REVISIONAL CIVIL

Before G. D. Khosla, C.J., and A. N. Grover, JJ.

GIRDHARI LAL,—*Petitioner.*

versus

JESSA RAM,—*Respondent.*

Civil Revision No. 694 of 1959.

1961

Nov., 3rd

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 10, 15(c), 16 and 52—Secured creditor electing to retain security—Whether can enforce his charge by execution of the declaration granted by the Tribunal or must file a separate suit for the enforcement thereof—Such suit—Whether barred by section 15(c).

Held, that when a creditor elects to retain the security, he has to make an application to the Tribunal under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951, for a declaration of the amount due under his debt. The decree which has to be made in such a case, is to be in the form of declaration relating to the charge and cannot be a decree either for the payment of money or for the sale of any immovable property on which the charge may have been declared. Such a declaration granted by the Tribunal cannot possibly be executed as it contains no mandate or order which alone the executing Court can carry out. At best, the declaration granted by the Tribunal under section 16 of the said Act is in the nature of a preliminary decree in a mortgage suit which per se is not executable. The only remedy then with which a decree-holder is left is to bring a regular suit on the basis of the charge which has been created by virtue of the declaration granted by the Tribunal and to obtain a decree in respect of the property which has been subjected to the charge.

Held, that the only course provided by the Act for realisation of his dues by a displaced creditor who has elected to retain his security is to have recourse to the provisions of section 52 of the Act. If he cannot avail of those provisions, then it is certainly open to him to enforce the charge declared by the Tribunal by means of a regular suit and such a suit will not be barred under section 15(c) of the Act.

Petition under Section 115 of Act V of 1908, for revision of the order of Shri Udham Singh, Sub-Judge, 1st Class, Patiala, dated 21st July, 1959, rejecting the application of Decree-holder.

R. N. SANGHI, ADVOCATE, for the Petitioner.

R. K. DASS BHANDARI, ADVOCATE, for the Respondent.

JUDGMENT

Grover, J.

GROVER, J.—This petition for revision was admitted to a Division Bench for the reason that the correctness of the decision of Bhandari, C.J., in *Bir Bhan and Atma Chand* v. *Narain Dass* (Civil Revision No. 157-D of 1956), had been challenged.

Girdhari Lal, petitioner had filed an application under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951 (to be referred to as the Act) for a declaration that the amount of the mortgage money charged in his favour on the property of the respondent-debtor situate in Pakistan was Rs. 4,300 which should be a first charge on the amount of compensation which may be paid to the latter in cash or in kind. The respondent admitted the claim and by mutual settlement the Tribunal passed the following decree on 8th September, 1955 :—

"This application coming on this day, 8th September, 1955, before S. Diali Ram, Sub-Judge, 1st Class (Tribunal), Patiala, for final disposal, it is ordered that the claim of the petitioner is decreed on the basis of compromise and declared that the amount of the mortgage money charged in his favour on the property of the respondent-debtor, situated in Pakistan was Rs. 4,300 which shall be first charge on the amount of the compensation which may be paid to the latter in cash or kind. The applicant having elected to retain the security

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shall be entitled to a first charge on the amount of compensation that may be paid to the debtor in cash equal to the amount which bears to the total debt of Rs. 4,300 the same proportion as the compensation paid in respect thereof and to that extent the debt shall be deemed to have been reduced and if compensation is given by way of exchange of property, he shall be entitled to the first charge on that property, which shall be equal to the amount which bears to the total debt the same proportion as the value of the property received by way of exchange bears to the value of the verified claim in respect thereof and to that extent the debt shall be deemed to have been reduced. * * * *".

It appears that although the contents of the aforesaid decree were communicated to the prescribed authority by the Tribunal in accordance with the provisions contained in section 52 of the Act, the petitioner was not able to realise anything in discharge of his debt out of the amount of compensation which was received in cash by the respondent. He filed an application in August, 1958, for execution of the decree awarded by the Tribunal. He prayed that he should be paid the amount due to him under the decree after attachment and sale of the property which the respondent had received in lieu of his claim. The learned Subordinate Judge in whose Court the execution application was filed, dismissed the same on 21st July, 1959, relying on the decision of Bhandari, C.J., referred to before. It was stated in the order that if the petitioner could not get any relief in accordance with the provisions contained in section 52 of the Act, then it was open to him to file a regular suit. It is against that order that the present petition has been brought to this Court.

