

Sardar Balwant Singh

Vs

Shri Bishan Sahai Om Prakash and Others

Civil Appeal No. 1200 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

21.01.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Allahabad High Court.
2. The appellant is a displaced person who was formerly doing business at Lyallpur, now in Pakistan, as a Banker, Commission Agent and clearing agent under the name and style of M/s. Narain Singh Sunder Singh. Respondents 2 and 3 are residents of Amritsar. According to the appellant they carried on their business there under the name and style of Messrs. Bishan Sahai Om Prakash who is respondent No. 1. The appellant had business dealings with this firm previous to the partition of the country. The claim of the appellant was that as a result of those dealings there was an outstanding balance of Rs. 39,414/6/6 payable by the respondents to the appellant together with interest at 6% per annum.
3. On October 11, 1952 the appellant, who resides at Mathura, filed an application in the court of Civil Judge, Mathura, under Section 13 of the Displaced Persons (Debts Adjustment) Act, 1951 hereinafter called the 'Act' for recovery of the aforesaid amount. By a written statement filed on behalf of himself and respondent No. 1, respondent No. 2 inter alia, took up the plea that he was the sole proprietor of respondent No. 1 and he alone was doing business with the appellant. Respondent No. 3 had nothing to do with the firm. He made a counter-claim for a sum of Rs. 47,568/10/3 against the appellant. It was asserted by him that he himself was a displaced person under the provisions of the Act and therefore the court had no jurisdiction to entertain the application under Section 13. Respondent No. 3 pleaded in his written statement that he was a resident of Bombay and was doing business there and that he had nothing to do with respondent No. 1 which was the business name of respondent No. 2.
4. The trial Court framed two preliminary issues. These were whether respondent No. 2 was displaced person and if so, was application filed by the appellant maintainable under Section 13 of the Act. The second was whether the Court at Mathura had territorial jurisdiction to try the petition. On February 4, 1954 the Civil Judge, Mathura held (a) that the appellant was a displaced creditor; (b) that respondents Nos. 1 and 3 were not displaced persons; (c) that respondent No. 3 was a partner of respondent No. 2; (d) that respondent No. 2 though residing at Amritsar and doing business there was a displaced person within the meaning of the Act; (e) that the application under Section 13 was not maintainable against respondent No. 2; (f) since respondent No. 2 was a displaced person and none of the respondents lived or carried on business at Mathura so the Court had no territorial jurisdiction to try the application and (g) as the application itself was not

maintainable it could not be returned for presentation to the proper court.

5. The appellant filed an appeal to the Allahabad High Court. The High Court dismissed the appeal holding inter alia, that respondent No. 2 was a displaced person; that the provisions of the Act did not permit the appellant to combine a claim against a displaced person with a claim against a non-displaced person in an application under Section 13 and that the application was not maintainable and there was no question of its return for presentation to proper court.

6. Learned Counsel for the appellant sought to raise two points before us. The first was whether the Court at Mathura had jurisdiction to entertain the application so far as respondent No. 3 was concerned even though the finding of the Courts below that respondent No. 2 was displaced person be accepted as final. The second was, at any rate, the petition under Section 13 of the Act should not have been dismissed but should have been returned for presentation to a proper court. Section 13 of the Act reads :

"At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one, any of such respondents, actually and voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

During the course of arguments it was stated that the appellant was willing to have the name of respondents Nos. 1 and 2 struck off and confine his claim only against respondent No. 3. After that is done there can be no doubt that the application would be maintainable under Section 13 of the Act. The appellant, who is a displaced creditor resides at Mathura and once that requirement is satisfied the application could be instituted there so far as respondent No. 3 was concerned. In view of the prayer on behalf of the appellant that he be allowed to amend the petition by striking off respondent Nos. 1 and 2 from the array of respondents we do not consider it necessary to decide any other point. We allow that prayer and permit the appellant to make amendments as above. We would like to make it clear that we are expressing no opinion as to the effect of the giving up of the aforesaid two respondents on the claim of the appellant so far as its merits are concerned. In other words it will be open to respondent No. 3 to take up such defence as may be open to him under law.

7. The appeal is accordingly allowed and the order of the High Court is set aside. The case shall now go back of the Court of the first instance for disposal in accordance with law. Respondent No. 2 alone shall be entitled to costs in this Court and in the High Court.

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