PUNJAB AND HARYANA HIGH COURT

S. Milkha Singh

Vs

N.K. Gopala Krishna Mudaliar

(Bhandari, C.J. Kapur, J.)

04.05.1956

JUDGMENT

Kapur, J.

1. The controlling question which is raised in this revision is the determination of the meaning of the word "debt" as given in Section 2(6), Displaced Persons (Debt Adjustment) Act, 1951.

2. Nikka Singh and others petitioners entered into a contract with the opposite party for thepurchase of 300 pieces of shirting at Rs. 21/14/-per piece. The goods were delivered and a bill was drawn on the purchaser for a sum of Rs. 6,598714/-which was paid. When the goods were" actually received bv the purchasers it was, it is alleged, found that they were not of the requisite quality and therefore there was a breach of warranty by the sellers the opposite party.

3. On 17-2-1952 Nikka Singh and others made an application under Section 13. Displaced Persons (Debt Adjustment) Act for the recovery of Rs. 1,200/- on account of damages of breach of warranty. The respondents in that case who are now the opposite party pleaded that the application was not covered by the provisions of the Act, and several other questions were raised. But the real question that arises is the question of jurisdiction and that" depends upon the meaning to be attached to the word "debts". There is no doubt that the applicants were displaced persons and that if the claim can be brought within the meaning of the word "debt" the Tribunal would have jurisdiction to determine the matter. Mr. Bhatnagar acting as a Tribunal has held against the applicants finding that "debt" does not include a claim for damages for breach of contract of sale of goods. The applicants have come up in revision to this Court and the matter was heard by Hon'ble the Chief Justice Bhandari C. J., who referred the matter to a Division Bench.

4. Two questions would arise:

(1) whether an amount of money borrowed for the first time after the partition or a claim to damages which arises out of a breach of contract after the partition is a "debt"; and (2) whether a claim for damages for breach of contract by itself is covered by the definition of the word "debt" as given in Section 2(6) of the Act

5. With regard to the first point there is conflict of authority in this Court itself. I had held that any liability which arises after the partition is not a debt, but my learned brothers Khosla and Harnam Singh JJ. in two single bench cases have taken a contrary view. As the case can be decided on the second question, I do not propose to go into the first question.

6. The second question as to whether a claim for damages for breach of contract falls within the meaning of the word "debt" as given in section 2(6) of the Act falls for determination in this case, The word "debt" is defined in Section 2(6) and the relevant portion of tihat section reads as follows :

> "2(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) * * *

(b) * * *

(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) Provided that in the case of a loan, whether in cash or in bind, the amount, originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability; but does not include any pecuniary liability due under a decree passed after the 15th day of August, 1947, by any Court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement."

7. The petitioners' contention is that the words "pecuniary liability" are wide enough to cover all cases where the claim is to result in a decree for money and particularly relied upon the words "pecuniary liability, whether payable presently or in future, or whether ascertained or to be ascertained". It is true that in all cases for damages for breach of contract or for the recovery of a debt taken in its ordinary connotation or in a personal action for a penalty arising out of the commission of a tort the claims ultimately become claims for money, but are the words "pecuniary liability" used in that wide sense so as to cover damages for breach of contract or damages for the commission of a tort is the question now before us. In jurisprudence, "Civil proceedings, if successful, result in a judgment for damages, or in a judgment for the payment of a debt or (in a penal action) a penalty, or in an injunction or decree of specific restitution or specific performance or in an order of mandamus, prohibition, or ceriorari, or in a writ of habeas corpus, or in other forms of relief known distinctively as civil." Sal-mond on jurisprudence p. 106. There are cases where civil and criminal proceedings may result similarly, i.e., the defendant may be ordered to pay money. There are statutes in England where a common

informer, who is a person who first sues for penalty for the breach of certain statutes, may be able to sue on his own account and thus in all these cases the outcome is a decree for money. Can it be said that all these cases were within the contemplation of the legislation when they gave definition to the word "debt" in the language which they have used in Section 2(3) of the Act?

8. There is a distinction between a remedy for the repayment of an amount borrowed and in regard to publishing of a libel. According to Salmond the remedy of a borrower to repay the amount borrowed is remedial and that of a publisher of a libel to be imprisoned or to pay damages to a person injured by him is penal and thus in jurisprudence there is a distinction between a liability to pay a debt in its ordinary connotation and to be mulcted in damages for causing a civil injury to another person.

9. In Crofter *Hand-Woven Harris Tweed Co. Ltd. v. Veitch*[1], Viscount Simon L.C. drew a distinction between injury and damage. 'Injury' according to stricter diction derived from the civil law is limited to actionable wrong, while 'damage' means loss or harm occurring in fact, whether actionable as an injury or not.

10. In *Swansea Corporation v. Harpur*[2], Fletcher-Moulton L.J. defined' damages' to mean sums paid under the order of the Court for compensation for breach of contract or a wrong.

11. The principles of jurisprudence and the cases mentioned above show that the remedies in regard to loans and in regard to damages are distinct and that damages are sums which the Court orders to be paid as compensation for a breach of contract or wrong. If the definition which is sought to be placed by the petitioner is correct, then all financial liabilities whether they arise in contract or in tort or fines imposed in criminal proceedings would be covered and that in my opinion would be giving a definition which the words of the section do not warrant. The preamble to the Act itself shows that the Act is meant for the recovery of certain debts due to or by displaced persons and for matters connected therewith. Even all debts are not covered by the provisions of the Act. The provisions of Sub-clause (c) of Section 2(6) themselves show that it was not the intention of the Legislature to give a very wide meaning to the words "pecuniary liability". The sub-clause expressly includes any liability which is by way of renewal of a liability which falls within Clauses (a), (b) or (c), but it is significant do note that it does not include any liability which arises out of a decree passed in West Pakistan after 15-8-1947, nor any loan which exceeds the amount which was originally advanced and does not include the amount for which the liability had been renewed if it is more than what was originally advanced.