The learned counsel for the petitioner has assailed the correctness of the decision given by

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Bhandari, C.J., on the short ground that in that judgment the provisions of sub-rule (2) of rule 14 of Order XXXIV, Civil Procedure Code, had been overlooked. Reliance was placed in that judgment on sub-rule (1) which is to the effect that where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2. There, the Tribunal had granted a declaration that a sum of Rs. 4,000 was due to the mortgagee from the mortgagor. Bhandari, C.J., finally observed as follows:—

> "The legal position, as it seems to me, is briefly this. It was open to the Tribunal constituted under the Act of 1951 to forward a copy of the decree passed by it to the prescribed authority and it was open to the prescribed authority in accordance with the provisions of section 52 to scale down the debts and to satisfy the decree. If the procedure prescribed by section 52 was not or could not be followed, it is open to the decree-holder to bring a regular suit on the basis of the charge which has been created and to obtain a decree in respect of the mortgaged property. I am clearly of the opinion that it is not within the power of the Tribunal to treat the charge created by it as if it were a mortgage decree and to proceed to recover this charge by the sale of the mortgaged property."

It is true that according to sub-rule (2) of rule 14 of Order XXXIV, nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended. It cannot be disputed that the Transfer of Property Act has not been extended to the territories where

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the decree was made by the Tribunal in the present case. It has been held in *Abdul Aziz and others* v. *Alliance Bank of Simla Ltd. and another* (1), that in view of the provisions of Order XXXIV, rule 14(2) it seems clear that in the Punjab at any rate as the Transfer of Property Act is not in force, a decree for sale is not a necessary preliminary to the sale of the equity of redemption at the instance of the mortgagee in all circumstances. According to *Raghunandan Prasad Bhakat and another* v. *Wajid Ali Mian Muhammad Rafiq Firm* (2), the Transfer of Property Act not having been extended to Santhal Parganas, Order XXXIV, rule 14(1), had no application there. In the presence of sub-rule (2) there can possibly be no doubt that sub-rule (1) of rule 14 of Order XXXIV can have no application to the present case and to the extent that Bhandari, C.J., relied on sub-rule (1) as a reason for holding that the charge declared by the Tribunal could not be enforced by the decree of the Tribunal being executed his view cannot be sustained. The question still remains whether in view of the provisions contained in the Act and the nature of the decree which is made by the Tribunal, when a secured creditor elects to retain the security, he can proceed to enforce his charge by execution of the decree or whether he must file a separate suit in that behalf. The application in the present case was made by the creditor under section 10 of the Act. Under section 11 the Tribunal, after following the procedure laid down therein, has to determine the claim and pass such decree in relation thereto as it thinks fit. Section 16 specifically provides for debts secured on immovable property in West Pakistan. The Tribunal has to ask the creditor to elect to retain the security or to be treated as an unsecured creditor. If he elects to retain the security, he may apply to the Tribunal having jurisdiction in this behalf as provided in section 10 for a declaration of the amount due under his debt. Where he elects to retain his security and if the displaced debtor receives any

(1) A.I.R. 1931 Lah. 483
(2) A.I.R. 1929 Pat. 439

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compensation in respect of any such property which has been left behind by him in Pakistan, the creditor shall be entitled to a first charge on the compensation, if paid in cash or by way of exchange of property subject to certain provisos which need not be mentioned. If, however, he elects to be treated as an unsecured creditor, then the provisions of the Act have to be applied accordingly.

Now, when a creditor elects to retain the security, he has to make an application to the Tribunal under section 10 for a declaration of the amount due under his debt and that is what was done by the petitioner. Obviously in such circumstances the creditor does not elect to be treated as an unsecured creditor in relation to the debt and he cannot claim the benefit of those provisions which apply to unsecured creditors. A decree, which has to be made in such a case, has to be in the form of a declaration relating to the charge and cannot be a decree either for the payment of money or for the sale of any immovable property on which the charge may have been declared. Section 32(4) makes it clear that a creditor who has elected to retain his security under section 16 shall have no right to realise any money due to him from the assets of the debtor in India, but nothing in that sub-section has any effect on any of the rights given to him by section 16. Section 27 of the Act gives the contents of a decree which a Tribunal passes on the application of a displaced person. The Tribunal has to prepare a complete schedule of the creditors and of the assets and liabilities of the displaced person. This indicates that a decree contemplated by section 27 cannot relate to the declaration which the Tribunal makes when a person elects to retain his security under section 16. It is only a decree which is made under the Act which can be executed under section 28. A mere declaration, which is granted by the Tribunal cannot possibly be executed as it contains no mandate or order which alone the executing Court can carry out. At best, the declaration granted by the Tribunal under section 16 is in the nature of

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a preliminary decree in a mortgage suit which *per se* is not executable. The only remedy then with which a decree-holder is left is to bring a regular suit on the basis of the charge which has been created by virtue of the declaration granted by the Tribunal and to obtain a decree in respect of the property which has been subjected to the charge.

