

REVISIONAL CIVIL

*Before Harnam Singh and Kapur, JJ*M/S SULAKHAN SINGH-MOOL CHAND,—*Petitioners.**versus*THE CENTRAL BANK OF INDIA LTD.,—*Respondent.*

Civil Revision Application No. 363 of 1952

1953

April 10th

Displaced Persons (Debts Adjustment) Act, LXX of 1951—Section 17—Whether an addition to the substantive law of the country—Whether relief provided by it available to a displaced debtor in matter pending in an ordinary Civil Court and not before a Tribunal constituted under the Act.—Interpretation of statutes—Meaning of words—Rules stated.

Per Harnam Singh, J.

Held, that section 17 of the Act is an addition to the substantive law of the country and has its application outside the proceedings before the Tribunal under the Act.

Per Kapur J.

Held, that the scheme of the Act shows that whenever the Act intends a particular relief to be given by the Tribunal it says so and where in sections relief has been provided as an addition to the ordinary law of the country, no mention is made of the Tribunal. The relief provided by section 17 of the Act is available to a displaced debtor if the matter in which the relief is sought is pending in the ordinary Civil Court and not before a Tribunal constituted under the Act.

Per Division Bench.

Held, that in interpreting statutes the golden rule is that the words of a statute must *prima facie* be given their ordinary meaning.

JUDGMENT

HARNAM SINGH, J. In order to appreciate the Harnam Singh, point of law that arises in Civil Revision No. 363 of 1952, the facts of the case may be set out in some detail. J.

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On the 21st of January 1950, the Central Bank of India, Limited, Hissar instituted Civil Suit No. 7 of 1950 for the recovery of Rs. 62,176-14-8 from Messrs Sulakhan Singh-Seth Mul Chand.

In the written statement the defendants pleaded, *inter alia*, that the rules given in section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, hereinafter referred to as the Act, should regulate the rights and liabilities of the plaintiff bank and the defendants.

On the 2nd of January 1952, the Court of first instance fixed issues arising under section 17 of the Act.

On the 14th of October 1952, basing himself upon the decision given in *Messrs. Banka Mal-Narinjan Das and another v. The Central Bank of India, Limited* (1), the Senior Subordinate Judge, Hissar, ordered:—

“In view of the decision of the Punjab High Court reported as 54 P.L.R., page 324, on the point of applicability of section 17 of Act 70, the intermediary issues framed on the 2nd of January 1952, have become redundant and are, therefore, struck off.”

Messrs. Sulakhan Singh-Seth Mul Chand apply under section 44 of Punjab Act, IX of 1919, for the revision of the order passed on the 14th of October 1952.

In approaching the matter, I wish to state that in interpreting statutes the golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. In *Nokes v. Doncaster Amalgamated Collieries* (2), Lord Simon, L.C., said:—

“The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. We must not shrink

(1) 54 P.L.R. 324

(2) 1940 A.C. 1014

from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinion of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words, the meaning of which is not entirely plain, there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view the Parliament would legislate only for the purpose of bringing about an effective result."

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In finding that section 17 of the Act is a provision enforceable only by the Tribunal appointed under section 4 of the Act, Weston, C. J., said:—

"It seems to me, therefore, that a *narrow* construction of section 17 is to be preferred and it should be held that it is a provision of law which is applicable to proceedings which are being held by the Tribunal, and that it has no application outside those proceedings."

From the judgment given in *Messrs. Banka Mal Narinjan Das and another v. The Central Bank of India, Limited* (1), it appears that that judgment

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- (1) that section 17 of the Act falls in Chapter II which is headed "Debt Adjustment Proceedings" and lies between two sections, each of them laying down the law to be applied by the Tribunal;
- (2) that section 5 of the Act provides for applications by displaced persons for adjustment of debts within one year after the coming into force of the Act giving particulars mentioned in that section;
- (3) that in a case under section 17 of the Act the fact of the debtor being a displaced person would be open to dispute by the creditor and it would be for the Tribunal to decide that point under section 9 of the Act; and
- (4) that section 21 of the Act confers on the Tribunal the power to revise, on the application of a debtor, a decree which has been passed before the commencement of the Act.

