(1956) 03 OHC CK 0001

In the Orissa High Court

Case No : Civil Revision No. 56 of 1955

Tek Chand APPELLANT

Vs

Ram Chand RESPONDENT

Date of Decision : 01-03-1956

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 32
Limitation Act, 1963 — Section 14, 2(6), 29(1)

Citation : (1956) 22 CLT 265

Hon'ble Judges : Narasimham, J

Bench : Single Bench

Advocate : M.S. Roy, for the Appellant; H. Sen, for the Respondent

Judgement

Narasimham, J.—This is a revision against the order of the Subordinate Judge of Sambalpur, exercising the powers of a Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951, decreeing the opposite Party''s claim against the Petitioner for Rs. 2350/- with future interest at 6 per cent per annum till the date of realisation.

2. It is admitted that the Petitioner is a "displaced debtor" and the opposite party is a "displaced creditor" within the meaning of the aforesaid Act. The opposite party''s claim was based on a deposit of Rs. 2000/- said to have been made by him with the Petitioner sometime in Ashadh Badi 29 Samvat 2004 (June-July, 1948) when the parties were at Karachi which is now in Pakistan. Both of them left Pakistan and settled in India and on the 17th of July. 1950, there was a settlement of the debt outstanding and the Petitioner by a document of that date agreed that the total amount due from him to the opposite party together with interest amounted to Rs. 2550/-. The claim was based on this acknowledgment of liability.

3. Originally, the opposite party applied to the Tribunal at Nagpur for a settlement of the claim. But that Tribunal returned the application for presentation before the proper Tribunal saying that the Nagpur Tribunal had no

jurisdiction. Then it was filed before the Subordinate Judge of "Sambalpur. Before the lower Court, the question of limitation was taken up and the Court held that Section 14 of the Limitation Act would apply in as much as the opposite party in good faith prosecuted his previous litigation before the Nagpur Tribunal. I see no ground for interfering with this finding of the lower Court.

4. The claim is admitted, but Mr. Roy on behalf of the Petitioner raises two interesting questions of law:

(1) By virtue of the proviso to clause (c) of sub-section (6) of Section 2 of the said Act, the ''debt'' would be the loan originally advanced and not the amount for which the liability has been renewed. As the loan originally advanced was Rs. 2000/-, the decree could be passed only for that amount and net for the amount of Rs. 2550/

(2) The lower Court committed an error of law in decreeing future interest at 6 per cent per annum in view of the special bar imposed by Section 29 (1) of that Act.

5. I think, both these points of law are correct. Section 2(6)(c) proviso is as follows:

Provided that in the Case of a loan, whether io cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability.

From the opposite party''s notice (Ext. A) it is absolutely clear that the original loan was only for Rs. 2000/-. The lower Court should not have decreed the claim for Rs. 2350/-.

6. Section 29(1) of the said Act further says that no tribunal shall allow any future interest in respect of any decree or order passed by it under the Act. The order of the lower Court decreeing future interest at 6 per cent per annum must therefore be set aside.

7. Mr. Sen on behalf of the opposite party urged that by virtue of proviso (b) to sub-section (1) of Section 29 of that Act, the opposite party would be entitled to interest at 4 par cent per annum from the date of the original loan till the commencement of the Act in November 1951 and he asks this Court to grant a decree to that extent. This point was however not taken before the trial court. Moreover, I notice that before granting interest under the said proviso (b) to Section 29 (1), the Tribunal is required to take into account the paying capacity of the debtor as defined in Section 32 of the Act. The explanation to Section 32 says, "Paying capacity means the aggregate of the market value of all the attachable assets in India of the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month".

8. Doubtless, the order of the trial Court shows that in considering the Petitioner''s prayer for installments the lower Court made - some investigation about the present salary of the Petitioner. But there has been no regular investigation about his paying capacity as defined in the Act. There is no finding about the market value of all his attachable assets in India, nor about the net balance that is available after excluding Rs. 250/- per month from his question had been agitated before the trial Court, a finding in respect of the Petitioner''s paying capacity would have been arrived at. But as it was not taken up, I am not included to allow a remand for this purpose. The materials on record also are not sufficient for this Court to come to an independent finding. I would therefore disallow interest altogether.

9. The order of the lower Court is modified as follows. The Petitioner (Tek Chand) should pay Rs. 2000/- to the opposite party (Ram Chand). Order about payment of future interest is set aside. Both parties will bear their own costs of this revision Order modified.

