
(1958) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 115-D of 1956

Seth Roshan Lal etc.

APPELLANT

Vs

Dewan Bhagwan Das

RESPONDENT

Date of Decision : 14-04-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 20
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 15, 2(6), 25

Citation : AIR 1959 P&H 367

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : Udai Bhan, for the Appellant; S.P. Chopra, for the Respondent

Judgement

Mehar Singh, J.—This is a respondents' appeal from the order, dated 24-8-1956, of the Tribunal, at Delhi u/s 10 of -the Displaced Persons (Debts Adjustment) Act (No. LXX), 1951.

2. There was a joint Hindu family consisting of three brothers, named, Mathra Das, Ladha Ham, and Ram Rakha Mal. Ladha Ram as karta of the joint Hindu family obtained a loan of Rupees 8,000/-/- on -the basis of a promissory note executed by him on 31-12-1943. The consideration for the loan was the amount due from the three brothers to Diwan Ram Saroop and Bhagwan Das because the latter had sold a house to the former.

3. After the partition of the country and when Ladha Ram was dead, the parties entered into an arbitration agreement about the debt, in consequence of which the arbitrator made an award, upon the basis of which a civil Court passed a decree in the amount of Rs. 4,000/- against Ram Rakha Mal, brother of Ladha Ram, and in the amount of Rs. 2,000/- against Parma Nand, nephew of Ladha Ram, each being liable only for the amount decreed against him to the extent he had got property from the estate of Ladha Ram deceased. The remaining amount of Rs, 2,000/- was the share of Govind Ham, who was not made a party to the arbitration proceedings and no decree was obtained against him in consequence

of those proceedings. The decree against Ram Rakha Mal and Parma Nand was obtained on 15-11-1950.

4. Act No. LXX of 1951 came into force on 10-12-1951. That was obviously after the decree against Ram Rakha Mal and Parma Nand.

5. Subsequently the creditor obtained a decree from a civil Court against Govind Ram for the remaining amount of Rs. 2,000/-. This was on 5-2-1952, and obviously after the enforcement of Act "No. LXX of 1951.

6. So the creditor held one decree against Rain Rakha Mal and Parma Nand and one decree against Govind Ram. It is not denied by the learned counsel on either side that he could have executed those decrees and in execution of the same realised the amounts from the claims of those judgment-debtors as such claims had been made with the authorities on the ground of such persons being displaced persons. But in spite of that, the creditor chose to come before the Tribunal u/s 10 of Act No. LXX of 1951 against all the three judgment-debtors. He said that, although subsequently the debt has been split up between the three judgment-debtors as stated, the original debt was one, and therefore an application "under Section 10 of the said Act against all the three was competent.

He filed the application before the Tribunal at Delhi. This was on 9-2-1952. On that date only Govind Ram was living at Delhi. The creditor, "however, showed that Ram Rakha Mal was also living at Delhi. The third judgment-debtor Parma Nand was admittedly living somewhere in Rajasthan. It appears that before Ram Pakha Mal could put in a reply he died. His four sons were brought on the record as his legal representatives and they put in a reply to the application of the creditor. In that reply they said that no application was competent against their father Ram Rakha Mal deceased before a Delhi Tribunal because the deceased did not reside at Delhi but resided at Saharanpur. It appears that this fact was not controverted on the side of the creditor. Instead, an application was made by the creditor u/s 20(b) of the CPC for permission of the Court to sue all the judgment-debtors as debtors before the Tribunal at Delhi on the ground that at least one of them, namely, Govind Ram, was residing at Delhi.

It was also said that one of the sons of Ram Rakha Mal deceased, namely, Manohar Lal, too was residing at Delhi. But it is obvious that the original application having been against Ram Rakha "Mal himself, the question that one of his sons was residing at Delhi would not make any difference to the matter raised by the sons of Ram Rakha Mal deceased.

7. The application of the creditor was opposed by the judgment-debtors on technical grounds (a) that the Tribunal at Delhi had no jurisdiction because, excepting Govind Ram, the remaining judgment-debtors were residing outside its territorial jurisdiction, (b) that it was bad for multifariousness because one application had been made in relation to a debt that had already been split up into there and in fact the creditor should have made three separate applications against the three separate debtors, and (c) that, at least in the case of Govind

Ram, the decree against him having been passed after the enforcement of Act No. 70 of 1951, no proceedings under that Act could be taken against him. Because of there being no provision for interference by the Tribunal with the decree of a civil Court passed against a party after the enforcement of that Act.