Section 17(1) of the Act, *inter alia*, reads:—

"17. *Debts secured on movable property.*

(1) Where in respect of a debt incurred by a displaced debtor and secured by the pledge of movable property belonging to him, the creditor had been placed in possession of such property at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely:—

- (a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale;

- (b) the creditor shall not be entitled, in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security;
- (c) the debtor shall not be liable, in the case of a sale by the creditor of any pledged property, whether under clause (a) or otherwise, to pay the balance where the proceeds of such sale are less than the amount of the debt due;
- (d) the creditor shall, in any case where the proceeds of the sale of the pledged property are greater than the amount of the debt due, pay over the surplus to the debtor."

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In the opening part of section 17(1) of the Act, it is stated that the rules given in clauses (a), (b), (c) and (d) of that section should regulate the rights and liabilities of the creditor and the debtor. Clearly, the provisions contained in section 17(1) of the Act are part of the substantive law of the country.

Clause (a) of section 17(1) of the Act gives power to the creditor, if he is still in possession of the pledged property, to realise the sum due to him by sale of such property after giving to the debtor reasonable notice of the sale. In exercising that power the creditor acts without the intervention of the Tribunal.

Clause (d) of section 17(1) of the Act provides that the creditor shall, in any case where the proceeds of the sale of the pledged property are greater than the amount of the debt due, pay over the surplus to the debtor. In regulating the rights and liabilities of the creditor and the debtor under clause (d) of section 17(1) of the Act the Tribunal does not intervene.

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Clauses (b) and (c) of section 17 of the Act do not define the procedure for the enforcement of rights and liabilities.

By notification in the Official Gazette the Central Government directed that the Act shall come into force in Punjab (India), on the 10th of December 1951.

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From the provisions of section 17(1) of the Act it is plain that the creditor may sell the movable property pledged with him within one year or after the expiry of one year of the commencement of the Act. In case the creditor sells the movable property pledged with him on a date subsequent to the 10th of December 1952, no application for the recovery of the surplus of the proceeds of the sale of the pledged property can be made under the Act.

Sections 5 to 9 of the Act deal with the application by a displaced debtor for adjustment of debts. That being so, no application for the recovery of the surplus of the proceeds of the sale of the pledged property is competent under section 5 of the Act.

Sections 10 to 12 of the Act deal with claims by displaced creditors against displaced debtors. In a case falling within section 17 of the Act the creditor may not be a displaced person. In that case sections 10, 11 and 12 of the Act do not provide any relief to the debtor.

Sections 13 to 15 of the Act deal with claims by displaced creditors against persons who are not displaced debtors. For an application under section 13 of the Act the period of limitation is one year after the date on which the Act comes into force. In case the creditor does not exercise the power conferred on him under section 17(1)(a) of the Act within one year after the date on which the Act comes into force no application for the recovery of the surplus within section 17(1)(d) of the Act can be made within the time allowed by section 13 of the Act. Indeed, no provision is to be

found in the Act for the enforcement of the claim for the recovery of the surplus of the sale-proceeds within clause (d) of section 17(1) of the Act. In my judgment, the interpretation placed on section 17 of the Act in *Messrs. Banka Mal-Narinjan Das and another v. The Central Bank of India, Limited* (1), to use the words of Lord Simon, cited above, "would fail to achieve the manifest purpose of the Act and reduce the Act to futility."

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In an earlier portion of this judgment I have stated the points which weighed with the Court in deciding *Messrs. Banka Mal-Narinjan Das and another v. The Central Bank of India, Limited* (1). In differing from that decision I deem it proper to examine the points on which that judgment is based.

From a perusal of sections 19(1) and 20 of the Act it is plain that there is no scope for the application of those provisions of the Act to proceedings before the Tribunal. If so, the position of section 17 in Chapter II of the Act does not show that section 17 of the Act has no application to proceedings outside the Tribunal.

In *the Commissioner of Income-tax, Bombay v. Ahmedbhai Umarbhai and Company, Bombay* (2), Patanjali Sastri, J., said:—

"Nor can the title of a Chapter be legitimately used to restrict the plain terms of an enactment."

