

PUNJAB AND HARYANA HIGH COURT

Ram Lal Harnam Dass

Vs

Bal Krishen

(B Narain, J.)

23.10.1956

JUDGMENT

B Narain, J.

1. This is a debtors' appeal under the Displaced Persons (Debts Adjustment) Act against the decision of the Tribunal passing a de-cree for Rs. 5,364/7/9 in favour of the displaced creditors. The facts leading to this appeal are as follows.

2. The respondents who are partners of the firm Murli Mal Balmokand filed an application under Section 13, Debts Adjustment Act, against the appellant firm for the recovery of Rs. 14,000. The petitioners were carrying on their business at Peshawar under the name of Murli Mai Balmokand before the partition of the country. The appellant firm is known as firm Ram Lal-Harnam Das carrying on business in Calcutta. The displaced creditors filed an application on 1-12-1949 "for leave to file a suit in forma pauperis to recover Rs. 12,900/- from the Calcutta firm. This application was hotly contested. During the pendency of that application the Displaced Persons (Debts Adjustment) Act came into force on 10-12-1951. The displaced persons then made the present application on 31-3-1952 on the allegation that the Calcutta firm used to purchase goods from the Peshawar firm and there was a running account between them in which Rs. 14,000/- were due to the petitioners. The Calcutta firm contested the claim and raised a preliminary objection inter alia that the displaced firm could not claim the amount as it was not a registered firm and Section 69, Partnership Act, was a bar to the claim. On the merits it was denied that the Calcutta firm has ever any dealings with the Peshawar firm or that there was any, kind of account between the parties or that any amount was due from it in that account. Various issues were framed on the places of the parties but it is not necessary to refer to them in detail. After the petitioners had led the evidence to show that there were dealings between the parties, Raghnnath, proprietor of the Calcutta firm was examined on commission. In the course of his statement he admitted that there were dealings between the parties and that the accounts produced by the petitioners were correct subject to objections to four items. The Tribunal upheld the objections to the item of Rs. 5,183/13/-but reduced the claim to Rs. 5,364/7/9. The Calcutta firm has filed this appeal but the displaced, creditors have not filed any appeal against the decision reducing their claim.

3. Shri Amar Nath Grover has argued on behalf of the appellant in that (1) the petitioners could

not file this petition as the said firm was not a registered firm, and (2) the objections to the other three items should also" have been given effect to.

4. I shall first deal with the objection relating to Section 69, Partnership Act. It is common ground that the Peshawar firm was not a registered firm. The learned counsel for the appellants has argued that this petition under Section 13 could not be filed by the partners of the firm Murli Mal Balmokand as the said firm was not a registered firm and therefore Section 69, Partnership Act, bars such an application. The argument is that the proceedings under the Debts Adjustment Act are in the nature of a suit and Section 69(3) is applicable to them. It is conceded that these proceedings are not a suit and therefore Section 69(2) has no application. Section 69(3) reads-

"The provisions of Sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not effect

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency 'Towns' Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner." The argument is that this sub-section makes the prohibition laid down in Sub-sections (1) and (2) applicable to all kinds of proceedings, in which a right arising under a contract is sought to be enforced through Court. On the other hand, the argument of the learned counsel for the respondents is that the words "other proceeding" occurring in this sub-section relate to and are limited to proceedings in a suit and not to any proceedings which may be in the nature of a suit.

5. Now, Section 69 does not purport of make registration of a partnership compulsory nor does it Prohibit enforcement of any claim by an unregistered firm. In Sub-sections (1) "and (2) a suit for this purpose, however, is not allowed to be instituted. Obviously Sub-sections (1) and (2) to Section 69 bar a suit and the language "no suit to enforce a right arising from a contract shall be instituted in any Court" suggests that the institution of a Plaint was being prohibited as a suit is instituted by filing of a plaint. Sub-section (3) proceeds to extend the prohibition to "a claim of set-off or other proceeding". Now, a claim of set-off can be made only in defence, i.e., only in a written statement. Thus an unregistered firm cannot claim a set-off by virtue of Section 69(3) in a written statement. Thus far the position is clear. The exception mentioned in Section 69(4)(b) also makes the position clear as it mentions only a suit and a claim for set-off and does not mention other proceedings. The difficulty arises by the use of words "or other proceeding" after "set-off". It appears to me that these words which are of very wide import should be limited in this context to any proceedings in the nature, of a claim of set-off, for example, a claim which defeats the suit entirely or a counter claim seeking a decree against the plaintiff, These claims are to be made in a written statement. Therefore, "other proceeding" should be read to mean "other proceedings in the suit"--This is also consonant with the exceptions laid down in Sub-section. (3) which refers to suits. If the Legislature intended to use 'these words "other proceeding" in Section 69(3) in contradistinction to "suit" as contended by Shri Amar Nath Grover, then these words would have been placed next to "suit" in Sub-sections (1) and (2) to Section 69 and not to "set-off" in Section 69(3). Further I fail to see anything common between "set-off" and "other proceeding". "Set-off" relates to a claim while "other proceeding" relates to the proceedings taken to enforce the claim and I do not understand why the Legislative should use these very two