8. The learned Tribunal has found against the judgment-debtors on these three contentions the very contentions have been pressed by the learned counsel for the judgment-debtors, who are appellants here. The reply on behalf of the creditor is that, although Section 10 of Act No. LXX of 1951, clearly says that a displaced creditor can only make a claim against a displaced debtor by way of an application under the Act where the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the particular Tribunal, and in this case at least two of the three debtors to the application of the creditor to the Tribunal were not living within the jurisdiction of the Tribunal, yet the case as laid before the Tribunal does not properly fall u/s 10, but u/s 25 of Act No. 70 of 1951 by which Section the CPC has been applied to the proceedings in an application under the Act in so far as the Act does not provide anything otherwise.

The learned counsel for the creditor says that here is a case of three debtors, against whom the creditor had already obtained decrees, and out of them one was resident of Delhi and not the other two. Section 10 of Act No. LXX of 1951 does not deal with such a situation. No other provision in the Act deals with such a case. So by virtue of Section 25 of Act No. LXX of 1951, the provisions of Section 20(b) of the CPC are attracted and the learned Tribunal was right in coming to the conclusion that it had jurisdiction against all the judgment-debtors in this case.

The question of multifariousness is also connected with the question of jurisdiction because the substance of the argument of the learned counsel for the judgment-debtors is that if separate applications had been brought against each judgment-debtor, the Tribunal could not possibly have applied Section 20(b) of the Code or Civil Procedure to the case and to this extent there has been prejudice to the judgment-debtors by the Tribunal allowing one application against three separate debtors whose debts had already been separated, even though originally they arose out of one debt.

Emphasis by the learned counsel for the creditor is that there being in the beginning one debt, subsequent splitting of the same between the various persons who were liable for its payment does not mean that the creditor must proceed by a separate application against each person liable for the debt. In so far as the position of Govind Ram, judgment-debtor, is concerned the case that has been put forth on his behalf is that u/s 21 of Act No. LXX of 1951 only decrees passed before the enforcement of that Act can "be re-opened for the matter of adjustment and that the decree against him was passed after the enforcement of the Act

The learned counsel for the judgment-debtors refers to Section 15 of the Act and points out that it was open to Govind Ram to make an application under that Section to the Tribunal and the result of that under Clause (a) of that section would have been the transfer of the proceedings of the suit to the Tribunal and the consolidation of the both before the Tribunal. In that event the only decision in the case would have been of the Tribunal.

That did not happen. Govind Ram, judgment-debtor, suffered" a decree from an ordinary civil Court and now there is nothing in the Act which entitles the creditor to the re-opening of the decree. The reply on behalf of the creditor is that u/s 10 of the Act the creditor, being a displaced person, has an unqualified right to make an application against a debtor, who is also a displaced person, in regard to a debt and under" Section 2(6) of the Act the term "debt" in its definition includes a debt due under a decree. Therefore the learned counsel for the creditor contends that u/s 10, even though the decree against Govind Ram has been passed after the enforcement of the Act, the creditor can still maintain an application against that judgment-debtor.

9. In so far as the first question is concerned I think that the Tribunal was wrong in proceeding u/s 20(b) of the CPC and granting permission to the creditor to proceed with the application against the two debtors, namely, Ram Rakha Mal and Parma Nand, on the ground that one of the debtors, namely, Govind Ram, was living at Delhi and within the jurisdiction of the Tribunal. It is true that Section 25 of the Act applied the provisions of the CPC to proceedings under the Act but that is to situations otherwise than those provided for by the Act itself.

A situation that raises a question of jurisdiction of the Tribunal is a situation which is specifically provided for in Section 10 of the Act. It says that a Tribunal has jurisdiction only if the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the Tribunal. The jurisdiction of the Tribunal is limited thus only to such displaced debtors who reside within the local limits of its jurisdiction and it does not cover the cases of those who do not so reside.

This provision broadly corresponds to Clause (a) of Section 20 of the Code of Civil Procedure. The legislature when enacting Section 10 must necessarily have had in view Clause (a) of Section 20 of that Code, but it did not choose to incorporate a provision parallel to Clause (b) of that Section in the Act. It is not open either to the Tribunal or to this Court to so read Section 10, along with Section 25 of the Act, as to introduce a provision in the Act which the legislature could have introduced but has not done so.

So in spite of the provisions of Section 25 of the Act, to attract jurisdiction of the Tribunal the provisions of Section 10 of the Act must be strictly complied with. No recourse can be had to Section 20 of the CPC and the Tribunal under Act No. LXX of 1951 has no jurisdiction against a displaced debtor who does not fall within the scope of Section 10 of that Act. The Tribunal, therefore, had no jurisdiction to

proceed with the application of the creditor against Ram Rakha Mal and Parma Nand, displaced debtors.