From a perusal of section 17 of the Act it is plain that that section does not contemplate any application to the Tribunal. The particulars mentioned in subsection (2) of section 5 of the Act are to be given by displaced debtor in an application for the adjustment of debts. In proceedings for the recovery of the surplus of the sale-proceeds of the pledged property no question of the adjustment of debts does arise.

(1) 54 P.L.R. 324

(1) A.I.R. 1950 S.C. 134

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In the judgment given in *Messrs. Banka Mal-Narinjan Das and another v. The Central Bank of India, Limited* (1), it is not stated how a conflict between a decree of the Tribunal and a decree of a civil court can arise if the words of section 17 of the Act are given their ordinary meaning. From the provisions of section 21 of the Act it is plain that the Tribunal has no power to revise a decree passed by a civil court after the commencement of the Act.

For the foregoing reasons, I find that section 17 of the Act is an addition to the substantive law of the country and has application outside the proceedings before the Tribunal under the Act.

In the result, I allow Civil Revision No. 363 of 1952, and set aside the order passed by the Court of first instance on the 14th of October 1952, whereby intermediary issues fixed on the 2nd of January 1952, were ordered to be struck off.

Having regard to the fact that the order sought to be revised proceeded upon a judgment of this Court, I would leave the parties to bear their own costs in these proceedings.

Kapur, J.

KAPUR, J. I agree and would like to add my reasons.

This is a rule obtained by the defendants against an order passed by the Senior Subordinate Judge, Hissar, dated the 14th of October 1952,

striking off certain issues dealing with the applicability of section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, hereinafter referred to as the Act.

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The Central Bank of India on the 21st of January 1950, brought a suit against the defendants, Messrs. Sulakhan Singh-Mool Chand and others for recovery of Rs. 62,176-14-8. Some issues were raised as to the applicability of section 17 of the Act, but on the 14th of October 1952, the learned Senior Subordinate Judge struck off those issues on the ground that they had become redundant because of a judgment of this Court in *Messrs. Banka Mal-Naranjan Das v. The Central Bank of India, Ltd.* (1), where it was held that this section was not an addition to the substantive law of the country but was a provision which was enforceable only by the Tribunal appointed under the Act for debt adjustment proceedings under Chapter II of the Act. The question for determination is whether the provisions of section 17 of the Act are available to the defendants in this case or this section is applicable only when either a debtor or a creditor approaches a Tribunal constituted under this Act for the determination of their rights and liabilities.

In order to determine this question I would first refer to the scheme of the Act. Section 3 gives an overriding effect to the Act and rules and orders made under the Act. Section 2(12) defines "Tribunal" to mean any civil Court specified under section 4 as having authority to exercise jurisdiction under this Act. Section 4 empowers any State Government to specify any civil Court or class of civil Courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act.

Then starts Chapter II which is headed "Debt Adjustment Proceedings". Section 5 deals with application to be made to the Tribunal within one year by the debtor and gives the form and the

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requisites of the application and what it should contain. Sections 6, 7, 8 and 9 are sections which deal with the procedure to be followed in the issuing of notices, objection by respondents and proceedings after service of notice on respondents. Section 10 is a corresponding section which provides for applications by creditors, section 11 with the procedure after such applications.

Under section 12 objections can be raised by creditors of a displaced debtor as to the schedule of assets.

Section 13 deals with claims by displaced persons against persons who are not displaced debtors and section 14 provides the procedure to be followed in such applications.

Consequences ensuing on applications are dealt with in section 15 and section 16 provides for election to be made by a creditor when debt is secured on immovable property. Then comes section 17 which deals with debts secured on movable property. It is not necessary to quote it in full as it has already been done in the judgment of Harnam Singh, J.

In section 18 provision is made for claims against insurance companies.

It may here be noticed that in all these sections, except section 17, the Tribunal is specifically mentioned, either the application is to be made to the Tribunal or the Tribunal has to do something specific in the matter of relief.

Section 16(1) of the Act provides—

“16(1) Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceedings under this Act, require the creditor to elect to retain the security or to be treated as an unsecured creditor.”

