citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law sues again he should be answered, 'You were defeated formerly.' This is called the plea of former judgment.' [*See* the Mitakshara (Vyavahara). bk.II. ch.i., edited by J. R. Gharpur, p. 14, and the Mayuka, ch.i., s. 1, p. 11 of Mandlik's edition.] And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

The above passage was cited with approval by Mahajan, J. in *Shrimati Raj Lakshmi Dassi and others* v. *Banamli Sen and others* (1).

In view of the decision of the Full Bench in *Mst. Lachhmi* v. *Mst. Bhulli* (2), and of the Supreme Court in *Narhari and others* v. *Shankar and others* (3), I affirm the decision of the lower appellate Court. The result, therefore, is that the appeal of Umrao Singh fails and is dismissed. In the circumstances of the case there will be no order as to the costs of this Court.

CIVIL MISCELLANEOUS

Before Bhandari, C.J. and Khosla, J.

THE ASSOCIATED HOTELS OF *INDIA, LIMITED,* ETC.,—
Petitioners

versus

R. B. JODHA MAL KOTHALIA FOREST LESSEE,—
Respondent

Civil Miscellaneous No. 24-C of 1955.

1957

Jan., 22nd

Code of Civil Procedure (V of 1908)—Order XLV Rule 15—Indian Independence (Legal Proceedings) Order (Governor-General's Order No. 11 of 1947)—Clause 4(3)—

(1) A.I.R. 1953 S.C. 33, 38.
(2) I.L.R. 8 Lah. 384.
(3) (1950) 1 S.C.R. 754.

Whether still in force—Expressions "All proceedings" and "Court of competent jurisdiction" in clause 4(3), interpretation and meaning of—Decree passed by Federal Court of Pakistan—Whether can be executed in the Punjab High Court without a transfer certificate—Procedure for the execution of such a decree indicated—Judgment-debt—Whether property—Situs of.

Held, that the effect of the repeal of the Indian Independence Act by the Constitution of India was not to affect the right which a decree-holder had got under the Indian Independence (Legal Proceedings) Order. Clause 4(3) of the Order is still in force.

Held also, that if "all proceedings" mentioned in Clause 4(3) of the Order were to be interpreted as meaning only those cases in which the jurisdiction of the Courts came to an end, a large residue of cases would be left which were heard and decided in each Dominion and which would be of no avail to the party in whose favour they were decided unless final orders could be enforced in either of the two Dominions. The use of word "all" clearly indicates that all cases pending in all Courts, Civil or Criminal, in two Dominions were intended to be covered by the order.

Held further, that a Court of competent jurisdiction to entertain a suit in Pakistan is the Court of Subordinate Judge. The mere fact that an appeal is taken to the High Court and to Federal Court, does not affect the question which Court is competent to pass the decree. It cannot be held that the Supreme Court of India is the only Court of competent jurisdiction to pass the decree and therefore the application for execution must be made under the provisions of Order 45 Rule 15 Civil Procedure Code. The Court of competent jurisdiction is the Court of Subordinate Judge at the place where the decree is sought to be executed and the proper procedure is not to come to the High Court but to apply for a transfer certificate from the Court in Pakistan and seek execution in the Court of Subordinate Judge in India. The High Court of Punjab cannot take any action on an execution application unless a non-satisfaction certificate is produced from a Court in Pakistan and that Court must be the Court in which decree-holder can legally take out execution.

Held also, that a judgment-debt possesses all the characteristics of property. It is a right owned by the

decree-holder; it is capable of being transferred for consideration, it can be attached in execution of a decree. Both according to law of Pakistan and of India, a judgment-debt is to be treated as property. Situs of a judgment-debt is the situs of a Court which passed the judgment.

Case law discussed.

Petition under Order 45 Rule 15 and Section 151 Civil Procedure Code praying that the decree may be transmitted to the court of the Senior Sub-Judge, Simla, for execution by it in the manner and according to the provisions applicable to the execution of its original decree and that the court may issue directions to the said court that the amount payable to the decree-holder in India shall be estimated according to the rate of exchange for the time being fixed and authorised by the Reserve Bank at the date of making of the order for execution.

M. C. SETALVAD, J. G. SETHI and M. L. SETHI, for Petitioners.

A. V. VISHWA NATH SHASHTRY and D. K. MAHAJAN, for Respondent.

ORDER

Khosla, J.

