

M/S. Lakhi Ram Ram Dass

Vs

Har Prasad Syal and Others

Civil Appeals Nos. 686, 687 and 725 To 729 of 1966

(J. M. Shelat, V. Bhargava JJ)

07.05.1971

JUDGMENT

SHELAT, J. -

1. These seven appeals by special leave arise out of the judgments and orders passed by the High Court of Punjab in Letters Patent Appeals 58-D of 1960 and 52-D of 1960, decided on March 10, 1965. Civil Appeal No. 686 of 1966 is against the judgment by which the application of the appellants (decree-holders) to withdraw and appropriate an amount of Rs. 29,000/- deposited in the executing court in Delhi by Jasbir Singh, Respondent 3 herein towards the decretal amount due to them under a consent decree, dated January 30, 1951, was disallowed. The rest of the appeals are consequential upon that order inasmuch as they are against the order by which ratable distribution of the said sum of Rs. 29,000/- amongst the respondents, who are the other judgment-creditors of the said Jasbir Singh, was directed.

2. All the seven appeals were listed for being heard ex parte on the ground of Respondents 1 to 3 not having filed their appearance and their statements of case within time. On going through the relevant papers, we, however, found that Respondent 3 had filed his appearance in person in time. As regards his statement of case, we found that service on him of the appellant's statement of case was not satisfactorily proved. It is not, therefore, possible to say that he delayed in filing his statement of case. In these circumstances, we permitted him to appear through his counsel. As regards Respondents 1 and 2, we did not find any reason to interfere with the order listing the appeals to be heard ex parte against them.

3. The appeals arise from the following facts :

On January 30, 1951, the 2nd Joint Civil Judge, Ahmedabad passed a decree of Rs. 80,000/- in favour of the appellants against M/s. J. S. Boota Singh and Co., Smt. Jasbir Kaur, the sole proprietor of that firm (Respondents 1 and 2 herein) and Jasbir Singh, her husband (Respondent 3 herein) in his capacity as a guarantor. The decree provided that Rs. 40,000/- out of the said decretal amount of Rs. 80,000/- would be paid by all the three judgment-debtors, who were made jointly and severally liable for that amount, within nine months from the date of the decree and balance of Rs. 40,000/- within three years from the date of the decree but in respect of which Respondents 1 and 2 only were made liable. Respondent 3 was thus liable in respect of the guarantee given by him in the sum of Rs. 40,000/- only along with Respondents 1 and 2.

In January, 1952, the appellants had the said decree transferred from the Ahmedabad Court to the Court of the Sub-Judge, Delhi for execution. On January 15, 1952, the appellants applied for

execution in respect of the said Rs. 40,000/- payable, as aforesaid, by all the three respondents jointly and severally under the said decree. The application for execution thus was in respect of the sum of Rs. 40,000/- for which Respondent 3 was the surety. On March 15, 1952, Jasbir Kaur, Respondent 2 herein, applied to the Tribunal under the Displaced Persons (Debts Adjustment) Act, LXX of 1951 for adjustment and apportionment of the said decretal amount between her and Respondent 3 for which they were jointly and severally liable. In that application, Respondent 3 (who was Respondent 2 therein with the appellants as Respondent), filed a written statement also praying for apportionment and determination of his liability. The parties arrived at a settlement in that application in terms of which the Tribunal passed an order, dated June 29, 1953. That order, after reciting that the application was by a displaced debtor for declaration and adjustment "of a debt due from the applicant and Respondent 2 jointly on the basis of a consent decree passed against them, which, as claimed by the petitioners, is liable to be revised and apportioned under the provisions of Sections 21 and 22 of the said Act" stated as follows :

"The parties have come to mutual understanding as regards to (sic) the debt in dispute and their statements have been recorded accordingly. In accordance with the compromise of the parties it is hereby declared and ordered that Rs. 40,000/- are due from the applicant to Lakhi Ram Ram Das respondent, and that the respondent will be entitled to recover the same a first charge from, and in proportion of the compensation, which the applicant will get on account of the claim preferred by her in respect of her property left in Pakistan."

