(1962) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 71-D of 1960

Yograj APPELLANT

Vs

Barkat Rai Sarna and others RESPONDENT

Date of Decision : 16-10-1962

Acts Referred:
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11, 11(2), 13, 15

Citation : (1962) 10 P&H CK 0020

Hon'ble Judges : Dulat, J;Capoor, J

Bench : Division Bench

Advocate : D.D. Chawla and M.K. Chawla, for the Appellant; S.N. Marwah, D.N. Bhasin and Inder Mohan, for the Respondent

Final Decision : Allowed

Judgement

Capoor, J.—Letters Patent Appeals Nos. 71-D to 75-D of 1950 are directed against the orders, dated the 27th of July 1960, made by a learned Single Judge of this Court, upholding the judgment, dated the 16th of March 1955, of the Tribunal, under the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), hereinafter referred to as the Act, whereby the application made by the present Appellants u/s 5 of the Act was dismissed so far as it pertained to debts which the Appellants had incurred after the partition of the country.

2 Connected with these Letters Patent Appeals are Messrs. Belt Ram Celly & Sons and Anr. v. Shri Barkat Rai Sarna etc. (Civil Revision application No. 69-D of 1955) and Messrs. Belt Ram Celly & Sons and Ors. v. Shri Barkat Rai (Regular First Appeal No. 96-D of 1955). It will be convenient to dispose of all these matters in the course of the following judgment. They arise in the following circumstances:

Barkat Rai, on the 22nd of February 1951, advanced a loan of Rs. 10,000/- to five Appellants, who are brothers and partners of the firm Messrs. Beli Ram Celly and Sons. On the 12th of February, 1954, Barkat Rai instituted a suit in the Court of the Senior Sub Judge, Delhi, against them for the recovery of Rs. 10.625/- in which issues were framed on the 5th of November 1954. On the 14th of January, 1955, the Appellants, who were Defendants in that suit, gave an application before the Senior Sub Judge, submitting that they had made an application u/s 5 of the Act before the Tribunal, duly constituted under the Act, and that proceedings before the Senior Sub Judge be stayed u/s 15 of the Act. The Senior Sub Judge rejected the application on the 1st of February 1955 and fixed 4th of February 1955 for evidence. An application was given on the 4th of February 1955, for review of this order but it was dismissed and on the basis of some evidence recorded the Senior Sub Judge on the same day decreed the Plaintiff''s suit with costs and future interest from the date of the suit till realisation at the rate of Rs. 6/- per cent per annum. It is this decree which gave rise to R.F.A. No 96-D of 1955 by the firm.

In the meantime, on the 7th of February 1955, the Defendants filed Civil Revision No. 69-D of 1955 against the order, dated the 1st of February 1955, declining to stay the suit. This Civil Revision has, therefore, now merged in the Regular First Appeal.

3. The Tribunal, before which the application was made u/s 5 of the Act, also proceeded to evidence. It was urged on behalf of the creditor Respondents, to whom the post partition liabilities were due, that these liabilities were not covered within the definition of debt as laid; down in Clause (6) of Section 2 of the Act and the application regarding such debt was not maintainable. This objection prevailed with the Tribunal and in consequence it dismissed the petition with, regard to those pecuniary liabilities which had been incurred subsequent to the partition of the country.

4. The learned Single Judge, while affirming the decision of the Tribunal, followed an unreported Division Bench judgment of this Court in Karam Narain v. Ved Perkash C.R. No. 390-D of 1954 decided on the 6th of April 1956, and also a Division Bench authority of the Bombay High Court in Ramchand Tillumal Vs. Khubchand Daswani and Others, . Mr. D. D. Chawla, on behalf of the Appellants in Letters Patent Appeals, has submitted that these cases were not correctly decided and the view taken by the Bench of this Court in Karam Narain v. Ved Parkash C.R. No. 390-D of 1954 needs reconsideration by a larger Bench, but he has not been able to Persuade us to agree with him.

5. Clause (6) of Section 2 of the Act, so far as it is relevant for the present purpose, defines ''debt'' as follows:

(6) ''debt'' means any pecuniary liability whether payable presently or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained, which-

(a) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India ;

(b) in the case of a displaced person who, before and after the 15th day of August 1947, has been residing in any area now forming part of India, was incurred before the said date on the security of any immovable property situate in the territories now forming part of West Pakistan.

