

REVISIONAL CIVIL.

Before Bhandari, C.J.

WADHAWA RAM, AND ANOTHER,—Petitioners.

versus

GIAN CHAND AND OTHERS —Respondents.

Civil Revision No: 408 of 1954

1956
 Feb. 24th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 2(6) and 11(2)—Debt—Decree passed by Tribunal—Whether a debt—Application under section 11(2) not made at the proper time—Whether such application barred.

Held, that a decree passed by a Tribunal under the provisions of the Displaced Persons (Debts Adjustment) Act is a 'Debt'.

Held also, that failure on the part of the debtor to make an application under section 11(2) of the Displaced Persons (Debts Adjustment) Act, at the proper time debars him from presenting such an application at later stage.

Petition under Section 40 of Act 70 of 1951, for revision of the order of Shri Om Parkash, Tribunal, Jullundur, dated the 13th December, 1954, dismissing the application.

Application under section 5 of Act No. LXX of 1951, to response to notice under sub-sectional of section 11 on the application filed by respondent No. 1, under section 10 of the said Act in the court of S. Jasamer Singh, Sub-Judge, 1st Class, Jullundur.

H. R. SODHI, for Petitioners.

Y. P. GANDHI, for Respondents.

JUDGMENT.

Bhandari, C.J. BHANDARI, C. J. This petition raises the question whether the failure on the part of a debtor to make an application under section 11(2) of the Displaced

Persons (Debts Adjustment) Act, 1951, at the proper time debars him from presenting a similar application on a later occasion.

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The facts of the case are very simple indeed. On the 8th August, 1952, Smt. Baldevi presented an application under section 10 of the Act of 1951, against Wadhawa Ram and Harbans Singh and on the 7th July, 1953 she obtained a decree in a sum of Rs. 7,630, which was later confirmed in an appeal. On the 16th January, 1954, one Gian Chand, another creditor, brought an application under section 10 against the said debtors and on receipt of the notice the debtors put in an application under section 5 for the adjustment of their debts, mentioning in the schedule appended to the application the name of Smt. Baldevi as a creditor to the extent of Rs. 7,630. Smt. Baldevi objected to her decree being included in the schedule and her objection found favour with the Tribunal. The Tribunal dismissed the petition under section 5 as far as Smt. Baldevi was concerned but allowed it to proceed in respect of the other creditors. The debtors are dissatisfied with the order and have come to this Court in revision.

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There can be no manner of doubt that a decree passed by a Tribunal under the provisions of the Act of 1951, falls within the ambit of the expression 'debt' as defined in section 2(6) of the said Act and consequently that it is incumbent on a debtor making an application under section 5 of the said Act to include this debt in the schedule which accompanies the application under the said section. It is equally clear, for the reasons which appear hereafter, that the failure on the part of a debtor to take advantage of the provisions of section 11(2) debars him from presenting a similar application in respect of the same debt. When Smt. Baldevi presented her application

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under section 10 of the Act of 1951, it was clearly open to the debtors to present an application under sub-section (2) of section 11. They failed to take advantage of this provisions and on their failure to do so the Tribunal proceeded to pass a decree in favour of the creditor. As the provisions of the Code of Civil Procedure, apply to proceedings under this Act and as Explanation IV to section 11 of the Code of Civil Procedure declares that any matter which might and ought to have been made ground of defence or attack in a former suit sha'll be deemed to have been a matter directly and substantially in issue in such suit, it seems to me that when the debtors who were at liberty to take advantage of the provisions of section 11(2) in the earlier litigation omitted to do so, they must be deemed impliedly to have relinquished the right which vested in them. I am inclined to hold, therefore, that as no application under section 11(2) was presented by the debtors, the application must be deemed to have been impliedly dismissed. A fresh application will thus be barred not only under the rule of *res judicata* but also under the provisions of section 44 of the statute which declares in unambiguous language that where an application made by a displaced debtor under sub-section (2) of section 11 has been dismissed no further application for the same purpose shall lie.

There is another aspect of the matter which needs to be considered. Section 21 of the statute makes it quite clear that the power to revise decrees under this Act extends only to decrees passed before the commencement of this Act. As the express mention of one thing implies the exclusion of another, it seems to me that the power conferred by this Act to revise decrees extends only to decrees passed before the commencement of this Act and not to decrees passed after the commencement of this Act. **It follows as a consequence that the decree passed by**

the Tribunal in favour of Smt. Baldevi on the 7th July, 1953, cannot be reopened and cannot be readjusted under the provisions of the present Act. Moreover, if an application under section 11(2) were allowed to be preferred at any time no decree passed by a Tribunal on the application of a creditor would ever be final and there would be no end to litigation.

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For these reasons, I would uphold the order of the Tribunal and dismiss the petition. Having regard to the difficulty of the point at issue I would leave the parties to bear their own costs.

FULL BENCH.

Before Bhandari, C. J., and Falshaw, and Bishan Narain, JJ.

UNION OF INDIA, PREVIOUSLY DESCRIBED "DOMINION OF INDIA",—Defendant-Appellant.

versus

FIRM BALWANT SINGH-JASWANT SINGH,—Plaintiffs-Respondents.

Regular Second Appeal No. 75 of 1951.

Indian Independence (Rights, Property and Liabilities) Order, 1947, Act 8(1) (a)—Applicability of—Contract for the purposes of Dominion of Pakistan—Goods consigned by North Western Railway from Karachi to Peshawar—Non-delivery of Goods—Suit for damages—Whether Government of India, liable.

Displaced Persons (Institution of Suits) Act (XLVII of 1948)—Section 4—Proprietors of Plaintiff firm registered as refugees at Delhi, but residing and carrying on business at Dehradun—Suit instituted at Delhi—Delhi Court—Jurisdiction to entertain suit.

Code of Civil Procedure (Act V of 1908)—Sections 20 and 80—Railways Act (IX of 1890)—Section 77—Notice under section 80, Civil Procedure Code, and Section 77, Railway Act—Service of notice, whether constitutes a part of the cause of action.

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Mar. 5th