Under section 18 also which deals with claims against insurance companies, where loss has been incurred in respect of any property, the Tribunal has to determine the amount of the loss, etc., [see section 18(2)]. Again under subsection (5) of section 18 the Tribunal has to give the direction and a period of one year has been prescribed for bringing these applications.

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To the Tribunal has been given the power to revise certain decrees and settlements under section 21 and to apportion joint debts under section 22 of the Act.

Sections 23 to 28 deal with certain powers to be exercised by the Tribunal.

Section 19 deals with calls on shares and provides against forfeiture of shares for non-payment of calls and under subsection (4) of this section if a company or a co-operative society refused to comply with the request of a displaced person as provided for in this section, then such displaced person can apply to the Tribunal for relief.

Section 20 dealt with companies and co-operative societies in liquidation and prohibits any call being made on a displaced person in regard to any share held by him in the company on the 15th of August 1947, and provides for the period for which this section shall be applicable. It may here be noted that calls of a company in the course of winding-up are made by the liquidator of a company and enforced by the High Court under the Companies Act and in the case of co-operative societies by the liquidator under the provisions of the Co-operative Societies Act. No power is given to any Tribunal to deal with any rights or reliefs given to a displaced person under this section

Under section 22(g) of the Act there is no prohibition against a decree being passed by a Court in a suit brought by a principal against a surety but the provisions of this Act have to be kept in view and the decree cannot be for an amount in excess of that amount which can be decreed in accordance with the provisions of this Act.

M/s. Sulakhan Chapter III deals with reliefs to be given.
 Singh-Mool Under section 29 interest ceases to accrue but
 Chand the wording of this section does not make it clear
 v. as to what power is given to the Tribunal. Section
 The Central 30 provides an exemption to a displaced person
 Bank of India, from arrest and there is nothing in this section or
 Limited in the next section, which deals with further reliefs
 in the matter of exemption from attachment of
 Kapur, J. property that the Tribunal alone can give these
 two reliefs.

Section 32 provides for scaling down of debts which the Tribunal alone have been given the power to determine. Section 33 prescribes the matters to be taken into account in directing payment by instalments.

Section 34 deals with variation of maintenance allowance.

The other sections in this Chapter are not necessary for the purposes of this argument.

The scheme of the Act shows, therefore, that wherever this Act intends a particular relief to be given by the Tribunal it says so and where in sections relief has been provided as an addition to the ordinary law of the country, no mention is made of the Tribunal. In regard to debts secured on immovable and movable property as given in sections 16 and 17 the Tribunal is mentioned in section 16 and not in section 17 where debts have been secured on movable property. We cannot ignore the difference of language used in these two sections when section 17 is to be interpreted.

There is nothing in the plain words of section 17 which reserves exclusively to the Tribunal the power to give relief under this section. Jervis, C. J., in *Mattison v. Hart* (1), said:—

“We ought to give the words their plain, fair, literal and natural meaning where we do not see from its scope that such meaning would be inconsistent, or would lead to manifold injustice.”

This rule was stated by Lord Cranworth, L. C., as M/s. Sulakhan Singh-Mool Chand v. The Central Bank of India, Ltd. 'a Cardinal Rule, from which, "if we depart, we should launch into a sea of difficulties not easy to fathom" [*Gundry v. Pinnigar* (1)]. The law is summed up at pages 5 and 6 of Maxwell on Interpretation of Statutes and in *Nokes v. Doncaster Amalgamated Collieries* (2). Viscount Simon, L. C., observed:—

"The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning."

In accordance with the principles laid down by these authorities and taking the plain words of section 17 I am of the opinion that there is nothing to show that the relief provided by this section is not available to a displaced debtor if the matter in which the relief is sought is pending in an ordinary civil Court and not before a Tribunal constituted under the Act.