Provided that where any such liability was incurred on the security of immovable properties situated both in India and in West Pakistan, the liability shall be so apportioned between the said properties that the liability in relation to each of the said properties bears the same proportion to the total amount of the debts as the value of each of the properties as to the date of the transaction bears to the total value of the properties furnished as security and the liability, for the purposes of this clause, shall be the liability which is relatable to the property in West Pakistan ;

(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends ;and includes any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on and is solely by way of renewal of, any such liability as is referred to in Sub-clause (a) or Sub-clause (b) or Sub-clause (c).

The other relevant definitions are that of displaced creditors'' and ''displaced debtors'' which are respectively as follows .-

(8) ''displaced creditor'' means a displaced person to whom a debt is due from any other person, whether a displaced person or not ;

Section 5 of the Act makes provision for applications by displaced debtors for adjustment of debts. These applications are to be made within one year after the date on which this Act came into force in any local area, which date, so far as Delhi was concerned, was the 10th of December 1957. So far as claims by the displaced creditor are concerned, the relevant provisions are contained in Sections 10 and 13, the former relating to claims by displaced creditors against displaced debtors and the latter to claims by displaced creditors against persons who are not displaced debtors. With regard to claims u/s 13, the limitation for applications is one year from the date from which the Act came into force. A displaced creditor makes an application u/s 10, Sub-section (2) of Section 11 confers on the displaced debtor a right to make an application in accordance with the provisions in Section 5.

6. These are the relevant provisions of the Act. Mr. Chawla contends before us, as he did before the learned Single Judge, that Sub-clauses (a), (b) and (c) of Clause (6) of Section 2 merely define a ''debt'' and are not primarily concerned with the person who owes the debt or the persons to whom it is owned, i.e. that these three clauses should be interpreted disjunctively and not conjunctively. What is due to a displaced person and would be a debt within Sub-clause (c), would equally be a debt qua the person from whom it is due. If a creditor, who is a displaced person, is given the right u/s 20 read with Sub-clause (c) of Clause

(6) of Section 2 to file his claim against a displaced debtor with regard to the post-partition debts, such a displaced debtor should equally be entitled to make an application against that displaced creditor for adjustment of the debt u/s 5.

7. This line of argument loses sight of the objects and the scheme of the Act The preamble of the Act is as follows:

An Act to make certain provisions for the adjustment and settlement of debts by displaced persons, for the recovery of certain debts due to them and for matters connected therewith or incidental thereto.

It is to achieve these objects that the definition of ''debt'' in the Act is by reference to the state of the person who is either a debtor or a creditor. The definition of ''displaced debtor'', as given in Clause (9) of Section 2 of the Act must be co-related to the definition of ''debt'' as given in Sub-clauses (a) and (b) of Clause (6), which clauses exclude what may compendiously be called post-partition debts. It would follow, therefore, that applications u/s 5 by displaced debtors can only be made in regard to such debts and not with regard to the pecuniary liabilities incurred subsequently. No doubt, where a displaced creditor has given an application u/s 10, the displaced debtor under Sub-section (2) of Section 11 may make an application in accordance with the provisions of Section 5 but this application will again be maintainable only with regard to the pecuniary liabilities which are defined in Sub-clauses (a) and (b) of Clause (6). It is not permissible to use anything stated in Sub-clause (c) to enlarge the definition of pecuniary liabilities incurred by displaced persons as given in Sub-clauses (a) and (b). If the wide interpretation, which Mr. Chawla seeks to place on Sub-clause (c) is correct, then Sub-clauses (a) and (b) would become superfluous.

