the Tribunal u/s 10 of the Act to give an opportunity to the Appellant to claim benefit of Section 16 of it, the Appellant can claim benefit of that section in a suit like the present by the Respondents in an ordinary civil Court. In this respect the learned Counsel made reference to some reported cases in support of his argument. It may be stated at once that *Budh Singh v. Maya Ram* 1959 P.L.R. 355, *Gurbaksh Singh v. Dr. Dayal Chand* ILR (1960) P&H 734 : AIR 1960 P&H 599, *Girdhari Lal Kala Ram Vs. Jassa Ram Kalia Ram*, and *Mahla Ram v. Nanak Singh* 1967 Curr. LJ P&H 614, are cases which are not relevant on facts, because in those cases the aggrieved party came in the High Court from a decision of the Tribunal under the provisions of Act 70 of 1951. This is not so in the present case. Sub-section (1) of Section 16 says--"Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceeding under this Act, require the creditor to elect to retain the security or to be treated as an unsecured creditor". The remaining sub-sections deal largely with what happens and how the matter is to be dealt with when election has been made by the creditor in the terms of Sub-section (1). Sub-section (1) of Section 17 makes provision, where in respect of a debt incurred by a displaced debtor and secured by the pledge of movable property belonging to him, the creditor had been placed in possession of such property at any time before the debtor became a displaced person, for rules regulating the rights and liabilities of the creditor and

the debtor. The rules are enumerated in this sub-section. It has been held in *Sulakhan Singh Mool Chand and Others Vs. The Central Bank of India Ltd.*, , per Kapur, J. *Krishan Talwar Vs. Hindustan Commercial Bank Ltd. and Another*, , *Ghaki Mal Hukam Chand and Others Vs. Punjab National Bank Ltd.*, and *Punjab Co-operative Bank Ltd. Vs. Amrik Singh and Others*, , that the provisions of Section 17 are an addition to the substantive law of the country and are not restricted to proceedings before the ordinary courts of the country, and, therefore, the advantages given to the debtor u/s 16 are available to a debtor even in a civil Court. The learned Counsel for the Appellant contends that just as provisions of Section 17 can be taken advantage of by a debtor in a civil Court, same is the case of provisions of Section 16. This, however, is obviously not so, because, while Section 17 regulates rights and liabilities of the creditor and the debtor, between a displaced creditor and a displaced debtor, and thus the rules laid down are an addition to the substantive law, this is not so in so far as Section 16 is concerned. In Sub-section (1) of Section 16, it is clearly stated that the relief under it can only be claimed before the Tribunal under Act 70 of 1951, whereas there is no reference whatsoever to the Tribunal in the whole of Section 17. Section 17 provides rules regulating the rights and liabilities of displaced persons as creditors and debtors, and its provisions have thus rightly been held to be an addition to the substantive law enforceable also in an ordinary civil Court. This, however, cannot be said of Section 16 because Sub-section (1) of that section makes it clear that the creditor must make the option before the Tribunal and, after he has made the option, then provision is made how the matter is to be dealt with by the Tribunal. The learned Counsel for the Appellant has then referred to *Punjab Commerce Bank Limited in liquidation v. Parkash Ahuja*, Case No. 5 in Liquidation Matter No. 88 of 1954, in which Falshaw, J. (as he then was), on April 15 1955, made these observations--"The matter is, however, specifically dealt with as regards displaced debtors whose debts are secured by mortgage of immovable property now situated in West Pakistan in Section 16 of Act 70 of 1951. This section allows the creditor in such a case to elect either to retain the security or to be treated as an unsecured creditor and goes on to fix the principles on which the proportion of any compensation paid to the debtor in respect of the mortgaged property which can be paid to the creditor in respect of the mortgage debt is to be fixed. Admittedly this section refers only to proceedings before a Tribunal constituted under the Act, either initiated by the debtor u/s 5 of the Act for the adjustment of his debts or by a creditor u/s 10 of the Act. Since, however, by the amended provisions of the Banking Companies Act, which in terms override any other law for the time being in force, the High Court is the forum for deciding all disputes between a banking company in liquidation and other parties, this Court must decide what is to be done in cases like the present one. This Court has held long ago that the principles contained in Section 17 of the Act relating to debts secured on movable property should be applied to proceedings in this Court, and in exercise of its powers under the amended Banking Companies Act this Court has already transferred to itself a large number of cases involving Banks in liquidation which were pending before

Tribunals constituted under Act 70 of 1951. * * * * * In these circumstances it seems to me that although the principles laid down in Section 16 of Act 70 of 1951 only refer to proceedings before the Tribunals under the Act, these principles can, and indeed must, be applied to claims of this kind brought by Banks in liquidation against displaced debtors. "It is immediately clear that the learned Judge noted that the provisions of Section 16 of Act 70 of 1951 are only available in proceedings before the Tribunal under that Act, but in view of the peculiar type of proceedings in the High Court with regard to banking companies in liquidation, the learned Judge was prepared to extend the principle underlying that section to the proceedings before him where one of the parties involved in those proceedings was a displaced debtor. This case is hardly a precedent for a case like the present which is a case coming to this Court from the decree of an ordinary civil Court. It is obvious that the analogy of Section 17 is of no assistance to the argument on the side of the Appellant, nor can a civil Court proceed to act u/s 16 of Act 70 of 1951, which provision is only available to proceedings before the Tribunal under that Act.