Khosla, J.—This is an application for the execution of a decree passed by the Federal Court of Pakistan. The application purports to have been made under the provisions of Order XLV rule 15, Civil Procedure Code and the points for our decision are whether this application can be entertained and if the decree passed by the Federal Court of Pakistan is capable of being executed in this country. The decree-holder in this case is R. B. Mohan Singh Oberoi who is one of the Managing Directors of the Associated Hotels of India, Limited. The judgment-debtor is R. B. Jodha Mal Kothalia. Both the decree-holder and the judgment-debtor are citizens of India and the judgment-debtor owns property in India.

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia,

Khosla, J.

The circumstances which have given rise to this case are briefly as follows. The decree-holder entered into an agreement with the judgment-debtor for the purchase of property which is now situated in Pakistan. A sum of rupees five lacs was advanced by the decree-holder to the judgment-debtor in anticipation of the completion of this transaction. For some reason which is not relevant for our purpose the sale could not be completed and the intending purchaser (the decree-holder before us) filed a suit for the recovery of the earnest money which he had paid to the vendor. The suit was instituted in the Court of the Senior Sub-Judge, Lahore, who passed a decree in favour of the plaintiff on the 14th March, 1949. The judgment-debtor Jodha Mal filed an appeal to the Lahore High Court and at the same time applied for the stay of execution proceedings which were started by the decree-holder. The application for stay was considered by Khurshid Zaman, J. and the order passed on the application was that execution would be stayed on condition the judgment-debtor deposited a sum of rupees three lacs in the High Court and furnished security for the balance due upon the decree to the satisfaction of the executing Court. This order was in due course implemented and the judgment-debtor deposited rupees three lacs in the Lahore High Court. He also gave security for the balance. On the 24th November, 1949, the appeal of Jodha Mal was accepted and Mohan Singh Oberoi's suit was dismissed. Immediately thereafter Jodha Mal applied for the refund of rupees three lacs which he had deposited. An order was passed *ex parte* allowing withdrawal of the amount.

After independence, India as well as Pakistan had enacted laws to administer evacuee property and on the day when the order for the withdrawal

of the money was passed in favour of Jodha Mal the Custodian of Evacuee Property was functioning in Pakistan. The High Court ordered that the Custodian be informed of this order. The Custodian immediately took action and applied for the review of the order allowing Jodha Mal to withdraw the money. He contended that the deposit of rupees three lacs was evacuee property. While these proceedings were going on in the High Court an appeal against the High Court order was preferred to the Federal Court of Pakistan and on the 21st December, 1953, the Federal Court allowed the appeal and restored the decree passed by the Senior sub-Judge. The amount of the decree had by now swelled a little and costs incurred in the Federal Court were added to it. Jodha Mal made an application soon afterwards to the Lahore High Court praying that the deposit made by him be applied towards the satisfaction of the decree passed by the Federal Court.

The position at this stage therefore was as follows. Oberoi held a decree against Jodha Mal which he wanted to execute. He applied to the High Court to transfer the deposit of rupees three lacs to India so that it could be applied towards the payment of his decree. Jodha Mal had obtianed an order allowing him to withdraw rupees three lacs deposited by him. He had put in a fresh application praying that the deposit be applied towards the satisfaction of the decree. The Custodian had applied for the review of the order allowing withdrawal and was claiming the money as evacuee property. There were therefore three separate proceedings pending before the High Court of Lahore. These proceedings were all disposed of by means of an order passed by a Division Bench of that Court on the 30th January, 1956. A copy of this order has been placed on the file of the case before us and the net result was that (a) the

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia, ——— Khosla, J.

application for the transfer of deposit to India was dismissed; (b) the application of the Custodian was allowed and the order sanctioning the withdrawal of the money by Jodha Mal was cancelled; (c) the Custodian was asked to report what interest the evacuee had in the deposit of rupees three lacs. The High Court held that the money could not be transferred to India because the deposit was the property of the Associated Hotels of India, in which some non-evacuees were shareholders. This reason is, however, not relevant for the purpose of the enquiry before us. The present application for execution was filed in this Court in the beginning of January, 1955.