In *Messrs. Banka Mal-Naranjan Das v. The Central Bank of India, Ltd.* (3), Eric Weston, C. J., gave in my opinion a narrow interpretation of section 17 by confining it to proceedings before a Tribunal on the grounds—

- (1) that section is in Chapter II dealing with adjustment;
- (2) it is located between sections 16 and 18 both of which mention the Tribunal;
- (3) that if there is any dispute between the parties as to whether the debtor is or is not a displaced person, it is for the Tribunal to decide this; and
- (4) that certain formalities are necessary under section 5 and under section 21 the Tribunal has been given the power to revise on the application of a debtor a decree passed before the commencement of the Act.

(1) 21 L.J. Ch. 405

(2) (1940) A.C. 1014—1022

(3) 54 P.L.R. 324

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I do not think that the fact that section 17 appears in the Chapter headed "Debt Adjustment Proceedings" would be an index to the meaning of the words used in section 17 if the words are themselves quite clear. As has been said in *Maxwell on Interpretation of Statutes*, page 54, "the headings prefixed to sections or sets of sections..... are regarded as preambles to those sections" but a preamble cannot be used in interpretation of a section of which the words are clear. In *Commissioner of Income-tax, Bombay v. Ahmedbhai Umarbhai and Company* (1), it was held, relying on a judgment of their Lordships of the Privy Council in *Balraj Kunwar v. Jagatpal Singh* (2), that marginal notes in an Indian statute, as in an Act of Parliament, cannot be referred to for the purpose of construing the statute..... Nor can the title of a Chapter be legitimately used to restrict the plain terms of an enactment. In the *Union Steamship Company of New Zealand v. Melbourne Harbour Trust, Commissioners* (3), remarks were made as to the effect on interpretation of dividing an Act into parts with appropriate headings. Sir Robert P. Collier observed at p. 369:—

"It may be, indeed, that the fact of a clause being found in certain group may in some cases possibly throw some light upon its meaning; but it appears to their Lordships that the construction contended for on the part of the plaintiffs that the term 'officers' controls the meaning of the word 'person' in section 46, applying it solely to officers and negating its applications to a corporation, is untenable."

His Lordship then examined the different clauses and held that the plain meaning of the section was not to be controlled by the heading.

(1) 1950 S.C.R. 335 at p. 353

(2) 31 I.A. 132

(3) 9 A.C. 365

Section 9 does not give exclusive jurisdiction to a Tribunal to decide the question whether a person is or is not a displaced person. No doubt section 3 of this Act gives an over-riding effect to the Act, i.e., if such a finding is given by the Tribunal it would be binding, but that does not exclude the jurisdiction of the Courts to determine this question if and when it there arises. Besides if relief provided by sections 20, 30 and 31 can be given to a displaced debtor in an ordinary civil Court there is no reason why the relief provided by section 17 should be circumscribed to proceedings before a Tribunal.

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If the Legislature has chosen to use certain words in one section, viz., the section dealing with debts secured by immovable property, and different words in another section dealing with movable property and the meaning of the words is plain no consideration as to the requirements or formalities under another section can be brought in to interpret those words nor can on such considerations a different interpretation be given. The Courts must interpret the words according to their plain meaning unless they are likely to lead to an absurdity or repugnancy or inconsistency. In my opinion the plain meaning of the words used in section 17 would not lead to any such absurdity or repugnancy or inconsistency. Neither the scheme of the Act nor the objects of the Act nor the particular location of section 17 nor the fact that under section 5 of the Act a schedule of assets and liabilities has to be given or any other requisites or formalities are under that section necessary, can be any ground for departing from the rule laid down in regard to the interpretation to be put on the plain words of a section. And by the interpretation I am putting on this section, the objects of the Act are subserved and not disserved. With due respect to the views of Eric Weston, C.J., I am of the opinion that section 17 is available to a displaced debtor even when the proceedings are before an ordinary Court of the country and for the reasons that I have given above, I would hold

M/s. Sulakhanthat Messrs. Banka Mal-Naranjan Das v. The
Singh-Mool Central Bank of India, Ltd. (1), is not correctly
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I would, therefore, allow this petition, set aside
the order of the learned Senior Subordinate Judge
and make the rule absolute. In the circumstances
parties will bear their own costs in this Court.

Kapur, J. Parties have been directed to appear in the
trial Court on the 27th of July 1953.