

(1957) 11 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 47 of 1955

Prem Nath

APPELLANT

Vs

Kaudoomal Rikhiram and Another

RESPONDENT

Date of Decision : 01-11-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, 20
Displaced Persons (Debts Adjustment) Act, 1951 — Section 13 , 36
Displaced Persons (Institution of Suits) Act, 1948 — Section 4, 8
Limitation Act, 1908 — Article 89

Citation : AIR 1958 P&H 361

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : Bhagirath Das, for the Appellant; Shamair Chand, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—The appellant Shri Prem Nath sole proprietor of firm Prem Nath Pran Nath submitted a claim u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951, for the recovery of Rs. 43,891/2/9 principal and interest. The petitioner was doing business at Lahore and on the partition of the country came to India. It is not denied that he is a displaced person under the Displaced Persons (Debts Adjustment) Act LXX of 1951.

The respondents, who had their Head Office in Lahore and a Branch Office at Gurdaspur, were acting as commission agents for the petitioner for the purchase of grains like wheat and paddy etc., which used to be despatched to different places under the petitioner's instructions. The practice which prevailed, was that the petitioner used to advance sums of money to the respondents, and hundis used to be drawn by the respondents on account of the price of the grains.

The petitioner has stated that a sum of Rs. 29,215/2/9 remained in deposit with the respondents as sale proceeds of rice and paddy on the petitioner's account. This money lay in trust with the respondents for the petitioner. The petitioner

also claims, besides the above sum, Rs. 14,676/- as interest at 6 per cent., per annum.

2. The respondents stated, that all the sale proceeds were remitted to the petitioner, either by bank draft, or otherwise, in accordance with his directions. Nothing was due from the respondents to the petitioner. The liability to pay any interest was also denied. It was also contended by the respondents that the petitioner had no locus standi to sue alone as he was not the sole proprietor. It was also pleaded, that the application did not lie under Act LXX of 1951 and it was time barred. The following issues were framed in this case:

1. Is Prem Nath the sole proprietor of firm Prem Nath Pran Nath?
2. If issue No. 1 is not proved what is its effect?
3. Is the amount in dispute a "debt" as defined in Act No. 70 of 1951?
4. Does not this application lie against both the respondents?
5. Is the sum of Rs. 29,215/2/9 due to the applicant from the respondents?
6. Is the application time barred?
7. Is the applicant entitled to interest? If so, at what rate?
8. Relief and against whom?

The first two issues were decided in favour of the petitioner, and it was held, that Prem Nath was the sole proprietor of the firm Prem Nath Pran Nath & he could sue alone. On issue No. 3 it was held that the amount in dispute was a "debt" as defined in the Act. Issue No. 4 was also decided in favour of the petitioner, and it was held, that the application was competent. Issue No. 5 was held not to have been proved and therefore it was decided against the petitioner.

Under issue No. 6 the application was held to be time barred. On issue No. 7, it was held, that if Issue No. 5 had been found in favour of the petitioner then he would have been entitled to interest at the rate of six per cent., per annum. In view of the decision on issues Nos. 5 and 6 the application was dismissed, but the parties were left to bear their own costs.

3. Against the above order. Pran Nath has filed an appeal to this Court. The issue as to limitation may be disposed of first. There are three provisions of the Displaced Persons (Debts Adjustment) Act, LXX of 1951, which have a bearing. u/s 53 every application made under the Act is deemed to be a suit for the purpose of the Indian Limitation Act.

Section 13 provides a limitation of one year after the date of the enforcement of the Act within which a displaced creditor may make an application, claiming a debt from any other person who is not a displaced person. The Act came into force on 10-12-1951, and therefore application u/s 13 claiming a debt could be filed by 9-12-1952, to the Tribunal which was done in this case.

4. Section 36 which extends the period of limitation runs as under:

"Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law or in any agreement,--

(a) any suit or other legal proceeding in respect whereof the period of limitation was extended by Section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

(b)

may be instituted at any time within one year from the commencement of this Act."

5. Under the Displaced Persons (Institution of Suits) Act, 1948 (No. 47 of 1948) the period of limitation was extended for the first time by Section 8. This section reads-

"Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), or any special or local law, any suit instituted in pursuance of Section 4 of this Act may be admitted after the period of limitation prescribed therefore when the plaintiff satisfies the Court that he was unable to institute the suit within such period owing to causes connected with his being a displaced person."

6. Under the above provisions the plaintiff had to satisfy the Court that he was unable to institute the suit within such period, owing to causes connected with his being a displaced person. If he had instituted a suit within three years from the date of the commencement of the cause of action, he would still have to comply with the provisions of Section 8, but he did not choose to bring any suit while Section 8 was the law prior to its amendment.