The learned Attorney-General who appeared on behalf of the decree-holder placed his reliance upon the provisions of clause 4(3) of the Governor-General's Order No. 11 of 1947 to base his right to apply to this Court for execution of the decree under the provisions of Order XLV rule 15, Civil Procedure Code. His argument may briefly be summarised as follows:—

> Upon the creation of two independent Dominions out of United India in 1947 certain difficulties regarding legal proceedings were anticipated. It was considered desirable to maintain continuity and to make provision for giving effect to the orders of one Dominion in the other despite the fact that by the operation of private international law each Dominion would look upon the other as a foreign country. A sudden break or discontinuity in legal proceedings would cause unnecessary hardship and raise problems regarding limitation etc. So the Governor-General promulgated his Order No. 11. Clause 4(3) of

this Order was in the nature of an exception grafted upon the rules of private international law and its effect was that so far as pending proceedings were concerned both India and Pakistan were to be treated as if they had not been divided into two independent Dominions. Therefore it followed that the decree of the Federal Court of Pakistan which was the culmination of proceedings pending at the time of the partition of the country was to be treated as if it were a decree of a Court of equal denomination in India. The Federal Court of Pakistan must be equated with the Supreme Court of India. Therefore the decree of the Federal Court of Pakistan had to be executed as if it were a decree passed by the Supreme Court of India. That being so, the provisions of Order XLV rule 15, Civil Procedure Code, came into play and the proper procedure for the decree-holder was to come to this Court for directions regarding realization of his decree. The learned Attorney-General sought to support his argument by a number of reported decisions to which I shall presently refer.

The judgment-debtor raised a number of objections and it was contended on his behalf that this Court was not competent to entertain the application. It was averred in the first place that clause 4(3) of G. G. Order 11 of 1947 was narrower in scope than had been envisaged by the learned Attorney-General. Mr. Sastri who appeared on behalf of the judgment-debtor conceded that the object of this provision was to remove difficulties relating to legal proceedings which had arisen by

e Associated Hotels of India, imited, etc. v. R. B. Jodha Ial Kothalia, Khosla, J.

reason of the partition of the country into two independent Dominions but he contended that these difficulties arose only in those cases in which the Court concerned had lost jurisdiction by the partition of the country and not in all cases pending in all Courts throughout the two countries. According to him only those orders were to be given effect to in the other Dominion where the Court passing the order had lost jurisdiction by reason of the partition. Those cases in which jurisdiction had not been lost were not affected in any way and to them the provisions of the ordinary private international law must be applied. This argument may be stated more clearly by taking a concrete example. Supposing at the time of the partition the jurisdiction of a certain Court X extended over an area which after partition lies partly in India and partly in Pakistan. Proceedings originating from any part in the whole of this area would be filed in Court X and at the time of the partition this court would have jurisdiction to deal with all of them. After partition, however, the Court X could not deal with cases originating in that part of its territorial jurisdiction which had fallen to the share of the other Dominion, and if the Court X were situated in Pakistan it would cease to have jurisdiction over the area which was formerly within its territorial jurisdiction but now forms part of India. In such cases alone the provisions of clause 4(3) apply, for otherwise a most difficult position would arise. A case or proceedings which had been filed in Court X (because that was the only Court where they could have been filed before partition) could not be continued because the area from which they arose had gone to India and they could not be filed in India because limitation might have expired, they would thus come to a dead end. So clause 4(3) provided that the proceedings must

continue and the final orders would be effected in the Dominion within whose territory the origin of these proceedings now lay. In the present case the suit was filed in Lahore and the jurisdiction of the Lahore Court had not ceased by reason of the partition of the country. Therefore, the provisions of clause 4(3) could not be invoked in the present instance.

Again it was argued that the decree was the property of an evacuee (R. B. Mohan Singh Oberoi) and had become vested in the Custodian of Evacuee Property, Pakistan, under the provisions of section 6 of the Pakistan (Administration of Evacuee Property) Ordinance, 1949. The decree-holder had thus become divested of all his rights and had no *locus standi* to apply for execution to this Court. It was contended that the law applicable was the law in force at the place where the decree was passed.