8. The facts in Karam Narain v. Ved Parkash C.R. No. 390-D of 1954, were that both the parties were displaced persons and the debt which the displaced creditor sought to recover u/s 10 of the Act from the displaced debtor was one which was contracted since the partition and since the parties came to reside in India. The Respondent-debtor took up the position that the liability was not, in these circumstances, a debt within the meaning of Clause (6) of Section 2 of the Act and hence the petition was not competent. The Tribunal dissmissed the petition and the Bench held as follows:

Clause (c) of Sub-section (6) gives no clue at all as to who is a displaced debtor within the meaning of the Act. It seems to me in the circumstances that the proper way to look at Clause (c) is to consider it in two parts, namely (1) the liability due from a non-displaced person to a displaced person, in which case there is no further limitation and on proof of the liability it becomes a debt within the meaning of the Act, and (2) the liability due from a displaced person to a displaced person, and in such case the limitation is the same as mentioned in Clauses (a) and (b) namely that the liability must have been incurred before a certain date. It appears to me that it is impossible to call a displaced person a displaced debtor unless his case falls under either Clause (a) or Clause (b) of

Sub-section (6) of Section 2, and unless of course he can be called a displaced debtor no petition against him u/s 10 of the Act is competent. I am fortified in this view by the provision contained in Section 11 of the Act which contemplates that as soon as an application is made against a displaced debtor for recovery of any amount he is entitled to seek relief u/s 5 of the Act and this relief of course only be available to him if his case falls either under Clause (a) or Clause (b) of Sub-section (6) of Section 2, so that a contrary view would largely nullify the point of this provision.

Thus, the same argument in essence, which has been advanced by Mr. Chawla before us, was repelled.

9. In Ramchand Tillumal Vs. Khubchand Daswani and Others, , the Appellant had made an application before the tribunal appointed under the Act for the adjustment of his debts which were contracted subsequent to the 15th of August 1947 and the Respondent creditor was also a displaced person within the meaning of the Act. This is precisely the position arising in the case giving rise to the Letters Patent Appeals. The Bombay Court upheld the order of the tribunal, dismissing the application and Gajendragadkar J. (as he then was) observed as follows:

Wherever the Act refers to the debt due by a displaced debtor it is necessary to apply the provisions of Section 2(6)(a) or Section 2(6)(b) as the case may be. The definition of the word ''debt'' given in Section 2(6)(c) would be inapplicable in the context. Similarly, where the Act refers to the creditor''s claim for the recovery of his debt, the Court must turn to the definition of the word ''debt'' in Sub-section (6)(c) and not Sub-section (6)(a) or (b). A displaced debtor can therefore apply u/s 5 only if the debt which he seeks to be adjusted satisfies the requirements of Section 2(6)(a) or Section 2(6)(b).

Even assuming that the creditor himself had applied for the recovery of his debt under 5. 10 and that this application was otherwise competent, the only right to which the debtor would have been entitled u/s 11(2) would be to apply for the adjustment of his debt, provided the debt satisfied the test laid down by S. 2(6)(a). In other words, if the debt due from a displaced debtor does not fall within S. 2(6)(a), he gets no right to ask for its adjustment even u/s 11(2). The contention that the right denied to the displaced debtor u/s 5 would become available to him u/s 11(2) in case his creditor makes an application against him u/s 10 is not, therefore, well founded.

Thus, precisely the same view was taken as by the Bench of this Court in Karam Narain v. Ved Parkash C.R. No. 390-D of 1954.

10. In support of the contrary view, Mr. D. D. Chawla cited some Single Bench decisions of this Court, F. Jagan Nath Ram Sarup v. F. Amin Chand Pearey Lal (1953) 55 P.L.R. 521, B. S. Bali v. Seth Batalia Ram and Ors. (1954) 56 P.L.R. 16 and Mukand Singh v. Vishwa Nath Nanda F.A.O. No. 39-D of 1954 decided on 31st of January 1955. These cases having been decided before the case Karam

Narain v. Ved Parkash C.R. No. 390-D of 1954 need not detain us. Mr. Chawla then referred to a head note in Rajkumari Kaushalya Devi Vs. Bawa Pritma Singh and Another, to the following effect:

There is nothing in this section (Section 17) or in any provision of the Act or in its scheme which can cut down the amplitude of the words used in S. 2(6)(c) of the Act.