On a reading of this order, there can be no doubt that the application for declaration and adjustment by Respondent 2 was in respect of Rs. 40,000/- jointly due by her as the principal debtor and Respondent 3 as the guarantor and that it was that debt which the said order adjusted in the manner aforesaid, namely, that the amount recoverable by the appellants would be in proportion to the compensation which Respondent 2 would get under a claim lodged by her in lieu of the property left by her in Pakistan.

4. Before, however, this order was passed the appellants filed an application, dated June 22, 1953, before the executing court in Delhi for realisation of Rs. 29,000/- then due from Respondent 3 out of the said joint decretal debt of Rs. 40,000/-, the appellants having by then already realised a sum of Rs. 11,000/- from him. At the instance of the appellants the executing court passes an order, dated June 23, 1953, attaching certain plots of land belonging to Respondent 3. On August 5, 1953, an objection under Order XXI, Rule 58 of the Code of Civil Procedure was lodged by Delhi Land and Finance Co. Ltd. against the said order of attachment in claiming certain interest in the said plots and praying for raising the attachment. It would appear that there was an arrangement earlier made between Respondent 3 and the said company whereunder the company was to develop the said lands and divide them into building plots with a view to sell them and for that purpose Respondent 3 had placed the company in possession of those lands. On October 3, 1953, a settlement was reached between the appellants, Respondent 3 and the said company under which the parties agreed that the plots already sold by the company were to be released from attachment, and the company would be at liberty to sell the rest of the plots and either pay to the appellants or deposit in court an amount out of the sale proceeds thereof equivalent to the share of Respondent 3 therein. On the said settlement having been arrived at, the executing court ordered that the execution proceedings taken out by the appellants should be struck off as infructuous. In pursuance of the said settlement the company deposited in court Rs. 5000/- and Rs. 24,000/- on January 18, and February 25, 1954, respectively.

5. Despite the said order of the said Tribunal, dated June 29, 1953, and the settlement arrived at on October 3, 1953, the appellants filed, on March 11, 1954, an application for execution in the very court at Ahmedabad which had passed the said decree against all the three judgment-debtors alleging the Respondents 2 and 3 had applied under the Displaced Persons (Debts Adjustment) Act, 1951, for certain reliefs but that application had been dismissed. That allegation was clearly untrue and was so found by that court. The allegation by the appellants that Respondent 2 had failed to disclose a tent manufacturing business carried on by her in the schedule to her application before the said Tribunal under the said Act was also found to be incorrect. The Court at Ahmedabad ultimately dismissed the execution application by its order, dated May 3, 1954, on the ground that in view of the consent order passed by the said Tribunal on June 29, 1953, under the said Act the appellant's execution application before it was not maintainable by reason of Section 15(c) of Act LXX of 1951. This view was upheld by the High Court of Bombay by dismissing the appellant's appeal against that order. Respondent 3 thereafter filed two applications before the Sub-Judge, Delhi, one dated June 4, 1954 and the other dated March 28, 1955, for permission to withdraw the said sum of Rs. 29,000/- deposited in that court by the Delhi Land and Finance Co. Ltd. on his behalf. The first application was on the ground that the order passed by the Tribunal on June 29, 1953, under Act, LXX of 1951 had adjusted the decretal debt and such adjusted debt was made payable from out of the compensation payable to Respondent 2, that therefore, there was no decree which remained to be satisfied, and consequently he was released from any liability under that decree as the guarantor. The second application was based on the ground of dismissal by the Ahmedabad court of the execution application filed by the appellants. The appellants contended (1) that the order of the Tribunal, dated June 29, 1953, did not affect the liability of Respondent 3 to pay Rs. 40,000/- as the guarantor, and (2) that by reason of the settlement between them and Respondent 3 under which the said sum of Rs. 29,000/- was deposited in court, Respondent 3 was estopped from making an application denying their right to that amount.

