
(1960) 04 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 100 of 1959

Sham Lal Thakar Dass Aggarwal

APPELLANT

Vs

Punjab National Bank Ltd. and Others

RESPONDENT

Date of Decision : 12-04-1960

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 16, 17, 32(3), 32(4), 32(8)
Limitation Act, 1908 — Section 5
Transfer of Property Act, 1882 — Section 58, 59

Citation : AIR 1961 P&H 81

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Bhagirath Das, for the Appellant; S.L. Puri, for the Respondent

Judgement

D.K. Mahajan, J.—This order will dispose of F. A. Os. Nos. 100 to 103 of 1959. These appeals are directed against the decision of the Subordinate Judge, 1st Class, Amritsar, acting as a Tribunal under the Displaced Persons (Debts Adjustment) Act (No. 70 of 1951) -- hereinafter called the Act.

2. The facts giving rise to these appeals may be shortly stated. M/s. Rakha Ram Thakur Dass was a firm doing cotton business. Rakha Ram, Thakar Dass, Mehnga Ram and Sham Lal were the partners of the firm. Both Thakar Dass and Rakha Ram are dead and their legal representatives are parties to these appeals. There was a cash credit account up to the limit of Rs. 15 lacs opened by this firm with the Punjab National Bank Ltd., --hereinafter called the Bank. The account was opened on 11-12-1946.

On 31-12-1946, the amount due to the Bank was Rs. 16,05,775-12-6. On 9-6-1947, certain title deeds of the properties situate in Patti (Amritsar) were handed over to the Bank as security to secure the amount due under the cash credit account. It may be mentioned that this amount was also secured by the pledge of certain movable property. The title-deeds deposited with the Bank are enumerated in a letter signed by the partners of the firm. This letter is dated

9-6-1947, and is Ex. C. I., on the record. It is recited in it as under:

"Ham ne apni jaidad ke kagzat aap ke havale bataur zamanat de diey hain. Jin ki tafsil hasab zail hai."

Below this is the list of the properties.

3. On 28-6-1947, the amount due to the Bank was Rs. 11,40,768-14-7 and at the time when the suit was filed, it is stated to be Rs. 9 lacs odd. The present suit was filed on 28-2-1950, by the Bank against the partners of the firm for recovery of Rs. 11/2 lacs, the balance of the claim having been given up. It was prayed that this amount be ordered to be paid by sale of the mortgaged properties. This led to the filing of four applications on 4-4-1952, by the partners. It was disputed by the Bank that the petitioners were not displaced persons. The question as to whether the petitioners were displaced persons or not was decided on 13-7-1953; as a preliminary issue and it was held that the petitioners were displaced persons.

On the other issues, which had been framed, on the merits, it was held on the 17th October, 1958, that equitable mortgage in respect of the property in dispute was created in favour of the Bank and the letter, Ex. C-I, in which that equitable mortgage was recited did not require registration as the document did not by its own force create a charge, that the debt in question was secured not only by the pledge of movable property in Pakistan, but also by the mortgage of the immovable property situate in India and in this situation no relief could be given to the debtors u/s 17 of the Act, that the debtors were liable to pay Rs. 1 1/2 lacs to the Bank and that nothing was due to M/s. Chaman Lal and Bros.

While dealing with the question of paying capacity, it was held that the paying capacity was equal to the market value of the mortgaged properties in dispute. The other issues were not pressed. The result was that a decree for Rs. 11/2 lacs was passed in favour of the Bank, recoverable from the mortgaged properties and thereafter if any balance remained, out of the compensation payable under the Act.

4. Dissatisfied with this decision, the debtors filed four appeals in this Court on 20-1-1959. Copies of the decree were not filed with these appeals. On 28-8-1959, the matter came up for hearing before Dua, J., and on objection being taken it was adjourned to 7-9-1959. On the 28th of August, 1959, an application was, however, made for getting a certified copy of the decree and on the 23rd of September, 1959, the said copy was obtained. On the 23rd of September, 1959, copies of the decree were filed in this Court. While dismissing the appeals on 7-9-1959, Dua, J., held as under:

"I am, therefore, constrained to uphold the preliminary objection and hold the present appeal to be incompetent. It would certainly be open to the counsel for the appellant to prefer a proper appeal accompanied with necessary documents as and when he secures copies of the necessary decree sheets and then apply to

the Court for whatever relief is under the law open to him."