7. Section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (No. 47 of 1948), as amended by the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950 (No. 68 of 1950), runs as under:

"Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law, any suit or other legal proceeding by a displaced person,--

(a) where such suit or other legal proceeding is instituted in pursuance of Section 4 and the period of limitation expires or has expired on or after 14-8-1947, or

(b) where such suit or other legal proceeding is instituted otherwise than in pursuance of Section 4 in respect of a cause of action which arises or has arisen in a place now situate within the territories of Pakistan and the period of limitation expires after the commencement of the Displaced Persons (Institution of Suits and Legal proceedings) Amendment Act, 1950, may be instituted at any time before the date of expiry of this Act."

8. Section 8 (a) contains a reference to Section 4 of Act No. 47 of 1948, and for

facility of reference this is also reproduced below:

"Notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 (V of 1908), or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if-

- (i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person;
- (ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan;
- (iii) the Court in which the suit is instituted is otherwise competent to try it; and
- (iv) the suit does not relate to immovable property."

9. The contention of the learned counsel for the respondents is, that condition (ii) of Section 4 has not been satisfied in this case Mr. Shamair Chand, learned counsel for the respondents, has argued firstly, that the petitioner did not plead in this case, that cause of action arose in a place now situate within the territories of Pakistan.

He, therefore, says that there was no allegation and in the absence of such an averment the petitioner should not be permitted at this stage to show, that cause of action did arise in Pakistan. The second argument of Mr. Shamair Chand is that even if it be deemed to have been so alleged, there is no evidence, that the cause of action wholly or in part had arisen in a place within the territories of Pakistan.

10. With the first contention of the learned counsel for the respondents, that there was no allegation in the plaintiffs plea, that the cause of action arose in a place now situate within the territories of Pakistan, I do not agree. In para. 8 of the appellant's claim u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951, it was stated that the petitioner was a displaced person, while the respondents resided at Gurdaspur.

He then averred that the claim was within time under the provisions of the displaced persons litigation legislation, and under the provisions of Act No. 70 of 1951, in the corresponding paragraph of the written-statement, this plea was traversed. The plaintiff in his replication reiterated, what was previously stated in the plaint and affirmed that the claim was within time.

In view of the above, I cannot accept the contention of the learned counsel for the respondents, that the plea had not been taken. The maxim *secundum allegata et probata* does not I apply to the facts of this case and the authorities

referred to by the learned counsel in support of this maxim have no bearing, in view of what was alleged by the petitioner in para. 8 of his claim.

11. In the alternative, Mr. Shamair Chand has urged, that on the record of this case, there is no evidence, that cause of action arose to the appellant in West Punjab, now forming part of Pakistan.

12. A. W. 5 Prem Nath appellant has nowhere stated that the money was payable to him from the respondents at Lahore, or that the contract was entered into between the parties there. u/s 20 of the Code of Civil Procedure, suits, other than those mentioned in the preceding sections, are to be instituted in a Court within the local limits of whose jurisdiction the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, etc.

Both under Clauses (a) and (b) of Section 20 the residence of the defendants for purposes of determining cause of action is to be "at the time of the commencement of the suit." In this case the petition was made on 9-12-1952, when admittedly the defendants were residing in Gurdaspur. From the statement of Bikhi Ram, R. W. 2, the proprietor of the respondent-concern, Shri Bhagirath Das has tried to argue, that the Head Office of the respondent-concern was in Lahore and only a branch in Gurdaspur.

A careful perusal of his statement does not really support the contention of the learned counsel for the appellant. No doubt he did state in his cross-examination that the Head Office of the respondent-concern was at Lahore and there was a branch at Gurdaspur. He then stated that the business in Lahore was transacted in the name of Basanta Mal Ram Lal, and this business was closed in Sambat 2000 (1943 A. D.)

From the above statement, it cannot be concluded in the language of Section 20 that the defendants, at the time of the commencement of the suit, carried on business at Lahore. Mr. Bhagirath Das then urges that the payment by the petitioner was by means of hundis drawn by the respondents and the hundis show that actual payment was made at Lahore by the petitioner. Mr. Shamair Chand, on the other hand, lays emphasis on the word "payable". He contends that cause of action arises at a place not where the money is actually paid but where it is payable.

13. The word "payable" occurred in Explanation III to Section 17 of the Code of 1881, which related to causes of action in cases of contracts. Explanation III ran as under:

"In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:

- (1) the place where the contract was made;
- (2) the place where the contract was to be performed or performance thereof

completed;

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

14. After the insertion of the words "wholly or in part" in Section 20(c), the retention of Explanation in has become superfluous and, therefore, this Explanation has been omitted, as no longer necessary, but it is nevertheless a correct statement of what is still the law, vide *Sita Ram v. Ram Chandra* 26 PR 1918: AIR 1918 Lah 52. There is a sharp distinction between the place where any money is in fact "paid" or becomes "payable".

