

APPELLATE CIVIL

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.

LILAWATI AND OTHERS,—Appellants.

versus

SOVINDER SINGH AND OTHERS,—Respondents.

First Appeal from Order No. 51-D of 1956.

1963

August, 21st.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—S. 5(2)—Legal representatives of a deceased debtor—Whether entitled to make an application under the section.

Held, that where a debt is being claimed from a legal representative of a displaced debtor, he falls within the definition of “displaced debtor” given in section 2(9) of the Displaced Persons (Debts Adjustment) Act, 1951, provided he is a displaced person. It is a fundamental rule of Hindu Law that the inheritance does not remain in abeyance and the property immediately vests in the next heirs on the death of the last holder; and the liability of the legal representative for the debts of the deceased debtor passes on to them to the extent of the property or the estate they inherit from the deceased debtor. It is thus clear that the creditor can lay claim for the debt due from the deceased against the legal representatives in case the legal representatives succeed to the property of the debtor. There is no provision in the Act which excludes the legal representatives of a deceased debtor from the benefits of the Act. The benefit undoubtedly is conferred on the displaced debtor and like all other benefits under the general law, a legal representative of the person upon whom the benefit is conferred would be entitled to enjoy the same unless the benefit conferred is purely personal to the displaced debtor. Therefore, the legal representatives of a displaced debtor who are displaced persons can make an application under section 5(2) of the Act provided they have inherited the estate of the deceased debtor.

Sahib Ditta Mal v. Mohra Mal (1), distinguished.

(1) A.I.R. 1945 Lah. 58.

First Appeal under Section 40 of Act LXX of 1951, from the order of Shri Jagmandar Dass Jain, Tribunal, Delhi, dated the 4th January, 1956, dismissing the appellants petition under sections 5 and 11 of Act 70 of 1951.

GURCHARAN SINGH BAKHSI, ADVOCATE, for the Petitioner.

HARDAYAL HARDY, H. L. SABHARWAL, K. L. MEHRA, & S. D. SEHGAL, ADVOCATES, for the Respondent.

JUDGMENT

MAHAJAN, J.—In First Appeals from orders Nos. 51-D, 96-D and 145-D of 1956, Gurdev Singh, J. referred the following questions of law for decision by a

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Division Bench:—

“Whether a legal representative of a deceased debtor is entitled to make an application under section 5(2) of the Displaced Persons (Debts Adjustment) Act (LXX of 1951)?”

That is how the matter has been placed before us and we are only called upon to decide the limited question of law. These appeals will, after the decision of this limited question, go back to a learned Single Judge for decision of the remaining questions that arise in them.

The facts, so far as they are relevant for our purposes, may now be stated. Bhagat Brij Raj applied under section 10 of the Displaced Persons (Debts Adjustment) Act (LXX of 1951),—hereinafter referred to as the Act, for realisation of the debts that, according to him, were due from S. Atma Singh Namdhri, a displaced person from West Pakistan. Atma Singh died on the 7th January, 1954. The notice of the application was served on his legal representatives, namely, his minor

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sons Ram Rattan Singh and his two widows, Shrimati Lilawati and Shrimati Jug. The legal representatives put in an application for relief under section 5 of the Act. The application of the legal representatives was rejected by the Tribunal on the ground that they had no *locus standi* to make an application under section 5 of the Act. Against this decision, the present appeals were preferred to this Court, and as already stated, the common question of *locus standi* of the legal representatives of the deceased debtor to make an application under section 5(2) of the Act has been referred for decision by a larger Bench. This was done obviously in view of the decision of the Lahore High Court in *Sahib Ditta Mal, v. Mohra Mal* (1).

In order to arrive at a correct decision of the question before us, it will be proper to set out the relevant provisions of the statute, so far as they are necessary.

Section 2(9) of the Act defines a 'displaced debtor' and is in these terms:—

“2. (9) 'displaced debtor' means a displaced person from whom a debt is due or *is being claimed*;"

Section 35 makes the Code of Civil Procedure applicable to all proceedings under the Act unless the provisions of the Act or the Rules made thereunder are contrary to the Code of Civil Procedure. Section 48 provides that there would be no abatement of proceedings on the death of the debtor. It also provides that if an application is made the legal representatives must be impleaded and they would be entitled to make any defence appropriate to their character as legal representatives of the deceased debtor. The liability of

the legal representatives is limited to the assets of the deceased debtor which devolve upon them. It will, therefore, be clear from the definition of the displaced debtor that in order to be such a debtor, the person must be a displaced person and he must be a person from whom a debt is due or *is being claimed*. The relevant part of the definition of 'debt' for our purposes is given in section 2(6) as under:—

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"2(6) 'debt' means any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, which—

- (a) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India,
- (b) * * *
- (c) * * *

It will be patent from the perusal of both the definitions that so far as a legal representative is concerned, there is no debt due from him, but the definition of a displaced debtor does not end here. Where a debt is being claimed from a displaced person, he would still fall within the definition of the phrase 'displaced debtor', provided of course he is a displaced person. It is a fundamental rule of Hindu Law that the inheritance does not remain in abeyance and the property immediately vests in the next heirs on the death of the last holder; and the liability of the legal representatives for the debts of the deceased holder passes on to them to the extent of the property or the