The question whether a separate suit would be barred by virtue of the provisions contained in section 15(c) of the Act came up for consideration before Mahajan, J., in *Gurbakhsh Singh* v. *Dr. Dayal Chand*, (1). After discussing all the relevant provisions, the learned Judge came to the conclusion that in case the creditor decided to retain the securtiy then all that the Tribunal was required to do was to determine the debt and to declare the amount due after scaling it down in accordance with the provisions of the Act. No decree is passed in favour of the creditor nor has any machiney been provided in the Act as to how he is to enforce his charge. The conclusion of the learned Judge may be reproduced in his own words:—

> "If the matter is viewed in this light, it can admit of no doubt that moment a creditor elects to retain his security under section 16 of the Act, he is, thereafter left to the ordinary remedies under the law and so far as the Act is concerned, his rights come to an end. It is significant that no personal decree can be passed against the debtor and the amount of charge can only be recovered from the property charged. The other property of the debtor is not liable for the amount of the debt due which is made a charge on the property under section 16 of the Act. I have already said that no machinery is provided in the Act whereunder such a secured creditor can enforce his security. I cannot read section 15(c) in the isolated

(1) 1960 P.L.R. 684.

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> manner as the learned counsel would want me to. Read along with the other provisions of the Act, it presents no difficulty, as I have already indicated. I, therefore, repel the argument of Mr. Tuli that no separate suit lies to enforce the charge created under section 16 of the Act."

In *Khiloo Ram etc.* v.*Chuhar* Mal (Execution First Appeal No. 262 of 1960) decided on 26th September, 1961, Gurdev Singh, J., followed the above view and held that a declaratory decree of this type could not be executed nor could it be equated with mortgage decree directing the sale of the mortgaged property. According to him, in such a decree there is no direction, nor can such a direction be made by the Tribunal acting under section 10 of the Act, to sell the property for payment of the amount which has been adjudged due to the mortgagor. I respectfully agree and hold that the only course provided by the Act for realisation of his dues by a displaced creditor who has elected to retain his security is to have recourse to the provisions of section 52. If he cannot avail of those provisions, then it is certainly open to him to enforce the charge declared by the Tribunal by means of a regular suit. It may be somewhat unfortunate that a decree-holder is driven to a suit in such circumstances and there is no procedure prescribed in the Act for making his decree final so as to be executable in the same way as an ordinary mortgage decree, but the mere fact of there being a lacuna in the Act cannot justify taking any other view.

The learned counsel for the petitioner submitted that the respondent has acquired some property by investing the cash amount which he has received by way of compensation and that it is open to him to enforce his charge against that property. This is certainly a matter which the petitioner is entitled to agitate in his suit, but no opinion can be expressed on it at this stage. In the final analysis, the view of Bhandari, C.J., that in

such circumstances the charge can be enforced by means of a separate suit only, must be upheld. Consequently, the order of the Tribunal, which was based on that decision, is confirmed. In view of the nature of the points involved, the parties are left to bear their own costs.

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G. D. KHOSLA, C.J.—I agree.

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R. S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

KHADI GRAMODYOG BHAWAN WORKERS UNION,—*Petitioner.*

versus

E. KRISHNAMURTI AND ANOTHER,—*Respondents.*

Civil Writ No. 74-D of 1960.

1961
Nov., 6th

Industrial Disputes Act (XIV of 1947)—Section 2(k)—Industrial dispute—Dismissed employee becoming a member of the Union after his dismissal—Espousal of his cause by the Union—Whether can make it an industrial dispute—Compensation awarded for wrongful dismissal by Industrial Tribunal—Whether can be interfered with by High Court.

Held, that an individual dispute can be referred to adjudication only if its cause is taken up by the general body of workmen. Its representative character is the gist of an industrial dispute under clause (k) of section 2 of the Industrial Disputes Act, 1947. The membership of the Union which would give it jurisdiction to espouse the cause of an individual workman must be one anterior to the date of the dismissal of the workman and not subsequent to it. There is no nexus between the dispute of a workman and the Union of which he becomes a member subsequent to his dismissal.

Held, that the grant of compensation to a workman for wrongful termination of his services is in the discretion