Place of payment is where actual satisfaction takes place. On the other hand, the word "payable" is synonymous with "due". "Payable" means that which should be paid or which is to be, or liable to be paid. "Payable", therefore, excludes notion of fulfilment which is indicated by the word "paid". If, therefore, payment is in fact made at Lahore, it cannot follow that the amount was due to be paid there. In my opinion, the actual payment at Lahore, where the hundis were honoured, will not help in determining the place of accrual of the cause of action.

15. A commission agent, from the very nature of his work, transacts business on behalf of his principals scattered all over the country. A suit for the recovery of a specific amount, or for accounts by a principal, against his agent, should be filed at the place where the latter was. Cause of action against an agent, therefore, arises where he does his business.

In this case the place of business of the respondents was Gurdaspur, and not Lahore, or any other place now forming part of Pakistan. If the petitioner had instituted a suit at Lahore after the accrual of cause of action, his suit there could not be proceeded with, as the Court at the principal's place of residence would have no jurisdiction to entertain the suit.

This principle is well established and there is a long chain of authorities in its support: vide *Muhammad Shaft v. Karamat Ali* 76 PR 1896; *Asa Ram Kalu Ram T. Bakhshi Ram- kanhya Ram* ILR 1 Lah 203: AIR 1919 Lah 26; *Prithi Singh-Jamayati Rai v. Harsukh Das-Jhog Mal* AIR 1924 Lah 593; *Bhamboo Mal v. Ram Narain* ILR 9 Lah 455: AIR 1928 Lah 297; *Firm Ramditta Mal Sant Lal v. Firm Seth Joth Ram Kidar Nath* AIR 1940 Lah 171 and *Firm Jagan Nath Kuthiala Arthi v. Firm Khushi Ram Behari Lal* AIR 1951 P&H 378.

16. I am, therefore, of the view, that it has not been shown that Lahore was the place where the contract was made; or the place where the contract was to be performed; or the place where in performance of the contract, any money to which the suit related, was expressly or impliedly payable in accordance with the terms of Explanation III to Section 17 of the Code of 1882, which though omitted as no longer necessary, is still the law.

17. Mr. Bhagirath Das has drawn my attention to a decision of a Single Judge in *Parma Nand Ganesh Parshad Vs. Firm Jawahar Singh Tara Singh*, which followed

a Full Bench decision of the Madras High Court reported in K.E.P.V. Venkatachalam Pillai Vs. Rajaballi M. Sajun, In both these decisions it was found that the Court at the place where money for goods purchased was to be paid, had Jurisdiction to entertain the suit for the recovery of the amount. In the absence of proof that payment in this case was to be made at Lahore, it cannot be said that cause of action had accrued in that Court.

18. In R. J. Wylie and Co. v. Secretary of State AIR 1930 Lah 818 Hilton J., held that as there was a clear admission that actual payments were made at Palampur, therefore the place of actual payment furnished the best evidence of the parties. From the above dictum it is not possible to deduce a principle which may govern the facts of this case. In that case the plaintiff-company had instituted a suit against the Secretary of State for India for recovery of a sum of money. It does not appear to be a case between principal and agent.

19. It was also argued that the petitioner, who was .he creditor, lived at Lahore, and, therefore, according to the common-law rule of England the respondent as debtor must seek his creditor. This argument is without merit. The common-law rule does not apply for the purposes of determining the forum where the suit is to be instituted. See AIR 1927 156 (Privy Council) Piyara Singh v. Bhagwan Das AIR 1951 P&H 33; Jawala Dass v. Nand Lal AIR 1951 P&H 128 and S. Niranjana Singh Vs. Jagjit Singh and Another,

20. The limitation for purposes of instituting the suit in this case is provided under Article 89 of the First Schedule to the Indian Limitation Act. A principal, who brings a suit against his agent for moveable property received by the latter and not accounted for, may sue within three years from the date when the account is, during the continuance of the agency, demanded and refused, or, where no such demand is " made, when the agency terminates.

In this case the last transaction was made on 20-2-1946, and the suit should have been instituted within three years from that date plus the further period extending the limitation as already indicated. The conditions, subject to which the appellant could institute the suit so as to make it within limitation, have not been complied with in this case.

21. Agreeing with the findings of the Tribunal on issue No. 6, I hold that the application of the appellant u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951, is time-barred.

22-26. The parties' case on merits, which is the subject-matter of issue No. 5, may now be examined. (After examining the evidence his Lordship continued). I agree with the conclusion of the Tribunal on this issue, and I hold, that the petitioner has failed to prove that any amount was due to him from the respondents. This being so, no question arises to his being entitled to any interest.

27. I maintain the order of the Tribunal dismissing the petitioner's application u/

s 13 of the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951. In the result, the appeal fails and is dismissed. The respondents will be entitled to their costs throughout.