In the third place, it was argued that the provisions of Order XLV rule 15, Civil Procedure Code, did not apply to the case because the meaning of the phrase "a Court of competent jurisdiction" as used in clause 4(3) could not be stretched to equate the Federal Court of Pakistan with the Supreme Court of India and the High Court of Lahore with the High Court of Punjab. In any case, Order XLV rule 15 had reference only to those cases which had actually been decided by the Supreme Court of India on appeal from one of the High Courts. An application for execution could have been made to this Court under Order XLV rule 15, Civil Procedure Code, if the order of the Supreme Court had been passed on an appeal filed against an order of this Court. We could not have recourse to analogy in order to entertain the application for execution, nor could this Court give any directions to any of the subordinate

ıe Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia, Khosla, J.

Courts regarding the realization of the decretal amount.

The last argument of Mr. Sastri had reference to the sum of rupees three lacs deposited by the judgment debtor in the Lahore High Court. He contended that this sum had been deposited towards the satisfaction of the decree and therefore he must be given credit for it in the decree account.

The first point which arises for consideration is whether the Governor-General's Order No. 11 of 1947 is still in force after the coming into force of the Constitution whereby the Indian Independence Act was repealed. On this point there is considerable authority and it was held by the Supreme Court in the *State of Tripura* v. *The province of East Bengal* (1), that the Indian Independence (Legal Proceedings) Order is still in force. The first headnote in the report reads as follows:—

> "The Orders promulgated on 14th August, 1947, by the Governor-General of India before the partition in exercise of the powers conferred under section 9 and containing provisions specially designed to remove the difficulties arising in connection with the transition to the new situation created by the partition are binding on both the Dominion of India and the Dominion of Pakistan."

This decision relates to the period before the coming into force of the Constitution, but there are at least three decisions of the Calcutta High Court relating to the post-Constitution period and in each of these cases it was held that the effect of the repeal of the Indian Independence Act, 1947,

(1) A.I.R. 1951 S.C. 23.

was not to affect the right which a decree-holder had got under the Indian Independence (Legal Proceedings) Order. A reference may be made to *Protap Kumar Sen and another* v. *Nagendra Nath Mazumdar* (1), *Ahidhar Ghose* v. *Jagabandhu Roy* (2), and *Naresh Chandra Bose* v. *Sachindra Nath Deb and others.* (3) In the last mentioned case the argument is set out very clearly and I may quote from page 223 of the report—

> "Article 395 repealed the Indian Independence Act, 1947, and the Government of India Act, 1935, and though in the case of the latter Act it is expressly mentioned that it is repealed together with all enactments amending or supplementing it except the Abolition of Privy Council Jurisdiction Act, 1949, in the case of the former, there is no mention of the Indian Independence Act also being repealed along with enactments supplementing it, the different orders issued under its provisions being evidently enactments to supplement the Act.
>
> On the maxim, therefore, *expressio unius, exclusio alterius* one is entitled to infer that if it were the intention of the Legislature to repeal as in the case of the Government of India Act, 1935, enactments supplementing the Indian Independence Act, 1947, there is no reason at all why it should have been silent about enactments supplementing that Act while it took care to mention such enactments in the case of the

(1) A.I.R. 1951 Cal. 511.
(2) A.I.R. 1952 Cal. 846.
(3) A.I.R. 1956 Cal. 222.

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia

Government of India Act, 1935; in other words, it follows from Article 395 itself that though the Indian Independence Act, 1947, was repealed, the Indian Independence (Legal Proceedings) Order, 1947, was not repealed."

Khosla, J.

With great respect I find myself in agreement with these remarks and I must hold that clause 4(3) of G. G. O. 11 is still in force.

I now come to the interpretation of this clause which is in the following terms:—

"4. Notwithstanding the creation of certain new Provinces and the transfer of certain territories from the Province of Assam to the Province of East Bengal by the Indian Independence Act, 1947,—

(1) all proceedings pending immediately before the appointed day in any civil or criminal court (other than a High Court) in the Province of Bengal, the Punjab or Assam shall be continued in that court as if the said Act had not been passed, and that court shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day;

(2) any appeal or application for revision in respect of any proceedings so pending in any such court shall lie in the court which would have appellate, or as the case may be, revisional jurisdiction over that

court if the proceedings were instituted in that court after the appointed day; and

(3) effect shall be given within the territories of either of the two Dominions to any judgment, decree, order or sentence of any such court in the said proceedings, as if it had been passed by a court of competent jurisdiction within that Dominion."

The significant words in this clause are—

(*a*) "all proceedings pending";

(b) "such court";

(c) "effect shall be given";

(d) "said proceedings"; and

(e) "a court of competent jurisdiction".

