
(1965) 04 AHC CK 0014

Allahabad High Court

Case No: Civil Revision No. 337 of 1963

Bhim Sen

APPELLANT

Vs

Smt. Savitri Devi

RESPONDENT

Date of Decision: April 12, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Displaced Persons (Debts Adjustment) Act, 1951 - Section 13, 2(10), 2(6)

Citation: AIR 1966 All 247

Hon'ble Judges: D.S. Mathur, J

Bench: Single Bench

Advocate: Banarsi Das, for the Appellant; A.K. Saxena, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.S. Mathur, J.

This is a revision u/s 115 C. P. C. by Bhim Sen against the order of the Tribunal under the Displaced Persons (Debts Adjustment) Act (to be referred hereinafter as the Act) allowing an application u/s 13 of the Act of Ram Lal, who was represented after his death by his widow Smt. Savitri Devi alias Sushila Rani, opposite party, for the recovery of the arrears of rent with interest due from the present applicant.

2. The case of Ram Lal, and also of Smt. Savitri Devi, was that they were displaced persons within the meaning of the Act and they had the right to take recourse u/s 18 of the Act for the recovery of the arrears of rent of a house which had been leased to Bhim Sen. Bhim Sen admitted that he was not a displaced person, nor was he a displaced debtor, within the meaning of the Act. But he challenged the right of Ram Lal and also Smt. Savitri Devi in moving the application. These objections did not appeal to the Tribunal and their claim was decreed for that part of the arrears which

was not barred by limitation.

3. The jurisdiction of the High Court u/s 115 C. P. C. is limited by its provisions, in other words, the revisional Jurisdiction can be exercised only if it be found that the Tribunal did not have the jurisdiction to entertain the application or it has committed a breach of the provisions of the law or a procedural irregularity. Otherwise this Court shall not be justified in interfering with the order of the Tribunal howsoever, wrong it may be. Naturally this Court cannot admit additional evidence. The case must be decided on the basis of the evidence already adduced and also any admission made by the parties. In the above circumstances, the finding of the Tribunal that Bhim Sen is not a displaced person nor is he a displaced debtor, within the meaning of the Act cannot be questioned in revision.

4. To the most, what can be said is that Ram Lal, and also Smt. Savitri Devi, had a house in Dehra Dun. They also had ancestral property in Lahore (now within West Pakistan). A permanent resident of Lahore could, before the partition of the country, have house property at other places; and even if temporarily resided outside Lahore, he would still continue to be a permanent resident of Lahore. The location of the properties of a person shall not determine his residence. That shall be determined by, one may say, his domicile, i. e. where he is residing on a permanent basis. In the circumstances, the finding of the Tribunal that the creditor was living in Lahore and was within the meaning of the Act a displaced person cannot be said to be improper and, in any case, cannot be challenged in revision.

5. The third point raised is that claim for the arrears of rent and interest does not amount to debt as defined in the Act. "Debt" has been defined in Section 2(6) of the Act. The definition consists of three parts. The first two, namely, Clauses (a) and (b) apply to a debt due from a displaced person, i, e. to a displaced debtor; while Clause (c) to a displaced creditor. The present is a case of displaced creditor and hence Clause (c) shall be applicable. Therefore, "debt" means:

"Any pecuniary liability, whether payable presently or in future, under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, which.

(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."

"Displaced person" has been defined in Section 2(10) of the Act and, consequently, the words "ordinarily residing in the territories to which this Act extends" shall govern the debtor and not the displaced creditor. An application by a displaced creditor for the recovery of debt shall thus be maintainable only if the debtor ordinarily resides in the territories to which the Act extends. Consequently, if the debtor is living outside India, no application u/s 13 shall be maintainable. This is in substance what was held in [Ramchand Tillumal Vs. Khubchand Daswani and Others](#), . It was observed that the first object of the Act was to give relief to the debtors from

amongst the class of displaced persons who were divided in two broad divisions, and the second object was to facilitate the speedy recovery of debts due to such displaced persons. It was also laid down that the provision of the Act under which an application could be made shall depend upon whether the displaced person is a debtor or a creditor. In the first case Clauses (a) and (b) shall apply and in the other, Clause (c).

6. A contrary view appears to have been expressed in [Gokal Singh and Others Vs. Bakshi Ram and Another](#), While interpreting the term "ordinarily residing in the territories to which this Act extends" all the three clauses were read together and it was observed that the term must refer to persons who were displaced and were before the partition ordinarily residents of what is now India. It was at the same time observed that there was no other reason why a different phraseology should have been used in Clause (c). For reasons already indicated above, I find it difficult to agree with this view. The above term gives the description of the debtor who, as provided in Clause (c) of Section 2(6), can be a displaced person or he may not be a displaced person. Consequently, the definition of the "displaced person" and also the conditions laid down in Clauses (a) and (b) cannot govern the debtor. I, therefore, find no reason why Clauses (a) and (b) must be read along with Clause (c) while determining the meaning of the above expression.

7. The learned advocate for the applicant, Bhim Sen, also invited my attention to two other cases to which a reference shall now be made. [Iron and Hardware \(India\) Co. Vs. Firm Shamlal and Bros.](#), simply lays down that Section 2(6) contemplates as existing debt, i. e. an existing obligation, and as there is no existing obligation for damages of breach of a contract, no application u/s 13 of the Act shall be maintainable. The present is not a case of breach of contract, nor of a non-existing obligation or liability. There was the obligation to pay rent, month after month, and the amount of arrears could easily be determined. This Bombay case was followed in Milkha Singh v. N. K. Gopala Krishna, AIR 1956 Punj 174, and hence this case does not require any further comment.

8. The arrears of rent thus comes within the meaning of Section 2(6) and the opposite party being a displaced creditor, the application I u/s 13 was maintainable.

9. The revision has no force and it is hereby dismissed. Costs easy.