different matters in juxta position. The necessary inference is that the use of these two terms was intended to convey same kind of matter. Moreover, if it is correct that the bar laid down in Section 69, is applicable to all kinds of judicial proceedings, then it is not understood why a specific mention is made in Sub-section (3) of a claim for set-off because this claim would also be Covered by "other proceeding" and there is no reason why the Legislature should have particularly emphasised a claim for set-off. It is well established that when general words follow particular and specific words then the general words are to be ordinarily construed to include only those things of the same class as specifically mentioned. Obviously if in the present case the Legislature intended to use "other proceeding" in a general sense as including all kinds of judicial proceedings, then the "claim of set-off" would not have been mentioned. I am, therefore, of the opinion that the words "or other proceeding" in Section 69(3) relate to the proceedings of the nature of set-off and nothing else. This view is in consonance with the view taken by a Division Bench of the Nagpur High Court in *Jamal Usman Kachl v. Firm Umar Haji Karim Shop*¹, The learned counsel for the appellants relied on *Abdul Jabbar v. Audhesh Singh Ram Agyan Singh*², where it was held that proceedings under the U. P. Encumbered Estates Act are proceedings within Section 69, Partnership Act and a claim by an unregistered firm cannot be enforced in these proceedings. There is no discussion in this Judgment and the provisions of the U. P. Act have not been brought to my notice. It may be that under that Act the proceedings are deemed to be a suit and this may be borne out by the fact that the learned Judges had applied Section 69(1) to the case and not Section 69(3). Reliance was also placed on *Eabulal Dhandhania v. Gautam & Co*³, and *Maghraj Samptlall v. Aaghunath and Son*⁴, by the learned counsel for the respondents but in these cases all that was held was that arbitration without intervention of Court are not proceedings under the Act, These decisions are of no assistance in determining the present matter.

For all these reasons I am of the opinion that the words "other proceedings" in Section 69(3) do not apply to other judicial proceedings in contradistinction to a "suit" and are limited to proceedings taken to claim a set-off and similar claim in a written statement in a suit. Therefore, the contention of the learned counsel for the appellants fails and I hold that Section 69(3) does not relate to other proceedings as distinct from a suit and therefore the present proceedings taken under the Debts Adjustment Act are not barred.

6. In this view of the matter it is not necessary to decide whether the provisions of Section 69 Partnership Act, are applicable to proceedings under the Debts Adjustment Act or not. I would, however, be reluctant to exclude displaced partners of an unregistered firm from the ition of the Debts Adjustment Act when the such part "displaced person" in the Act inc-(SIC) second argument

7. This brings me tone appellants. He has of the learned counsel for the items (1) Rs. 117-13-3, limited his arguments RS.997/5/3, I shall deal (2) Rs. 3,000/- apparately. (After overruling the with each item in respect of these items the Objections proceeded:) judgment

Now all that remains to be considered is (SIC) claim interest made by the creditors. This than item of Rs. 2,144/6/- and the creditor justify this amount on the basis of trade usage. Admittedly

there is no agreement that the Calcutta firm will pay interest on the amounts due from it. Two witnesses other than the claimant's munim support this usage set up by the displaced creditors but they have not produced their books or any other document in support of their assertion, Mohan Lal P.W. 3 was examined on commission but he also does not advance the case of the respondents. It may be that on account of dispersal of all the Hindu businessmen of Peshawar all over India it is not possible to produce them but there must be many firms in Calcutta and other places in India that were dealing in dry fruits with Peshawar firms and no effort has been made to produce any of them.

8. It is, therefore, impossible to accept the ipse dixit of the witnesses produced in this case. Moreover the claimants' accounts disprove the trade usage set up in this case. No interest has been shown to have ever been charged from the Calcutta firm although the accounts produced date from the years 1937 to 1947. In my view this course of dealings as evidenced by the claimants' account-books definitely establishes that no such trade usage exists as set up -by them.

9. The parties dealt with each other for a number of years and the nature of transactions is that the plaintiff firm sold dry fruits and the Calcutta firm purchased them. The claimants' account-books show that all the debit items relate to price of goods supplied to the Calcutta firm and all the credit items consist of monies received from it. Therefore, the balance due is really the price of the goods supplied to the Calcutta firm. That being so, Section 61(2), Sale of Goods Act, applies to the case. The interest claimed and allowed by the Tribunal is at 6 per cent, per annum and I do not consider it to be at all excessive.

10. The way the amount of interest has been calculated by the claimants is not clear from the record. In the absence of any data available under Section 61(2)(a) it will be fair to allow interest on the last debit entry in the account-books produced by the claimants particularly when the appellants have not produced their books and their explanation of their loss is not convincing. The date of the last entry is 13-3-1947. On this date the amount admittedly due comes to Rs. 3,230/1/9. I am of the opinion that the claimants are entitled to interest at 6 per cent, per annum on this amount from 13-3-1947 till the application was made under Section 13, Displaced Persons (Debts Adjustment) Act, - before the Tribunal on 81-3-1952. Thus the appellant firm shall pay interest at 6 per cent, per annum for 13-3-1947 till 31-3-1952.

11. The result is that the appeal is accepted to the extent that the amount of interest awarded by the Tribunal is reduced to the extent indicated above. Inasmuch as the appeal in substance fails and the conduct of the appellant firm was not helpful in the proceedings before the Tribunal, I order the appellants to pay costs or .
this appeal.

Cases Referred.

- 1AIR 1943 Nag 115 (A)
- 2AIR 1954 All 310 (B)
- 3AIR 1950 Cal 391 (C)
- 4AIR 1955 Cal 278 (D)