Mr. Sastri's argument was that despite the use of the adjective "all" which qualifies "proceedings" the intention was merely to provide for those cases in which the Court concerned had ceased to have jurisdiction by reason of deprivation of territory as in the example given by me in the earlier part of this judgment. His contention was that there was no point in making any provision for those cases which the Court was competent to hear and would continue to hear without the enactment of any fresh law. The Order was promulgated merely in order to obviate the stoppage of proceedings in those cases which must come to an abrupt end because the subject-matter of those cases was no longer within the jurisdiction of the Court. On a first impression this seems to be a fairly reasonable interpretation and support is lent

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia

Khosla, J.

to this view by the consideration that in interpreting exceptions to the general rule a too liberal construction must not be put on the exception, but closer examination convinces me that the Order was intended to provide for all cases pending in all Courts Civil or Criminal. In *Ahidhar Ghose* v. *Jagabandhu Roy* (1), Mookerjee, J. while considering clause 4(3) observed as follows:—

> "True, this interpretation would be somewhat inconsistent with principles of international law but it is now well settled that, in the enactments which were found necessary on account of the partition and which were made to provide for adjustment of legal relations or rights and obligations—both private and public—of the people of the two new Dominions and also the new "Dominions *inter se* and *vis-a-vis* the people, certain established principles of international law were abrogated or departed from to the extent necessary to meet the new situation. The circumstances were abnormal and unprecedented and it must not be forgotten that the division of India and the creation of the two new Dominions of India and Pakistan gave rise to new problems which could not be solved under the existing principles of law-private or international. These problems were sought to be solved and the attending difficulties were sought to be resolved by the transitional enactments and, in our view, therefore, the proper construction of these enactments would be to give them as comprehensive a scope as their language permits."

(1) A.I.R. 1952 Cal. 846.

If we interpreted "all proceedings" as meaning only those cases in which jurisdiction of the Courts came to an end we would be left with a large residue of cases heard and decided in each Dominion which would be of no avail to the party in whose favour they were decided unless the final orders could be enforced in either of the two Dominions. In *Naresh Chandra Bose* v. *Sachindra Nath Deb and others* (1), the case related to a decree passed by a Court in Pakistan before independence. The decree was transferred to a Court in India for execution and it was held that execution could go on after independence. The use of the word "all" clearly indicates that all cases pending in all Courts in the two Dominions were intended to be covered by the Order.

The most obvious way of giving effect to a decree of a civil Court is to take out execution in respect of it and therefore it must be held that if effect can be given to a decree of the Federal Court of Pakistan the only way in which this can be done is to allow it to be executed in this country.

The more difficult question for decision, however, is what is the meaning of "a Court of competent jurisdiction". It has been contended on behalf of the decree-holder that the only Court competent to pass the kind of decree which the Federal Court of Pakistan passed is the Supreme Court of India and that therefore the provisions of Order XLV, rule 15, Civil Procedure Code, apply. In *Ahidhar Ghose* v. *Jagabandhu Roy* (2), Mookerjee, J., while considering this point which arose in somewhat different circumstances observed—

> "That paragraph, in other words, only makes the decree in question—though passed by a Court of one Dominion—

(1) A.I.R. 1956 Cal. 222.
(2) A.I.R. 1952 Cal. 846.

he Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia

Khosla, J.

the decree of 'a' competent Court or, to use the language of the said paragraph, the decree of a 'Court of competent jurisdiction', of or in the other Dominion. It does not, however, make it the decree of any particular Court of the 'other Dominion' nor does it make it the decree of any and every Court thereof.'

A Court of competent jurisdiction to entertain the suit instituted by the decree-holder in Pakistan would be the Court of a first class Subordinate Judge. It seems to me that to equate the Federal Court with the Supreme Court and the High Court with the High Court is to do violence to the terms of sub-clause (3). At the time this Order was promulgated the Federal Court of Pakistan was not even in existence. All that this Order sought to do was to make provision for the continuance of legal proceedings and for giving effect to orders passed by Courts in either Dominion. The mere fact that an appeal was taken to the High Court and then to the Federal Court does not affect the question which Court is competent to pass the kind of decree which was passed in this case, and it therefore cannot be held that the Supreme Court of India is the only Court of competent jurisdiction to pass this decree and that therefore the application for execution must be made under the provisions of Order XLV, rule 15, Civil Procedure Code. It seems to me that the Court of competent jurisdiction in this case is merely the Court of a Subordinate Judge first class at the place where the decree is sought to be executed and, therefore, the proper procedure would be not to come to the High Court but to apply for a transfer certificate and after obtaining a no-satisfaction certificate from the Court in Pakistan seek execution in the Court of the Senior Sub-Judge, Simla. There is

