
(1957) 12 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 33-D/-1953

Rup Lal and Another

APPELLANT

Vs

Ganesh Narain Hata Din etc.

RESPONDENT

Date of Decision : 03-12-1957

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 31, 36
Displaced Persons (Institution of Suits) Act, 1948 — Section 4, 8

Citation : AIR 1959 P&H 552

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Advocate : S.L. Bhatia, for the Appellant; Ram Piayara Lal Kapur, for the Respondent

Final Decision : Allowed

Judgement

D. Falshaw, J.—This is an appeal against the dismissal of an application u/s 13 of the Displaced Persons (Debts Adjustment) Act No. 70 of 1951 by a Tribunal constituted under the Act.

2. The application was filed on the 2nd of April 1952 by Rup Lal and Narain Dass appellants claiming a considerable sum of money from the respondent firm Messrs. Ganesh Narain Hata Din of Bombay on the allegation that Rup Lal and Narain Dass were displaced persons who formerly carried on business at a place now in Pakistan along with a third partner Arjan Singh, who was implead-ed as a pro forma respondent in the present application, and that the partnership business had dealings with the Bombay firm between 1945 and 1947 as a result of which the sum claimed in the application was dun from the Bombay firm to the Partnership business. The applicants were residing and carrying on business at Delhi and under the provisions of Section 13 of the Act they sought to enforce their claim against the Bombay firm which was not a displaced person and it was prayed that any decree to be passed should be not only in favour of the applicants but also of the third member of the partnership business who was

impleaded as a respondent.

3. The application was resisted by the Bombay firm on the ground that the claim was not within time and the preliminary issue was framed whether, assuming the petitioners to be displaced persons, the claim was within time. The present appeal is against the order of the Tribunal dismissing the application as barred by time.

4. Section 36 of the Act lays down that 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, may be instituted at any time within one year from the commencement of this Act. The Act came into force on 10-12-1951 and the present application was filed within one year on the 2nd of April 1952, and therefore the question was whether the claim of the applicants was one in respect of which time was extended by Section 8 of 1948 Act which, as amended by Act No. 68 of 1950, reads:

"Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 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

may be instituted at any time before the date of expiry of this Act."

Section 4 of Act No. XLVII of 1948 reads-

"Notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 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 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."

5. Prima facie these provisions apply to the claim of the present applicants but

the lower court held that Section 4 was not applicable on account of the words "is not a displaced person" in Clause (i). The view taken by the Tribunal was that for a suit or legal proceeding to be covered by Section 4 it was necessary that each and every defendant should not be a displaced person, whereas admittedly Arjan Singh, the third partner, was a displaced person, and he had been impleaded as a respondent in the application.

6. It seems to me that although this strictly technical view can possibly be taken, it is against the spirit and general intension of Statutes referred to above, which were intended to benefit displaced persons, and which culminated in Act No. 70 of 1951, Section 1-3 of which enabled a displaced creditor to enforce a claim "for which limitation had been kept alive by the earlier legislation in a Tribunal where he, the displaced creditor, resided or carried on business. In the present case it is quite clear that the claim is wholly against the Bombay firm and that Arjan Singh was merely impleaded as a pro forma respondent because he formerly was a partner of the applicants, and in fact the application was made also for his benefit.

Indeed Arjan Singh could easily be transposed as a petitioner at any time, and in my opinion the Tribunal took a wrong view in holding that the impleading of Arjan Singh as a pro forma respondent made what was otherwise a proper application filed within time to become barred by time. I accordingly accept the appeal and remand the case to the Tribunal for a decision on the merits. The parties have been directed to appear in the Court of Mr. Parkash Chand Saini, who I understand is carrying on the work of the Tribunal on 23-12-1957. The parties will bear their own costs in this appeal.