

(1956) 02 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 408 of 1954

Wadhwa Ram Kesar Singh and Another	APPELLANT
Vs	
Gian Chand Ganesh Dass and Others	RESPONDENT

Date of Decision : 24-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Displaced Persons (Debts Adjustment) Act, 1951 — Section 11(2), 2(6), 21, 44, 5

Citation : AIR 1956 P&H 189

Hon'ble Judges : Bhandari, C.J

Bench : Single Bench

Advocate : H.R. Sodhi, for the Appellant; Y.P. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, C.J.—This petition raises the question whether the failure on the part of a debtor to make an application u/s 11(2) of the Displaced Persons (Debt Adjustment) Act, 1951, at the proper time debars him from presenting a similar application on a later occasion.

2. The facts of the case are very simple indeed. On the 8th August 1952 Suit. Baldevi presented an application u/s 10 of the Act of 1951 against Wadhwa Ram and Harbans Singh, and on the 7th July 1953 she obtained a decree in a sum of Rs. 7630, which was later confirmed in an appeal.

On the 16th January 1954 one Gian Chand, another creditor, brought an application u/s 10 against the said debtors and on receipt of the notice the debtors put in an application u/s 5 for the adjustment of their debts, mentioning in the schedule appended to the application the name of Smt. Baldevi as a creditor to the extent of Rs. 7,630/-.

Smt. Baldevi objected to her decree being included in the schedule and her objection found favour with the Tribunal. The Tribunal dismissed the petition u/s 5 as far as Smt. Baldevi was concerned but allowed it to proceed in respect of

the other creditors. The debtors are dissatisfied with the order and have come to this Court in revision.

3. There can be no manner of doubt that a decree passed by a Tribunal under the provisions of the Act of 1951 falls within the ambit of the expression "debt" as defined in Section 2(6) of the said Act and consequently that it is incumbent on a debtor making an application u/s 9 of the said Act to include this debt in the schedule which accompanies the application under the said section.

It is equally clear, for the reasons which appear hereafter, that the failure on the part of a debtor to take advantage of the provisions of Section 11(2) debars him from presenting a similar application in respect of the same debt. When Smt. Baldevi presented her application u/s 10 of the Act of 1951 it was clearly open to the debtors to present an application under Sub-section (2) of Section 11. They failed to take advantage of the provision and on their failure to do so the Tribunal proceeded to pass a decree in favour of the creditor.

As the provisions of the CPC apply to proceedings under this Act & as explanation IV to Section 11 of the CPC declares that any matter which might & ought to have been made ground of defence or attack in a former suit shall be deemed to have been a matter directly and substantially in issue in such suit, it seems to me that when the debtors who were at liberty to take advantage of the provisions of Section 11(2) in the earlier litigation omitted to do so, they must be deemed impliedly to have relinquished the right which vested in them.

I am inclined to hold therefore that as no application u/s 11(2) was presented by the debtors, the application must be deemed to have been impliedly dismissed. A fresh application will thus be barred not only under the rules of "res judicata" but also under the provisions of Section 44 of the statute which declares in unambiguous language that where an application made by a displaced debtor under Sub-section (2) of Section 11 has been dismissed no further application for the same purpose shall lie.

4. There is another aspect of the matter which needs to be considered. Section 21 of the Statute makes it quite clear that the power to revise decrees under this Act extends only to decrees passed before the commencement of this Act. As the express mention of one thing implies the exclusion of another, it seems to me that the power conferred by this Act to revise decrees extends only to decrees passed before the commencement of this Act and not to decrees passed after the commencement of this Act.

It follows as a consequence that the decree passed by the Tribunal in favour of Smt. Baldevi on the 7th July 1953 cannot be reopened and cannot be readjusted under the provisions of the present Act. Moreover if an application u/s 11(2) were allowed to be preferred at any time no decree passed by a Tribunal on the application of a creditor would ever be final and there would be no end to litigation.

5. For these reasons I would uphold the order of the Tribunal and dismiss the petition. Having regard to the difficulty of the point at issue I would leave the parties to bear their own costs.