In fact the history of the case shows that, though originally the debt was one, subsequently the creditor was a party to the splitting up of the debt, he accepted splitting of the debt and he obtained decrees on the basis of the splitting of the debt against separate and individual persons. Therefore he broke the integrity of the original debt and he held each one of the persons against whom he obtained, a decree to be liable for the particular amount for which the decree was even though to the extent of the assets received by him from the estate of Ladha Ram deceased. In these circumstances the proper thing for the creditor was to make a separate application against each debtor, but in this case one application has been made and that as a device to attract jurisdiction of the Delhi Tribunal, and therefore those displaced debtors who have not been residing within the local jurisdiction of the Tribunal have been brought in this case in that manner. Unfortunately the device succeeded before the Tribunal but in my opinion the Tribunal had no jurisdiction to proceed against Ram Rakha Mal and Parma Nand who did not reside within, the local jurisdiction of the Tribunal.

It is said that one of the four sons of Ram Rakha mal, namely, Manohar Lal has been residing all along in Delhi. He along with his brothers, was made a party to the original application and after the death of his father he continued to be a party to the application. It is said, on the side of the creditor, that at least with regard to Manohar Lal it cannot be said that the application of the creditor is without jurisdiction. This argument is based on a misconception of the correct position because the original debtor was Ram Rakha Mal.

The decree against him was a personal decree as far as it was against him, but even that was limited to the estate that came to his hands from Ladha Ram. Manohar Lal was not a party to the decree and it appears that the sons of Ram Rakha Mal, in the beginning, were just roped in as members of the family of Ram Rakha Mal. So that when the Tribunal had no jurisdiction against the real debtor, it cannot be said to have any jurisdiction against the sons of that debtor, when in his life time the creditor could not possibly have either obtained a decree against the sons or proceeded against them in any manner.

10. It has already been shown that the purpose why the creditor brought one application against three separate judgment-debtors against whom he held decrees was to gain an advantage over them to attract the jurisdiction of the Delhi Tribunal and in fact in that he succeeded. The application is, therefore, bad for multifariousness, but if this was the sole defect, I agree on the basis of it the claim of the creditor could not possibly be defeated.

11. In so far as Govind Ram debtor is concerned he has been resident of Delhi and the Tribunal had jurisdiction with regard to him. As pointed out the crux of the case for him is that the decree was obtained against him after the enforcement of the Act and there is no provision in the Act where under it can be

reopened and adjustment made between him and the creditor. It is true that there is a provision for the re-opening and re-adjustment of the decrees passed before the date of the Act.

It is also true that during the pendency of the suit against him, Govind Ram could have taken advantage of Section 15 of Act No. LXX of 1951 and he could have had the whole matter moved to the Tribunal, but, for the reasons best known to him, he did not take advantage of that provision. All the same in so far as Section 10 of the Act is concerned, a displaced creditor can apply against a displaced debtor in regard to a debt, as defined in the Act, so long as the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain within the local jurisdiction of the Tribunal.

Govind Ram has been residing within the local jurisdiction of the Tribunal, u/s 10 of the Act the creditor can make an application against him for adjustment of the debt and for a decree against him. As the term "debt" as used in Section 10 according to Section 2(6) of the Act also includes a debt due under a decree, so the application was competent against Govind Ram.

The fact that there is no provision for the re-opening of such a decree does not mean that no application against such a displaced debtor is competent u/s 10 of the Act. In fact in view of the provisions of the Act no such provision for re-opening of a decree passed after the enforcement of the Act was necessary, the reason being that subsequently such a thing would not happen, as when the matter comes before an ordinary civil Court the displaced debtor can have it transferred u/s 15 of the Act to a Tribunal.

But if he does not do so and the creditor obtains a decree in ordinary civil Court, there is nothing in Act No. LXX of 1951 that bars the creditor from again proceeding against the debtor on the basis of that decree, under Act No, LXX of 1951. It is true that that comes to duplication of proceedings and the learned counsel for the judgment-debtors appellants contends that to proceed twice against a person in regard to the same claim is nothing but an abuse of the process of the Court.

But in this case the statute gives a right to the creditor and I see nothing whereby a Court can deprive Mm of such a right. All that a debtor can reasonably urge in such circumstances is that the creditor succeeding, the debtor should not be burdened with any costs. So there is no case in so far Govind Ram, judgment-debtor, is concerned.

12. The result is that the appeal succeeds in so far as Parma Nand and the sons of Ram Rakha Mal are concerned and the decree of the Tribunal as against them is set aside, but that decree is upheld in so far as Govind Ram is concerned. "In the peculiar circumstances of the case the creditor will bear costs" of appellants, who have succeeded in this appeal, in both the Courts. Although he has succeeded in regard to Govind Ram appellant, but as it was not necessary for him to obtain a decree against him second time, so he must bear the costs of the

proceedings with regard to him also throughout.