8. The learned Counsel for the Appellant has then contended that if his argument as above is not correct, then this Court must direct the Respondents as displaced creditors to make an application u/s 10 of the Act, but this is an argument that has to be stated to be rejected as untenable because there is no provision in the Act which gives jurisdiction to this Court to make any such direction to a displaced person in proceedings as the same are in this appeal.

9. The learned Counsel for the Appellant has then urged that the Appellant as a displaced debtor had put the Respondents as displaced creditors in possession of the land originally mortgaged, and, after the partition, has put them in possession of the land allotted in lieu of the land mortgaged, and the Respondents having accepted that position have, in substance, elected to retain the mortgage security in the terms of Section 16 of the Act, and, that having happened, there is an automatic scaling down of the debt in the terms of that section to which scaling down the civil Court must give effect. In this respect the learned Counsel has further contended that because the Respondents do not adhere to their such compliance with Section 16, so the mortgage contract upon which they rely cannot be enforced in view of Section 3 of Act 70 of 1951, because enforcement of such a contract would be contrary to the provisions of Section 16, something which is prohibited by Section 3 of the Act. The election to retain the security of immovable property or not to do so is not made so far as the provisions of Act 70 of 1951 are concerned automatically in the manner in which the learned Counsel has suggested. It is an election that is made in the wake of the provisions of Section 16 in proceedings before the Tribunal under the Act and no such thing has happened in the present case. There is no election made by the Respondents in so far as Section 16 of the Act is concerned, because no proceedings before any Tribunal under the Act have been taken by either party. No such election under that provision can be made outside the jurisdiction of the Tribunal. No such purported election outside the proper forum

can have any recognition in a civil Court and there cannot be thus an automatic scaling down of the debt of the Appellant in the wake of the provisions of Section 16 of the Act. This argument, to my mind, is not properly conceived.

10. The learned Counsel for the Appellant then points out that the Respondents are taking advantage in these proceedings, ignoring the provisions of Act 70 of 1951 and particularly of Section 32 of it, because if they had sought a personal decree under the provisions of the Act, their debt would have been scaled down in the terms of Section 32 which does not happen in these proceedings. This argument is of no avail to the Appellant, because if civil Courts have jurisdiction in the claim of the Respondents, then such a claim, if otherwise good, can succeed, and it cannot be defeated because, if resort was had to the provisions of a different law like Act 70 of 1951, the result might have been more favourable to the debtor, the Appellant.

11. The learned Counsel for the Appellant has then referred to this observation of the learned judge in Gurbaksh Singh's case ILR (1960) P&H 734 : AIR 1960 P&H 599, that the moment a creditor elects to retain his security u/s 16 of the Act, he is thereafter left to the ordinary remedies under the law and so far as the Act is concerned, his rights come to an end. It is significant that no personal decree can be passed against the debtor and the amount of charge can only be recovered from the property charged. The other property of the debtor is not liable for the amount of the debt due which is made a charge on the property u/s 16 of the Act." The learned Counsel has pressed that in view of Section 16 the Respondents cannot have a personal decree against the Appellant under the contract of mortgage, but this assumes that, like Gurbaksh Singh's case, proceedings u/s 16 have taken place before the Tribunal under the Act, which is not the case here. So that this argument is entirely besides the facts of the present case.

12. In the result, this appeal of the Appellant fails and is dismissed with costs.

13. This is an application u/s 151 of the CPC for re-hearing of Regular First Appeal No. 92 of 1958, which we heard and dismissed on September 16, 1968. This application was made on the next day, that is to say, September 17, 1968.

14. What is stated in the application is that the case was not properly argued and a statutory provision directly covering the point involved in the case was not adverted to in the arguments and that the result may be different after consideration of Section 16(4) of the Displaced Persons (Debts Adjustment) Act, 1951 (Act 70 of 1951). The learned Counsel for the Appellant (now Applicant) elaborates this by referring to Section 16 of the Act and dividing it into two parts. To appreciate his argument it is necessary to reproduce Section 16--

16. Debts secured on immovable property--

(1) Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the

Tribunal may, for the purpose of any proceeding under this Act, require the creditor to elect to retain the security or to be treated as an unsecured creditor.