6. The Trial Judge heard both the applications together and disposed them of by a common judgment by which he allowed the applications holding that the appellants were not and Respondent 3 was entitled to the said sum of Rs. 29,000/-. On the question as to the proper interpretation of the Tribunal's order, dated June 29, 1953, the Trial Judge read that order together with the statement of counsel for the parties made at the time of the passing of that order and found that the decree fell into two parts, one, which provided for payment of Rs. 40,000/- by all the three judgment-debtors, and the other, for payment of another, sum of Rs. 40,000/- by Respondents 1 and 2 only, that reading that order together with the statement them made by counsel, it was clear that the Tribunal kept the liability in respect of the first sum of Rs. 40,000/- intact and merely revised the decree in respect of the other amount of Rs. 40,000/- for which the liability was of Respondents 1 and 2 only, that therefore, the contention of Respondent 3 that the application before the Tribunal was for adjustment and appointment of the entire decree for Rs. 80,000/- and that that debt was scaled down to Rs. 40,000/- and was made payable out of compensation due to Respondent 2 was unacceptable, and therefore, the liability of Respondent 3 under the original decree to pay Rs. 40,000/- remained untouched. But the Trial Court next held that the question of interpretation of the Tribunal's order was not material as according to it the result of the proceedings before the Tribunal and its order, dated June 29, 1953, was that the original decree merged in that order and stood adjusted in accordance with the provisions of Act, LXX of 1951. Therefore, the respondents remained no longer liable to satisfy the original decree and the remedy of the appellants lay under Section 28 of that Act to execute the decree passed by the Tribunal against not only Respondents 1 and 2, but also Respondent 3. The Trial Court further held that the order, dated October 3, 1953, under which Rs. 29,000/- were deposited was without jurisdiction, and therefore, no question of res judicata or

estopped making that order binding on Respondent 3 could arise. Lastly, it held that the parent court at Ahmedabad having held that no execution proceedings could be taken against Respondents 1 and 2 in view of the proceedings under Act, LXX of 1951, having been taken and the decree being subject to that Act, no execution proceedings could also lie against Respondent 3 as his liability under the original decree being that of a surety became discharged once it was held that no execution proceeding lay against the principal debtors.

7. The appellant then filed an appeal against this judgment and order in the High Court. A learned Single Judge of the High Court, who heard that appeal, observed that prima facie the order of the Tribunal, dated June 29, 1953, dealt with that part of the decree which provided that Rs. 40,000/-, out of Rs. 80,000/- were payable jointly and severally by the three respondents, Respondent 3 being liable therefor as the guarantor. The order of the Tribunal thus did not affect the rest of the decree, namely the decree for the rest of the amount of Rs. 40,000/- for which Respondents 1 and 2 only were liable. He did not, however, pronounce a final opinion on that question as he thought that the appeal filed by the appellants was not sustainable on other grounds. The learned Single Judge next observed that according to the decision of the Ahmedabad court the appellants could not maintain any execution proceedings against Respondents 1 and 2 in view of the proceedings earlier taken under Act, LXX of 1951. The order of the Ahmedabad Court became final after an appeal against it by the appellants had been dismissed by the High Court and no further appeal had been filed. The learned Single Judge held that if no execution proceedings could be filed against Respondents 1 and 2, no such proceedings could also be filed under the decree against Respondent 3 as his liability as the surety was co-extensive with that of the principal debtors. He also rejected the contention that the consent order, dated October 3, 1953, was passed against Respondent 3 in his personal capacity and not as the surety, or that therefore, that order was valid and binding on him, and he therefore, could not be allowed to withdraw Rs. 29,000/- deposited thereunder for the benefit of the appellants. The Single Judge held that there was nothing to show in that order that Respondent 3 had held out in those proceedings that he was liable in his personal capacity de hors his capacity as the surety, that those proceedings were execution proceedings which could not be sustained against him in view of the decision of the Ahmedabad Court that the said decree after the Tribunal's said order was not executable against the Respondents 1 and 2. In the result, he dismissed the appeal.

8. A further appeal before the Letters Patent Bench of the High Court met with the same fate, the Letters Patent Bench being substantially in agreement with the learned Single Judge.

