

(1965) 11 MP CK 0006
In the Madhya Pradesh High Court
Case No : F. A. No. 6 of 1962

Radhomal and others

APPELLANT

Vs

Bhagwandas and others

RESPONDENT

Date of Decision : 26-11-1965

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 10

Citation : (1969) MPLJ 801

Hon'ble Judges : P. K. Tare, J; H. R. Krishnan, J

Bench : Division Bench

Advocate : A. R. Lahori, for the Appellant; Harbansingh, for the Respondent

Final Decision : Dismissed

Judgement

H. R. Krishnan, J.

This is an appeal by the creditors who are displaced persons and whose application u/s 10 of the Displaced Persons (Debts Adjustment) Act, 1951, has been dismissed by the Tribunal on three separate grounds viz., (1) limitation, (2) absence of legal necessity and (3) that all the defendants are not displaced persons. Actually, the legal necessity is patent on the face of mortgage of the immovable property, because the debt was incurred for the payment of the price of this very property, which had become the co-parcenary property of the defendants' joint family. Similarly, though one of the defendants was born in India, his father had migrated; so that the claim was again a joint family of displaced persons. Thus, the two grounds viz., of the want of legal necessity and that one of the defendants was not a displaced person, cannot be maintained.

It is only necessary to investigate fully whether the creditors having opted to sue as unsecured creditors u/s 10(5) of the Act, limitation should be calculated on the basis of the instrument being a registered bond for payment of money, as under Article 116 of the old Indian Limitation Act, or as a claim for money secured by an immovable property under Article 132. The transaction being

dated 18-11-1946 with a three-year period for payment which brings it to 18-11-1949 and the suit being filed on 3-9-1960, it is time-barred under Article 132, but in time under Article 132.

The facts necessary for our purposes are the following:-- Both the parties are Sindhis from Sukkur and have migrated to India in wake of the partition and the creation of West Pakistan. While in Sind, Khatanmal, father of the respondents (who is since dead), had borrowed Us. 3,000 from the father of the creditors-appellants (who is also dead) and mortgaged as security a house at Sukkur. The debt was to be repaid within three years, that is to say, by 18-11-1949. Meanwhile in India, after some other legislative measures, the Displaced Persons (Debt Adjustment) Act was enacted in 1951; claims between the parties of this class could be settled in accordance with its provision by an application before the Tribunal constituted under it.

When both parties were displaced persons, the creditors could apply u/s 10. Naturally, some of debts would be secured ones while others would be unsecured. Where the debts were ab initio unsecured, there would be no complication; but where it was secured by mortgage of immovable property and that property had been left behind in West Pakistan, some complications arose. Section 16 of the Act deals with this problem at some length. The Tribunal could put the creditor's claimant to an option, It comes to the same thing, if the latter himself made the option, and placed it before the Tribunal; in its turn it might either accept or refuse to act on the creditor's choice. If the option to proceed as an unsecured creditor was either not exercised or, having been sought, was rejected, then the applicant would proceed in the manner laid down in sub-sections (2) to (4) of section 16. On the other hand, where the creditor has exercised the option and it has been accepted by the Tribunal, the procedure would be as u/s 16(5) of the Act.

It is clear that in the instant case, the creditors opted to sue as an unsecured creditors. At the top of the application, sections 10 and 16(5) are clearly set out. Further, in the body of the application (Paragraph 4), the creditors aver:--

That they elect to be treated as unsecured creditors in relation to the debt stated above and make the opponents personally liable to pay up the amount in application as contemplated in section 16(5) of the above said Act.

Any doubt is further cleared by the fact that the relief sought is a bare money decree for which the debtors would be personally liable and not any of the alternative ways in which the security could be enforced outside West Pakistan.