(2) If the creditor elects to retain the security, he may apply to the Tribunal, having jurisdiction in this behalf as provided in Section 10, for a declaration of the amount due under this debt.

(3) Where in any case, the creditor elects to retain his security, if the displaced debtor receives any compensation in respect of any such property as is referred to in Sub-section (1), the creditor shall be entitled--

(a) where the compensation is paid in cash, to a first charge thereon:

Provided that the amount of the debt in respect of which he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the compensation paid in respect of the property bears to the value of the verified claim in respect thereof and to that extent the debt shall be deemed to have been reduced;

(b) where the compensation is by way of exchange of property, to a first charge on the property situate in India so received by way of exchange:

Provided that the amount of the debt in respect of which he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the value of the property received by way of exchange bears to the value of the verified claim in respect thereof and to that extent the debt shall be deemed to have been reduced.

(4) Notwithstanding anything contained in this section, where a debt is secured by a mortgage of agricultural lands belonging to a displaced person in West Pakistan and the mortgage was with possession, the mortgagee shall, if he has been allotted lands in India in lieu of the lands of which he was in possession in West Pakistan, be entitled to continue in possession of the lands so allotted until the debt is satisfied from the usufruct of the lands or is redeemed by the debtor:

Provided that in either case the amount of the debt shall be only that amount as bears to the total debt the same proportion as the value of the lands allotted to the creditor in India bears to the value of the lands left behind by him in West Pakistan and to that extent the debt shall be deemed to have been reduced.

(5) Where a creditor elects to be treated as an unsecured creditor, in relation to the debt, the provisions of this Act shall apply accordingly.

The learned Counsel contends that Sub-sections (1), (2) and (3) deal with immovable property other than agricultural land and where there is a mortgage with regard to such property, then the mortgagee can make an election before the Tribunal under the Act whether he will retain the security or be treated as an unsecured creditor, but he says that Sub-section (4) stands independently and deals with mortgages of agricultural land and gives relief to the mortgagor irrespective of the fact whether the proceedings are before the Tribunal or not.

His argument, in other words, is that Sub-section (4) of Section 16 be treated as an independent section just as Section 17 of the Act and an addition to the substantive law and not meant as something which can only be enforced in proceedings before the Tribunal. One aspect of this Section 16 was urged by the learned Counsel during the hearing of the main appeal and that was that as the Applicant, the mortgagor, had done everything by delivering possession of the mortgaged land to the mortgagees, so the mortgagees were entitled to no more than what may be available to them under the provisions of Section 16. This argument we rejected on the ground that benefit of Section 16 can only be availed of in proceedings before the Tribunal. Now, a different aspect of the same argument is being urged in consequence of this application and in the way as has been stated above that Sub-section (4) of Section 16 be read as not affected by Sub-sections (1), (2) and (3), but this is not a correct approach, because Sub-section (1) deals with immovable property and with all kinds of immovable property whether agricultural land or other immovable property. Then Sub-sections (2) and (3) would appear to deal with property other than agricultural land and Sub-section (4) with agricultural land. The whole section has to be read as such and the result then is that relief which is available to a mortgagee is to be found in this section in proceedings before the Tribunal. If the mortgage is of immovable property other than agricultural land, the mortgagor may have relief according to Sub-sections (2) and (3), but if the mortgage is of agricultural land, then, according to Sub-section (4). The only way the argument of the learned Counsel for the Applicant can possibly be accepted is to leave Sub-section (4) out of Section 16 and to treat it as an independent section as if at par with a provision like Section 17 of the Act and thus an addition to the substantive law, in consequence of which it is available for application not only by the Tribunal but also by an ordinary civil Court. We did not read Section 16 in that manner and on this argument we do not find that we can read Sub-section (4) as separate and apart from the other sub-sections of Section 16. As has been said above, the benefit of Sub-section (4) in regard to mortgage of agricultural land can only be had by the mortgagor provided the proceedings are before the Tribunal under the Act.

15. In the wake of Sub-section (4) of Section 16 this might appear to be a hard case, but the fault lies with the debtor, the present Applicant, who could have made a move u/s 5 of the Act within the time stated in that section, but he did not make the move and we rejected the argument of the learned Counsel during the hearing of the appeal that this Court can give a direction to the Respondents to approach the Tribunal u/s 10 of the Act.

16. In consequence, this application is dismissed, but there is no order in regard to costs in the same. This judgment will be read as a continuation of our judgment in the appeal of the Applicant decided on September 16, 1968.

H.R. Sodhi, J.

17. I agree.