9. We may mention at this stage that after the said amount of Rs. 29,000/- was deposited in the executing court at Delhi, certain creditors of Respondent 3 filed applications for its ratable distribution under Section 73 of the Code of Civil Procedure. The executing court rejected their applications, whereupon the said creditors filed appeals wherein the learned Single Judge accepted their contention and allowed them. The Letters Patent Bench also dismissed, as a logical consequence of dismissal by it of the main appeal, appeals filed by the appellants against that order of the Single Judge.

10. Counsel for the appellants contended (1) that the application by Respondent 2 under Act, LXX of 1951, before the Tribunal was in respect of the whole decree for Rs. 80,000/- and was not in respect of Rs. 40,000/- only which was a joint debt due by all the three respondents, (2) that the right of the appellants as decree-holders against Respondent 3 as the surety could not be adjudged by the Tribunal, and therefore, their right to execute the decree against Respondent 3 remained unaffected, (3) that, even assuming that the Tribunal revised the decree and scaled down the debt of Respondent 2 to Rs. 40,000/- since Respondent 3 was the surety for Rs. 40,000/- the appellants

could execute the decree for that amount against him, (4) that in spite of the Ahmedabad court holding that no execution proceedings lay against Respondents 1 and 2, that order did not affect the liability of Respondent 3.

11. As aforesaid, under the decree Respondents 1 and 2 were the principal debtors for Rs. 40,000/- and the liability of Respondent 3 was, as the surety, limited to the extent of that amount. In respect of the rest of the amount of Rs. 40,000/- the liability was that of Respondents 1 and 2 only. Rs. 11,000/- had already been recovered by the appellants from Respondents 3, and therefore, his liability remained only for Rs. 29,000/-. It was, therefore, that amount was deposited in pursuance of the settlement, dated October 3, 1953, in the executing court, Delhi. As reproduced by the Letters Patent Bench, the statement of counsel for Respondent 2 and the appellants before the Tribunal under Act, LXX of 1951, was that :

"Rs. 40,000/- is admitted as correct. A decree in favour of applicant against respondent be passed for that amount. This amount would be paid in proportion in which the applicant would get her compensation in respect of her claim of Rs. 40,000/-. Jasbir Singh Mala is not included in the above amount of Rs. 40,000/-. An order accordingly be passed."

Neither the application made by Respondent 2 before the Tribunal, nor the reply to it by the appellants, if any, nor the proceedings connected with the said application have been produced before us. It is, therefore, not possible to say with any certitude about the nature of these proceedings or the particular provisions of the Act under which the said application was filed and tried. The only clue for that, therefore, can be had from the actual order passed by the Tribunal. That order clearly says that the application was by Respondent 2, a displaced debtor, for "the declaration and adjustment" of debt due from "the applicant and Respondent 2 (i.e., Respondents 2 and 3 herein) jointly on the basis of a consent decree." This statement clearly means that the application was in respect of the amount of Rs. 40,000/- under the said decree for which Respondents 1 and 2, as the principal debtors and Respondent 3, as the surety, were jointly and severally liable. The order then states that the said debt was liable to be "revised and apportioned" under Sections 21 and 22 of the Act. Lastly, it says that in accordance with the compromise between the parties "it is hereby declared and ordered that Rs. 40,000/- are due from the applicant (Respondent 2 herein) to Lakhi Ram Ram Das respondent (the appellants herein) and that respondent will be entitled to recover the sum as first charge from and in proportion of the compensation which the applicant will get on account of the claim preferred by her in respect of her property left in Pakistan."

12. From the statement of counsel before the Tribunal and the Tribunal's said order it would appear (1) that the application was for declaration and adjustment, (2) that the application was in respect of the joint debt of Respondents 2 and 3, which must mean the sum of Rs. 40,000/- under the decree for which Respondents 2 and 3 were jointly and severally liable, and (3) that the debt was declared to be Rs. 40,000/- but was to be paid in proportion to the compensation which Respondent 2 would get on the claim made by her in respect of her property in Pakistan. It is also clear that the relief claimed by Respondent 2 was for revision and apportionment of the said sum of Rs. 40,000/- under Sections 21 and 22 of the Act.