Section 16 provides the choice to the creditor either to proceed against the security or to ask for a bare money decree. As usual, each alternative has its advantages as well as balancing disadvantages. In case there is an attempt to proceed against the security, the Tribunal" can give one of the following reliefs:-

(i). Just proceed against the original security which of course would be some

immovable property in West Pakistan. But this did not appear altogether shadowy to the law-makers in 1951, because they envisaged the possibility of exchange of evacuee properties between India and Pakistan. If and when evacuee properties would be exchanged, the creditors seeking to enforce the security would come into their own.

(ii) The second alternative was that the security in West Pakistan would stand substituted by such immovable property as the Custodian might allot to the debtor displaced person within India.

Certain proportion and ceilings had to be followed in this regard.

(iii) Yet another alternative would be, where the compensation was to be paid in cash in lieu of the secured property which the debtor-displaced person had abandoned in Pakistan, the creditor could get a first charge on that money-payment.

Thus, to sue as a secure debtor had certain advantages. On the other hand, there were disadvantages also. Exchange of evacuee property has proved a futile dream and there was an element of uncertainty about the value, location and some times even the existence or at least the availability of evacuee property on the India side as might possibly be given in exchange for what the debtor-displaced person had abandoned at the Pakistan end. Even in, the allotment of cash payment, there was a danger of insufficiency, conflict of priorities in the charges and, most of all, delay.

To proceed as an unsecured creditor had also its advantages and disadvantages. Every displaced person would have lodged with the Custodian, a statement of all the properties he had abandoned in Pakistan, its value and what the displaced person believed, the fair compensation he would be entitled to out of the compensation pool. This last was built up by sale of evacuee property at the India end. Very often, the displaced persons made exaggerated statements and in any case, even if their statements were moderate, the compensation pool with the Custodian would not give a full money equivalent. So in practice, the displaced person got only a fraction, of what he claimed. But the point was that, in certain circumstances, the creditors have a fair expectation of getting his money without any charges being imposed, unless any of the secured creditors had already chosen to proceed in the manner already described. Of course, once the money had already come into the hands of the debtor-displaced person, he could do whatever he liked with it. If at this stage, the creditor obtained a personal decree against him, his chances of realisation would be fairly bright.

I have set out at some length the modus operandi of both operations shorn of the many complications so as to bring out that each of the two alternatives had its definite advantages and disadvantages. It could not be said that a creditor seeking to proceed u/s 16(5) of the Act was punishing himself. He was just taking a fair chance; if the money from the pool has gone into the hands of the debtor, this was the safest course for the creditor.

The real question is, when the creditor chooses to proceed as an unsecured creditor, whether he could still ask that, for the purposes of limitations, he should be ranked as a mortgagee or one with a similar security. It is to be noted that, on the subject of limitation, the Displaced Persons (Debt Adjustment) Act leaves things just where they stand under the regular law. No doubt, there is a limitation in section 5; but for the purposes of section 10, there being no special rule of limitation, the limitation under the Indian Limitation Act, as it then stood, should be applied. The position is in no way different from that of any other secured creditor who chooses to sue as if he is an unsecured one. The fact that the creditor happens to be a displaced person can make no difference whatsoever because this enactment has no special provision in this regard.

What, generally speaking, should be the limitation for the suit of a secured creditor who categorically gives up his security and sues as an unsecured one, as clearly laid down both in the Indian Limitation Act and in the case-law. Article 116 of the old Indian Limitation Act is the law in that regard and not Article 132. There is a body of case-law which it is unnecessary to set out; *Manimala Devi Vs. Indu Bala Debya and Others*, is one of the recent rulings that touches on this subject. Certainly, the creditor, even if a displaced creditor who having chosen to seek, what he deems to be the advantage, of proceeding as an unsecured one, cannot in the same breath ask for the twelve-years limitation instead of six-years one which goes to the unsecured creditor. One cannot have it both ways, unless of course there is an express statutory provision which gives this concession. Since we do not have this provision in the present case, we shall have to hold that on the six-year limitation, the suit was time-barred in 1960.

Accordingly, the judgment and decree of the Tribunal are upheld and the appeal is dismissed. In the special circumstances of the case, the parties shall bear their own costs.