no serious objection to an application being made to this Court provided a certificate of no-satisfaction is obtained. This is necessary even when a decree-holder takes out execution in India of a decree passed by a Court in India. I do not see why any exception in this respect should be made merely because the Court happens to be in Pakistan. Clause 4(3) merely provides that a decree of a Court in Pakistan be given effect to in India as if it were a decree of a Court in India. In the case of a decree of a Court in India a no-satisfaction certificate is necessary before execution can be taken out in another Court. Therefore, I would hold that this decree cannot be executed unless a certificate of no-satisfaction is produced by the decree-holder from the Federal Court of Pakistan or any other Court competent to execute the decree in Pakistan. Not a single instance of a case in which the production of no-satisfaction certificate was dispensed with was cited before us. It will be illogical to hold that after the separation of the country into two Dominions a decree-holder is in a better position to execute his decree than he was before the 15th of August, 1947. Before the partition of the country the decree of a Court in Lahore could only have been executed in the Court of the Senior Sub-Judge, Simla, if a certificate of no-satisfaction had been produced and the decree transferred to the latter Court according to the provisions of the Civil Procedure Code. The Indian Independence (Legal Proceedings) Order merely provided that the facilities available to the decree-holder before partition should be available to him after partition. His task was by no means made easier. I am, therefore, of the view that this Court cannot take any action on the execution application unless a no-satisfaction certificate is produced from a Court in Pakistan and that Court must be the Court in which the decree-holder can

e Associated Hotels of India, imited, etc. v. R. B. Jodha Lal Kothalia

Khosla, J.

legally take out execution. There is no doubt that execution could have been taken out in Pakistan were it not for the fact that the judgment-debtor's property in Pakistan is not available to the decree-holder on account of the law relating to evacuee property. The application as filed in the form before us is therefore liable to be dismissed.

Another reason why this application must be dismissed is that the decree-holder has been divested of all his rights in the decree by the law of Pakistan and he has at present no *locus standi* to sue for execution. The argument may briefly be stated as follows. The decree is property with its *situs* in the place where the decree was passed, i.e., Lahore. Therefore, the law which is in force in Lahore must apply. The decree is the property of an evacuee of Pakistan and so by the law of Pakistan the decree has vested in the Custodian of Evacuee Property, Pakistan. This vesting has deprived the decree-holder of all his rights in the property and he therefore cannot take out execution in a Court in this country.

That a decree is property will not admit of any doubt. The legal conception of property is very wide and according to an English Act (Section 2 of the Law of Property and Conveyancing Act, 1881) "Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest". There is no definition of "property" in the Transfer of Property Act of our own country and no exhaustive definition of this term has been given in any of the Acts relating to evacuee property either in India or in Pakistan. But the Pakistan (Administration of Evacuee Property) Ordinance (XV of 1949) defines "property" as property of any kind, and includes

any right or interest in such property and any debt or actionable claim, but does not include a mere right to sue. The corresponding Administration of Evacuee Property Act, 1950, of India contains an even wider definition. According to clause (i) of section 2 of this Act "property" means property of any kind, and includes any right or interest in such property. Salmond in his treatise on Jurisprudence has noted four different conceptions of property as follows:—

(1) All legal rights whatever their description may be;

(2) In a somewhat narrower sense proprietary rights, and in this sense a man's land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation;

(3) Proprietary rights *in rem*, and according to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not;

(4) Corporeal property i.e., the thing or property itself or the right of ownership in a material object.

It is the second conception which contains the ordinarily understood meaning of the term "property" and it is this conception which is relevant for the purposes of our inquiry. There can be no doubt at all that both according to the law of Pakistan and of India a judgment-debt is to be treated as property. Therefore, if the *situs* of this property is in Pakistan it would clearly vest in the Custodian, Evacuee Property, Pakistan according to the provisions of section 6 of the Ordinance mentioned above.