13. That being the position, it would be correct to say that the Tribunal's order related to Rs.

40,000/-, out of the total decretal amount of Rs. 80,000/- in respect of which Respondents 2 and 3 were jointly and severally liable. It would further appear from the statement of counsel before the Tribunal that the liability of Respondent 3, as the surety for that amount, was not dealt with by the Tribunal, and therefore, remained unaffected.

14. Since it would appear that the application was in respect of the debt jointly payable by Respondents 2 and 3, i.e., in respect of Rs. 40,000/- only, we are not concerned in these appeals with the rest of the amount of Rs. 40,000/- for which Respondents 1 and 2 only were liable. The amount of Rs. 29,000/- deposited in the executing court in Delhi on behalf of Respondent 3 was obviously the balance due by Respondent 3 in respect of his liability as the surety for Rs. 40,000/-, the appellants having already realised Rs. 11,000/- from him. From the order of the Tribunal, dated June 29, 1953, it is clear that it was made under Sections 21 and 22 of the Act. That order became final and binding on the appellants as no appeal provided under the Act was ever filed against it by them.

15. Under Section 22 of the Act, it is the duty of the Tribunal, where a debt is due from a displaced debtor jointly with another person, to apportion the liability between them according to the rules therein laid down. Under clause (d) of Section 22, if one joint debtor is a displaced person and another is not, the sum apportioned to the non-displaced person shall not be deemed to be a debt within the meaning of the Act, and therefore, the creditor may in respect of such a debt seek any remedy open to him in a civil court or otherwise. Therefore, the appellants had the right to proceed in execution against Respondents 3 in respect of his liability as the surety for Rs. 40,000/-. But his liability as such surety was co-extensive with the liability of Respondents 1 and 2, the principal debtors, and could not exceed their liability. This principle is incorporated in clause (g) of Section 22, which lays down that where the relationship between joint debtors is that of principal and surety, nothing contained in the Act shall prevent the institution of a suit for the recovery of the debt against the surety, but no decree shall be passed in such a suit for an amount in excess of the amount decreed or which can be decreed against the principal debtor in accordance with the provisions of the Act.

16. The position is thus clear that the appellants could not recover any amount from Respondent 3 in excess of the amount claimable by them from Respondents 1 and 2. No doubt, the Tribunal's order had declared the joint debt to be Rs. 40,000/-, but it also provided that Respondent 2 had to pay that amount in proportion to the compensation which she would receive under her claim in lieu of the property left by her in Pakistan. The amount recoverable from Respondent 3 could not exceed that amount by reason of Section 22(g) as also the principle that the liability of a surety is co-extensive with that of the principal debtor. It has not been the case of the appellants, during any stage of these proceedings that the compensation payable to Respondent 2 has to far been fixed or ascertained. So long as that has not been done, the extent of the liability of Respondent 3 as the surety also cannot be fixed. In any event, since the liability of Respondent 2, as the principal debtor, has been made payable from out of the compensation recoverable by her and in proportion to such compensation, the Tribunal's order has superseded the decree at least as regards of Rs. 40,000/- payable jointly and severally by Respondents 2 and 3 thereunder. That order having provided (1) that the amount recoverable would be in proportion to the compensation, and (2) that it would be recovered from that compensation, the appellant could not claim Rs. 29,000/- deposited in the execution court, nor could that court order it to be paid to the appellants. In any case, so long as the compensation due to Respondent 2 has not been ascertained, the appellant's claim to the said amount of Rs. 29,000/- was premature as the liability of Respondent 3, if any, could not until then be ascertained. Further, the order of the Ahmedabad court, which on its confirmation by the High Court of Bombay, became final throws another difficulty in the way of the appellants, disabling them from claiming the said

sum of Rs. 29,000/-. In our view, the High Court was right in repelling such a claim by the appellants and rejecting their appeal. That being so, the High Court was also right in directing retable distribution of that amount amongst the other creditors of Respondent 3 who are respondents in the rest of the appeals before us.

17. The result is that all the seven appeals are dismissed but in the circumstances of the case we make no order as to costs.

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