12. That such a wide meaning cannot be given to the words "pecuniary liability" has been held by a judgment of the Bombay High Court in Iron and *Hardware (India) Co. v. Firm Sham Lal & Bros.*[3], where a claim for damages was held not to be covered by the words "pecuniary liability" under Section 2(6) of the Act. It was observed by Chagla C. J.:
"Now, in order that there should be a debt there must be an existing obligation. The payment may be due immediately or it may be due in future, but the obligation must arise in order that the debt) should be due. It may even be that the actual amount due in respect of the debt may require ascertainment by some mechanical process or by the taking of accounts. But even when the actual amount is to be ascertained the obligation must exist. It is well settled that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The breach of contract does not give rise to any debt

and therefore it has been held that a right to recover damages is not assignable because it is not a chose in action. An actionable claim can be assigned, but in order that there should be an actionable claim there must be a debt in the sense of an existing obligation. But inasmuch as a breach of contract does not result in any existing obligation on the part of the person who commits the breach, the right to recover damages is not an actionable claim and cannot be assigned." and the learned Chief Justice further observed:

> "Before it could be said of a claim that it is a debt, the Court must be satisiied that there is a pecuniary liability upon the person against whom the claim is made and the question is whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract.
> In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party."

I am in respectful agreement with the observations of the learned Chief Justice Chagla C. J. As I view the matter in order that a claim based on damages should become a "debt" and therefore within the definition of Section 2(6) of the Act the Court has to see whether there is a pecuniary liability on the person against whom an application is made. Can it be said that commission of breach of contract is a pecuniary liability? In my opinion, a mere breach contract of warranty cannot be said to be a pecuniary liability, because all that the breach amounts to is a right to come to Court and recover damages, and I have already discussed about' the jurisprudential meaning of the word "damages", it is nothing more than the compensation which the Court determines in the circumstances of each case for the injury or loss which has been sustained by the other party. This does not arise because of any existing obligation by the person who breaks a contract but it arises as a result of the determination by the Court and its fiat, and pecuniary liability therefore does not arise till it has been determined that the complainer is entitled to compensation, and, therefore, what the Court does is nothing more than to determine the value of the damage done to the other party to the contract but until that determination is given, there is no liability upon the defendant. The basis of a suit for damages is that on the date the suit is brought there is no pecuniary liability and it has yet to be established and the plaintiff comes to Court for that particular purpose.

13. Learned Advocate for the petitioners emphasizes the words "to be ascertained". As Chagla C. J. has pointed out, these words cannot make the pecuniary liability to comprise a suit for damages. What it means is that the debt must be due and all that has to be done is the ascertainment of the amount by some process, e.g., taking of accounts. But even in that case there must be a pre-existing liability.

14. A reference was then made by the petitioner to Section 73, Contract Act, which deals with compensation for loss or damage caused by breach of contract, it says :
"73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason

of the breach." It gives a right to the aggrieved party to recover compensation for the breach of contract, but that does not affect the argument used by Chagla C. J., who was of the opinion that no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages and therefore it is the fiat of the Court which gives rise to the evaluation of the loss in terms of money. The stress laid by the learned Chief Justice was on the pre-existence of the liability. The present liability is not pre-existent but it arises as a result of the fiat of the Court. In jurisprudence itself, as I have said above, there is a distinction drawn in regard to a judgment for damages and a Judgment for payment of a debt or a ponalty, and "damages" has been defined to mean sums paid under the orders of the Court for compensation for breach of contract or a wrong: see (1913) 107 LT 6 (B).

15. The concept of pecuniary liability is different from the concept of damages. The former has an element of pre-existence and the latter arises because the Court orders so. In my opinion, Section 73 cannot make any difference to the argument because this section only gives a right to sue for compensation and the determination of that is as a result of the orders of. the Court or, as it has been said by Salmond, the ultimatum of the law. A person who commits a breach is in jurisprudence liable or responsible for it and this arises "because of the bond of necessity that exists, between the wrongdoer and the remedy of the wrong", see page 334, Salmond's jurisprudence; 10th edition.

16. Besides, as I have already pointed out, there is a distinction between the remedy in regard to getting repayment of money borrowed and for getting damages for personal injury. One is remedial and the other is penal. That it is penal even in the case of breach of contract is shown by the words of Section 74, Contract-Act which supports the notion of penalty in the case of suits for compensation of breach of contract. In my opinion, therefore, the suit for damages is not within the jurisdiction of a Tribunal because the word "debt" in Section 2(6) of the Act does not include damages for breach of contract.

17. If such a wide interpretation as is sought to be put by the petitioner is given to the words "pecuniary liability", then all cases in which ultimately a defendant is ordered to make a money payment whether it is based on a debt, as ordinarily understood, or it arises out of a breach of contract or a personal injury or is imposed as a fine in a criminal case it would be included which, in my opinion, is not within the contemplation of the statute.

18. I would, therefore, dismiss this petition and discharge the rule

Bhandari, C.J.

19. I agree.

Cases Referred.

11942 A. C. 435 (442) (A)
2(1913) 107 LT 6 (B)
31954 Bom 423 (AIR V 41) (C)