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia

Khosla, J.

A judgment-debt possesses all the characteristics of property as understood by lawyers. It is a right owned by the decree-holder; it is capable of being transferred for consideration; it can be attached in execution of a decree (Order XXI rule 53, Civil Procedure Code). If a debt or an actionable claim is to be considered property within the meaning of the Pakistan Ordinance then *a fortiori* a judgment-debt is clearly property because an action has been brought upon the claim and embodied in an order of the Court.

The next point to consider is where lies the *situs* of this property and therefore what law is applicable to it. The *situs* of a judgment-debt is the place where the decree was passed. Mr. Sethi tried to argue that since this debt is not recoverable in Pakistan and proceedings for its recovery can only be taken against the judgment-debtor in India, therefore the *situs* lies in India and the law of Pakistan cannot be applied to it. There is, however, no force in this argument. When a decree is passed by a Court that Court is the proper authority for giving effect to it or executing it. An application for its execution must be made to that Court. The execution proceedings can be transferred to another Court and pursued in the transferee Court, but in the original instance the application must be made to the Court which passed the decree, and therefore the *situs* of the judgment-debt is the *situs* of the Court which passed the judgment. Dicey in his Conflict of Laws (Sixth Edition) at page 306 observes—

> "Judgment debts are assets, for the purposes of jurisdiction, where the judgment is recorded; this rule, though it sounds technical, is in substantial conformity with the principle regulating the locality of debts, for a judgment

> debt is enforceable by execution, or some similar process, in the country where the judgment is recorded."

This being the position of the matter it is quite clear that the Evacuee Law of Pakistan applies to the judgment debt in this case, and according to this Law the decree being the property of an evacuee vested in the Custodian.

Mr. Sethi next raised the argument that the laws of this country could not be set at naught by the operation of a law in Pakistan. The question, however, is not whether the law of Pakistan modifies the procedure in India but whether the decree-holder who acquired rights in Pakistan and lost them by the Law of Pakistan can come to this Court and claim recognition of those rights. In *The Delhi Cloth and General Mills Co., Ltd.* v. *Harnam Singh and others* (1), the validity of the Pakistan Ordinance was recognised and it was held that as its provisions were not opposed to the public policy of India they could be relied upon by way of defence. The following observation on page 423 of the report may be quoted:—

> "But when all is said and done, we find that in every one of these cases the proper law of the contract was applied, that is to say, the law of the country in which its elements were most densely grouped and with which factually the contract was most closely connected. It is true the judges purport to apply the *lex situs* but in determining the *situs* they apply rules (and modify them where necessary to suit changing modern conditions) which in fact are the very rules which in practice would be used

(1) (1955) 2 S.C.R. 403.

The Associated Hotels of India, Limited, etc. v. R. B. Jodha Mal Kothalia

to determine the proper law of the contract."

I would therefore hold that the decree-holder in this case has no *locus standi* to present an application for execution in India because he is not possessed of any interest in the decree now.

Khosla, J.

The last point argued before us related to the deposit of rupees three lacs in Court. With regard to this it is sufficient to say that the Custodian claims the deposit and although an order for its withdrawal was made in favour of the judgment-debtor the Custodian stepped in and applied for a review of that order. The review application has not so far been decided, and the ownership of this property will depend upon the ultimate decision of that review application. If the order is reviewed and the deposit is held to be evacuee property, neither the judgment-debtor nor the decree-holder will be entitled to withdraw it. If the review application is dismissed the decree-holder will have to go to the High Court of Lahore and make an application in reference to this deposit.

For the reasons stated above, this application must fail and I would dismiss it with costs.

Bhandari C.J.

Bhandari, C.J.—I concur in the order proposed by my learned brother.

CIVIL REFERENCE

Before Bhandari, C. J. and Khosla, J.

THE COMMISSIONER OF INCOME-TAX, DELHI, AJMER. ETC.,—*Applicant*

versus

DELHI STOCK EXCHANGE ASSOCIATION, LTD., DELHI,—*Respondent*

Civil Reference No. 6 of 1953.

1957

Jan., 22nd

Income-tax Act (XI of 1922)—Section 10—Mutual Society exempt from payment of income-tax—What is—Tests to determine stated—Income-tax—What is—Income—Essential ingredients of—Entrance fees received by a