5. Faced with this situation, the debtors filed the present appeals on the 24th of September, 1959, the certified copies of the decree sheets having been obtained on the 23rd September, 1959. Applications u/s 5 of the Indian Limitation Act have been filed by the applicants praying that the delay in filing the present appeals may be condoned. These applications are supported by the affidavit of the clerk to Mr. Bhagirath Dass, learned counsel for the appellants. It is stated in the affidavit that the appeals were filed in view of the erroneous belief that the copy of the decree sheet was not necessary and this belief arose from the unreported decision of G.D. Khosla, J., as he then was, in F. A. O. No. 125 of 1953, Krishan Gopal v. Sant Ram, reported in 1954 PLR (SN) 9

6. Mr. Puri raises a preliminary objection to the effect that the appeals are barred by time. No doubt it is true that the present appeals are barred by time, but this question wholly depends on the decision, of the question whether the appellants are entitled to the benefit of Section 5 of the Indian Limitation Act. It is a matter of common knowledge that during this period, the appeals were filed in this Court on the erroneous belief that no decree sheet was required; and I am doubtful if a decree sheet is required particularly when on the appeal no ad valorem court-fee is charged.

In any case, it is not necessary to go into this matter because the decision of Dua, J., has become final. The learned Judge has held that the appeals filed in the first instance were not proper appeals as they were not accompanied by the decree sheets. In view of the affidavit of the clerk to Mr. Bhagirath Dass and the erroneous belief prevalent during the relevant period, I am of the view that the appellants are entitled to the benefit of Section 5 of the Limitation Act. I, accordingly, acting u/s 5 of the Limitation Act, condone the delay in filing these appeals.

7. On the merits, the contentions raised by Mr. Bhagirath Dass, learned counsel for the appellants, may now be noticed. His contentions are:

1. that the document, Ex. C-I., by its own force creates an equitable mortgage and therefore it requires registration. It being unregistered, it cannot be looked at. If this document is ruled out, there is no evidence on which it can be held that the property in suit was mortgaged with the Bank;
2. that under the provisions of Section 17 of the Act, the debt being secured by the pledge of movable property, the whole of the debt is wiped out;
3. that in any case the share of the debtors should have been specified as required by Section 22(b) of the Act;
4. that credit for movable property which was pledged with the Bank to secure the cash credit account should have been allowed u/s 22 of the Act; and
5. that relief u/s 32 of the Act to which the debtors are entitled should have been

granted, namely, instalments qua the amount determined as due.

8. I propose to deal with each one of the contentions in the Order in which they have been enumerated above.

9. The first question that falls for decision is whether Ex. C-I., required registration? The operative part of the document is as under:

"Ham ne apni jaidad ke kagzat aap ke havale bataur zamanat de diey hain. Jin ki tafsil hasab zail hai."

In view of this statement, the document, Mr. Bhagirath Dass contends, per se creates an equitable mortgage and therefore requires registration. On the other hand, Mr. Puri, learned counsel for the Bank, contends that this document merely notices the already existing equitable mortgage and only furnishes the list of the property which has been equitably mortgaged. The rule in such cases is firmly settled, and there is no dispute between the parties on that matter.

The rule is that if the document per se creates an equitable mortgage, it requires registration, but if it merely recites a completed transaction, it does not require registration and it is immaterial whether the creation of the mortgage and the preparation of the memorandum reciting the factum of the completed equitable mortgage with the list of the properties mortgaged may have simultaneously come about.

In this connection, reference may be made to the decisions reported as Subramanian v. M.L. R.M. Lutchman AIR 1923 PC 50 , AIR 1931 36 (Privy Council) AIR 1939 167 (Privy Council) Pranjivandas Jagjivandas v. Chan Ma Phee ILR 43 Cal 895: (AIR 1916 PC 115), Ralli Bros. v. Punjab National Bank Ltd.. ILR 11 Lah 564: (AIR 1930 Lah 920), Ram Sarup v. Shiv Dayal AIR 1940 Lah 285 , Visalakshi Ammal Vs. C. Krishnaveni Ammal and Others, and Rachpal Maharaj Vs. Bhagwandas Daruka and Others, Therefore, the entire question turns on the interpretation of Ex. C-I. Read as a whole, I am of the view that the document per se does not create an equitable mortgage.