He interpreted this to mean that Section 2(6)(c) should be interpreted in its full amplitude and not in the light of Sub-clauses (b) and (c) of Clause (6) of Section 2. The legal point involved in these Letters Patent Appeals was not, however, before the Supreme Court in that case. The facts were that the Appellant had executed two usufructuary mortgages with respect to two properties situate in Ferozepore city in favour of the Respondents in 1946. She also took both properties on lease on the same date. An application was filed by the Respondents u/s 13 of the act for recovery of the principal sum due as well as the rent which was said to be in arrears. The Appellant''s objections to that application failed before the tribunal in an appeal and Letters Patent Appeal to the High Court. The contention on behalf of the Appellant before the Supreme Court was two-fold: (1) that the liability under a mortgage is not a pecuniary liability and therefore S. 2(6) will not apply to a mortgage debt and (2) that the scheme of the Act showed that mortgages in relation to properties situate in what is now India were not covered by the Act at all. Both these objections were repelled by their Lordships of the Supreme Court. One of the arguments advanced was that in Sub-clause (b) of Section 2(6) there was a specific provision with respect to mortgage debts in relation to immovable properties which were left in Pakistan and that if it were intended that mortgage of immovable properties situate in what is now India would also be dealt with under the Act there would have been a similar specific provision in the Act. Reliance was also placed on the proviso to Sub-clause (b) and their Lordships observed that the reason, however, for this special provision was to be found in the later provision contained in S. 16 by which a charge was created on compensation to be given to a displaced person with respect to the mortgage debt secured on immovable property in Pakistan or in the alternative a charge was created on property given in exchange for the property in Pakistan on which the debt was charged. The special provision therefore in Sub-clause (b) of S. 2(6) would not in these circumstances cut down the plain meaning of the words used in Sub-clause (c) or restrict the wide words ''pecuniary liability'' to liability other than that secured by a mortgage. Reference was then made on behalf of the Appellant to Section 17 of the Act and it was in this connection that their Lordships of the Supreme Court observed that there was nothing in that section which cut down the amplitude of the words used in Section 2(6)(c). These observations are, therefore, entirely in a different context to the point involved in the present Letters Patent Appeals and accordingly can be of no help to the Appellants. This was so held recently by a learned Judge of this Court in Dev Nath Suri v. Ram Chand Suri (1961) 63 P.L.R. 347 at p.352.

11. Thus, no congent argument has been advanced on behalf of the Appellants to justify reconsideration of the decision of the Division Bench of this Court in Karam Narain v. Ved Perkash C.R. No. 390-D of 1954, and I would, therefore, dismiss Letters Patent Appeals Nos. 71-D to 75-D of 1960 with costs.

12. So far as R.F.A No. 96-D of 1955 is concerned, Mr. Chawla placed his reliance on Section 15 of the Act which provides inter alia that where a displaced debtor has made an application to the Tribunal u/s 5, all proceedings pending at the date of the said application in any civil court in respect of any debt to which the displaced debtor is subject (except proceeding by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews, or revisions as aforesaid shall be transferred to the Tribunal and consolidated. Mr. Chawla maintained that in view of this provision, the proceedings in the Court of learned Senior Sub Judge after the 14th of January, 1955, i.e. the date of the application by the Defendants for stay of proceedings, were without jurisdiction. This contention is supported by the plain words of the statute as well as by authority in Parkash Textile Mills Ltd. v. Messrs. Mum Lal Chuni Lal (1955) 57 P.L.R. 107 F.B.. By the Bombay High Court in Baburao K. Pai Vs. Dalsukh M. Pancholi, and by the Allahabad High Court in Bishwa Nath Gupta Vs. Basdeomal Jogdhian, These cases lay down that in view of Section 15 of the Act, it is the Tribunal which is to decide the question whether the pecuniary liability is a debt and the status of the debtor and once an application is made u/s 5, the jurisdiction of the civil Court in these matters is barred. Barkat Rai Respondent in the Regular First Appeal had nothing to say against these contentions. Regular First Appeal must, therefore, be allowed. The order of the Tribunal dated the 16th of March 1955 is set aside and the case will go back to the Tribunal for further proceedings from the stage of the application made by the Defendants on the 14th of January 1955. There will be no order as to costs of this appeal.

13. No separate order is required in Civil Revision No. 69-D of 1955 which has merged in the Regular First Appeal.

14. The stay orders at the instance of the Appellants in the Letters Patent Appeals passed from time to time are vacated.

Dulat, J.

15. I agree.

