

Sukh Lal and Ors.

Vs

State Bank of India and Ors.

Civil Appeals Nos. 582-583 of 1964

(K. N. Wanchoo, J. C. Shah, R. S. Bachawat JJ)

13.09.1966

JUDGMENT

SHAH, J. –

Sukh Lal, Karam Chand, Sohan Lal and Prabh Dayal are four brothers and they with their sons constituted joint Hindu family Sukh Lal has two sons Nand Lal and Hardwari Lal and Karam Chand has a son Shiv Dayal. The family carried on business in groceries at Ganganagar in the former Bikaner State and at Fazilka in the Province of Punjab, in the name and style of "Panju Mal Tilok Chand". A branch of the Business was started in or about 1930 at Harunabad in the former State of Bahawalpur. The name of that business was later changed to Sohan Lal Shiv Dayal. In September 1946 two cash credit accounts were opened by Sukh Lal with the Imperial Bank of India, and certain commodities of Sohan Lal Shiv Dayal were deposited as security with the Bank. On the setting up of the Dominions of India and Pakistan there were riots in Harunabad and a large quantity of the goods pledged with the Bank by Sohan Lal Shiv Dayal was looted. The business was then closed, and the members of the family who were residing at Harunabad migrated on August 19, 1947 to Fazilka. The Bank sold the goods which were saved, and instituted suit No. 198 of 1950 in the Court of the Subordinate Judge, First Class, Fazilka against the members of the joint family for a decree for Rs. 23,418/12/- being the balance due at the foot of the accounts of Sohan Lal Shiv Dayal.

The members of the joint family then applied to the Tribunal set up under the Displaced Persons (Debts Adjustment) Act 70 of 1951 for adjustment of their debts due to the Bank and to other creditors. It was their case that they were displaced debtors and since the branch at Harunabad was closed after the partition of India, the debts due by them were liable to be adjusted under the provisions of the Displaced Persons (Debts Adjustment) Act 70 of 1951. The suit filed by the Bank was transferred to the Tribunal and was consolidated for trial with the petition under s. 5 of Act 70 of 1951. The Tribunal held that all the members of the family were residing and carrying on business and owning property both residential and agricultural at Harunabad and as they left Harunabad March 1, 1947 due to civil disturbances and were at the date of the suit and thereafter residing at Ganganagar, they were displaced debtors. The Tribunal further held that under s. 17(b) of Act 70 of 1951 the Bank was not entitled to recover from the debtors the balance of the debt for which the goods pledged were sold by the Bank. Accordingly the Tribunal allowed the application under s. 5 of Act 70 of 1951 and declared that nothing was due by the applicants to the Bank in respect of the liability under the two accounts. The suit filed by the Bank was also dismissed by the Civil Court. Against the orders passed in the petition under s. 5 of Act 70 of 1951 and the decree in Suit No. 198 of 1950 two appeals were preferred to the High Court of Punjab. The High Court held on a review of the evidence that four members of the family : Nand Lal and Hardwari Lal, sons of

Sukh Lal, Shiv Dayal, son of Karam Chand and Sohan Lal, son of Tilok Chand were displaced debtors since they were actually residing and carrying on business at Harunabad immediately before the partition of India and their liability to the Bank stood extinguished, but the other members of the family, Sukh Lal, Karam Chand and Prabh Dayal who were not residing in Harunabad immediately before the partition, were not displaced debtors. The High Court accordingly modified the decree in the suit and the order passed in the petition under s. 5 of Act 70 of 1951, and declared that three members of the family, Sukh Lal, Karam Chand and Prabh Dayal were liable to satisfy the debt due to the Bank for their proportionate share under s. 22 of the Act, and remanded the proceedings for determination of their "final liability" in accordance with the provisions of the Displaced Persons (Debts Adjustment) Act 70 of 1951.

The relevant provisions of Act 70 of 1951 are briefly these : Section 2(10) defines a 'displaced person' as meaning "any person, who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a banking company." Section 2(9) defines a 'displaced debtor' as meaning "a displaced person from whom a debt is due or is being claimed". The expression 'debt' is defined in cl. (6) of s. 2. The material part of the definition reads :

" '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.....