In coming to this conclusion, the Tribunal relied on the statement of J.H. Bangia, who has categorically stated that an equitable mortgage was effected first and Ex, C-I, was executed later, in which the list of the property equitably mortgaged was furnished to the Bank. The usual forms on which these memorandums are usually executed by the Bank were not available and therefore, resort was had to Ex. C-I. Moreover, the document read as a whole does not anywhere show that by this document properties listed therein were charged with liability. In this view of the matter, I, am in agreement with the Tribunal that the document does not require registration.

10. Coming to the second contention, it is no doubt true that the cash credit account was secured by pledge of movable property and it is equally true that it was also secured by the equitable mortgage of Indian properties. The Act does not wipe out debts secured by the mortgage of immovable property, though

debts solely secured by the pledge of movable property are wiped out. In this connection, reference may be usefully made to the provisions of Sections 16 and 17 of the Act.

It is equally true that there is no provision in the Act whereby the mortgage of Indian properties is, in any way, dealt with but one thing is definite that where there is a debt, which is secured by pledge of movable property and by mortgage of immovable property, then the value of the movables and the immovable property has to be ascertained and the debt has to be apportioned between the two properties in the same proportion as the value of each property bears to the total value of the properties. In this connection-reference may be made to Section 22(f) which is in these terms:

"22(f) if the liability is secured by a mortgage of movable and immovable properties, the debt shall be apportioned between the two properties in the same proportion as the value of each property bears to the total value of the properties;

Explanation: For the purposes of this clause, the value of the movable property shall be deemed to be the value thereof immediately before the date on which the debtor became a displaced person, and the value of the immovable property shall be deemed to be the value of the verified claim in respect thereof;"

The explanation will only apply where the mortgage is of properties left in West Pakistan. That part of the debt which is apportioned to the immovable property is therefore, certainly recoverable from the mortgage of Indian properties because to such a mortgage the provisions of Section 16 of the Act do not apply, these provisions being restricted to mortgage of immovable property left in West Pakistan. I am further fortified in my conclusion that the mortgage of Indian properties is not affected by the provisions of the Act, by the scheme of the Act and also by the provisions of Section 16 and Sub-sections (4) and (8) of Section 32, Therefore, the argument that in view of the provisions of Section 17 of the Act, the entire mortgage debt is totally wiped out is fallacious. The argument is only partially correct.

11. Taking up the third contention, namely, that the Tribunal has not specified the share of each individual partner qua the debt due, I find no merit in the contention. The Tribunal in the concluding portion of its judgment has clearly stated that the liability of each of the four partners is equal. That being so, each partner is liable to one-fourth share of the debt.

12. The next contention is that no credit has been allowed to the debtors qua the movable property pledged by them with the Bank, which would be necessary for the purpose of Section 22(f) of the Act. This is so and the determination of the question depends on the determination of the value of the movable property pledged with the Bank which the Tribunal has not determined.

13. So far the relief u/s 32 of the Act is concerned, the question does not arise.

None of the clauses of this section have any applicability to this case.

14. For the reasons given above, I would uphold the decision of the Tribunal on all the matters decided by it, but would remand the case to it for the determination of the value of the movable property pledged with the Bank and so also the value of the mortgaged properties for the purposes of Section 22(f) of the Act read with Section 17 of the Act. The debt which is apportioned towards the movable property would stand wiped out and that which is apportioned towards the mortgage of immovable properties will stand in its entirety and the mortgaged properties would be put to sale and the debt satisfied from the proceeds thereof.

Mr. Puri states that the Bank has not sued for the entire amount due and has given up its claim to a substantial part of the debt. The Tribunal while dealing with the matter will take into consideration as to what, in fact, was the total amount due at the time when the debtors became displaced persons. The value of the movables has to be given credit for towards that liability and not merely qua what the Bank has sued for.

15. In the circumstances of the case, there will be no order as to costs in this Court.

16. The parties are directed to appear before the Tribunal on the 16th of May, 1960.