(c)

Under s. 5 of the Act a person who is a displaced debtor may apply within the time fixed thereby to the Debt Adjustment Tribunal for adjustment of his debts. Section 22 provides for the apportionment of joint debts. It enacts :

"Where a debt is due from a displaced person jointly with another person, the Tribunal shall, for the purposes of this Act apportion the liability between them according to the following rules, namely :

(a) if the liability of each debtor is defined, then according to the defined share of each;

(b) if the debt was taken for any trade or business of the joint debtors, then according to the shares held by each of the joint debtors in the trade or business;

(c).....

(d).....

(e) if the debt was taken by a joint Hindu family, the members of the joint Hindu family shall be deemed to be joint debtors within the meaning of this section and the debt shall be apportioned amongst the members thereof in the same proportion in which shares would be allotted to them on partition :

Provided....."

The test applied by the High Court for determining the status of the applicants was in our judgment, erroneous. The High Court thought that a person may claim the status of a displaced person under the Act if he was actually residing in Pakistan immediately before the partition and has left that place. The learned Judges observed :

"The evidence, which the learned Tribunal has considered, does not really support the suggested conclusion that all the respondents were residing in Pakistan immediately before partition. Learned counsel have taken us through the entire evidence, and it appears that, out of the seven adult members of this family, four, namely, Sohan Lal, Nand Lal, Hardwari Lal and Shiv Dayal, were living in Harunabad immediately before partition and attending to their business in Pakistan, while the other members of the family were not living there. I feel satisfied that, out of the respondents, Sohan Lal, Nand Lal, Hardwari Lal and Shiv Dayal were actually residing in Pakistan before the partition, and equally no doubt that they were displaced from their place of residence in Pakistan, on account of the partition of the country.... The other respondents Sukh Lal, Karam Chand and Prabh Dayal are not proved to have been residing in Pakistan immediately before partition and cannot be called displaced debtors."

Under the Act a person who had a place of residence in the territory which at the date of the Act was in Pakistan and had been displaced from that place of residence on the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances after March 1, 1947 would be a displaced person. The Legislature has conferred the status of a displaced debtor (provided other conditions are fulfilled) upon a person who is displaced from his place of residence in Pakistan, as well as upon a person who has left Pakistan. The expression "place of residence" connotes a place where a person has his dwelling house, which need not necessarily be permanent or exclusive. A person may have more places of residence than one at a given time. A place occupied by a person with the intention of setting up a fixed, though not permanent - abode, would be deemed to be a place of residence. Sojourn for a purely temporary purpose will not constitute residence, and the place of sojourn will not be deemed a place of residence within the meaning of the Act : but where a person possesses establishments at more places than one and spends time more or less considerable in all those places, as exigencies of his occupation, vocation or fancy demand, he would be deemed to have a place of residence at each of those places.

We are unable to agree with the contention of the Bank that for a person to be a displaced debtor

under the Displaced Persons (Debts Adjustment) Act 70 of 1951 he must have before migration to India a place of residence only in the territory which later was included in Pakistan, and had no place of residence in the territory which is now India. The words of the definition in s. 2(10) read with s. 2(6) are sufficiently wide to include the case of a person who had a place of residence in India as well as a place of residence in an area now forming part of Pakistan, provided that such person was displaced from that latter residence because of the setting up of the two Dominions or on account of civil disturbances or fear of such disturbances.

The three appellants claim that they had a place of residence in Pakistan, and they were displaced from that place of residence. A large number of witnesses were examined on behalf of the appellants before the Tribunal and they generally stated that four members of the family, Nand Lal, Sohan Lal, Shiv Dayal and Hardwari Lal used to reside and carry on the business at Harunabad. They also stated that the "applicants" or the "petitioners" meaning thereby all the members of the family - had been displaced from Harunabad. But if the other members of the family had no place of residence in any area now in Pakistan, mere general assertions cannot come to their aid. Jagan Nath deposed that before the creation of Pakistan, some times Sukh Lal used to live at Fazilka and some times at Harunabad. Nathu Ram stated that Sukh Lal used to stay at Harunabad from time to time. Ganesh Dass stated that Sukh Lal was one of the proprietors of the business and used to come off and on to Harunabad. If Sukh Lal was ordinarily residing at Fazilka and for the purpose of attending to the business visited Harunabad and set up his residence in that town, it would be difficult to say that he had no place of residence at Harunabad. It is true that Sohan Lal, the only member of the family examined as a witness, did not say that Sukh Lal had a place of residence at Harunabad. But that by itself is not a ground for rejecting Sukh Lal's claim. Our attention was also invited to the examination of Sukh Lal presumably under O.X. of the Code of Civil Procedure before framing issues in which there is no record of Sukh Lal having claimed that he had a place of residence in Harunabad. But the examination under O.X of the Code of Civil Procedure is by the Court with a view to ascertain the case of a party and to frame appropriate issues, and omission to make any statement on the point under discussion cannot be pressed into service against him.

The Tribunal apparently accepted the testimony of the witnesses who deposed that Sukh Lal had a place of residence at Harunabad. The High Court disagreed with that view, for in their opinion Sukh Lal was not proved to have actually resided immediately before the partition at Harunabad. But the test of actual residence before partition, applied by the High Court was, in our judgment, erroneous. On a consideration of the evidence, we are of the view that Sukh Lal has established his status as a displaced debtor and the High Court was in error in setting aside the order of the Trial Court in so far as it related to Sukh Lal.

About Karam Chand and Prabh Dayal, however, there is no evidence on the record that they had at any time a place of residence at Harunabad. Counsel for the appellants, however, contended that the business of Sohan Lal Shiv Dayal was a joint family business and even though only four members of the family were actually residing and carrying on the business and attending to it at Harunabad, the entire family must be deemed to have a place or residence at Harunabad and by reason of the setting up of the Dominions of India and Pakistan and also on account of the civil disturbances in the area all the members of the family must be deemed to have left or to have been displaced from that place of residence. It is not necessary to decide in this case whether the expression "person" in s. 2(10) includes a Hindu joint family. But in the present case there is no evidence that the place of residence at Harunabad of the four members of the family was the place of residence of the joint family. The contention that the joint family had a place of residence at Harunabad was not set up either in the Trial Court or in the High Court. It was urged for the first time in this Court.

It was contended in the alternative, by counsel for the appellants, that what is material in deciding whether a person is a displaced person, especially when he was carrying on business, is the location of the business and if on account of the setting up of the two Dominions, or on account of disturbances - actual or apprehended - the business had to be closed, the person carrying on the business must be deemed to be a displaced person. As a corollary to that submission it was urged that the joint family of the appellants and other members was carrying on the business at Harunabad and since that business had to be closed on account of civil disturbances, the members of the family owning that business must be deemed to be displaced persons. But this is the argument that the joint family was displaced from its place of residence in another garb. The displacement contemplated by the Act is the displacement of the person and not of the business. If the owner of the business whether he was carrying on business in the territory now in Pakistan or not at the relevant time had left or had been displaced on account of the circumstances mentioned in cl. (10) of s. 2, he would acquire the status of a displaced person. The status of an individual as a displaced person arises on account of leaving or being displaced and not on account of closure of the business that he may be carrying on.

In our view, therefore, the appeal on Sukh Lal must be allowed and the appeal filed by Karam Chand and Prabh Dayal must be dismissed. The order passed by the High Court will stand modified and the Court of First Instance will determine the final liability of Karam Chand and Prabh Dayal for the debt due to the Bank in accordance with the provisions of s. 22 of the Displaced Persons (Debt Adjustment) Act 70 of 1951.

There is little doubt that on account of the circumstances, over which the appellants had no control, property of considerable value belonging to them had been destroyed. In the circumstances there will be no order as to costs in this Court and in the High Court till this date.

Y.P.

Appeal No. 582/64 allowed.

Appeal No. 583/64 dismissed.

</html