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estate they inherit from the deceased debtor. These propositions were not disputed with any seriousness by the learned counsel for the respondents and indeed they could not be. Section 48 of the Act gives a legal recognition to the second proposition and for the first proposition one has merely to refer to paragraph 28; page 96 of Hindu Law by Mulla, 12th edition. Therefore, it is absolutely clear that the creditor can lay claim for the debt due from the deceased against the legal representatives in case the legal representatives succeed to the property of the debtor. In the present case, it is not disputed that the widows and the son are the heirs of the deceased debtor and would succeed to his property, for if he died leaving no property then the application of the creditor under section 10 against the legal representatives would be wholly meaningless. In this view of the matter, it is apparent that the legal representatives who are displaced persons and who have succeeded to the property of the deceased debtor are displaced debtors within the meaning of section 2(9) of the Act and there can be no escape from this conclusion. Moreover, this conclusion is further fortified by the provisions of section 48 of the Act. If the legal representatives had no *locus standi* in the matter, section 48 of the Act would not have provided for their impleading after the death of the displaced debtor himself. This provision supports my conclusion that the legal representatives of the class mentioned above would be displaced debtors.

Learned counsel for the respondents, however, contends by reference to section 25 of the Act that the right to make an application under section 5 of the Act is solely confined to the original debtor and not to his legal representatives. Section 5 in terms does not say so. It merely provides for an application by a displaced debtor for adjustment of debts. The operative part of this provision says that a displaced person may make an application for adjustment of his

debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides or carries on business or personally works for gain. Who is a displaced debtor? For that, one has to go back to section 2(9) of the Act, but the learned counsel for the respondents argues that according to sub-section (2) of section 5 of the Act, certain particulars have to be specified and those particulars can only be specified by the debtor himself and not by the legal representatives, and therefore, I must restrict the definition of section 2(9) in the light of section 5(2). In my view, there is no justification for this argument. It appears that keeping in view of the scheme and the purpose of the Act the definition of 'displaced debtor' in section 2(9) was intentionally enlarged. There is no provision in the Act which excludes the legal representatives of a deceased debtor from the benefits of the Act. The benefit undoubtedly is conferred on the displaced debtor and like all other benefits under the general law, a legal representative of the person upon whom the benefit is conferred would be entitled to enjoy the same unless the benefit conferred is purely personal to the displaced debtor. The contention is that the Act confers a purely personal benefit on the debtor and the moment the debtor dies, that personal benefit also comes to an end. If this argument is accepted, then on the death of the debtor the right of the creditor would automatically come to an end and I have not been able to understand by what process of logic or reasoning the creditor would proceed against the property which on the death of the debtor no longer remains the property of the deceased but by operation of law becomes the property of the successors, that is, the next heirs of the deceased. Section 48 of the Act fastens the liability of the debt on to the legal representatives, but restricts it to the extent of the assets of the deceased in their hands. Therefore, the argument that the debt is a purely

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personal liability of the debtor is specious and must be rejected.

Mr. Chopra, learned counsel for the respondents relied on a decision of the Lahore High Court in *Sahib Ditta Mal's case* (1), wherein while dealing with the provisions of section 7 of the Punjab Relief of Indebtedness Act (7 of 1934) Chief Justice Harries and Mahajan, J. observed as under—

“The word ‘debtor’ in section 7 contemplates a person from whom a debt is personally due either because he himself incurred it or because otherwise he became liable to discharge it. The liability of legal representative to pay the deceased’s debt is not his personal liability and therefore the legal representative of a deceased debtor does not fall within the definition of the word ‘debtor’ given in section 7.”

Section 7(1) of the Punjab Relief of Indebtedness Act hereinafter referred to as the Relief Act—defines ‘debt’ and 7(2) defines a ‘debtor’ as a person who owes a debt and besides that there are a number of qualifications which he has to answer which are to be found in clauses (i) to (iii) in the same sub-section. While arriving at the aforesaid decision, their Lordships observed that the provisions of section 11 and 17 of the Relief Act supported their view. It will be seen from the comparative reading of the provisions of section 7(2) of the Relief Act and section 2(9) of the Act that the requirements of the definitions in both the Acts are not the same. In the Relief Act the word ‘owes’ is used as against the word ‘due’ in the Act and both convey the same thing, but in addition to the word ‘due’ in the latter Act, in section 2(9) further words ‘from whom debt is being claimed’ are added. That is not the same thing as ‘from whom

the debt is due'. The latter phrase 'from whom debt is due' implies that it is personally due while the former phrase 'from whom debt is being claimed' implies that it may be due in any other capacity. That is why the definition of the displaced debtor in the Act was couched in a broader language than the definition of the word 'debtor' in the Relief Act. Therefore, the aforesaid decision is no authority for the view that the legal representatives do not fall within the definition of the word 'displaced debtor'" even if they are displaced persons and a claim for a debt is being made against them. Once it is held that a person is a displaced debtor, as defined in section 2(9) of the Act, he has the right to make an application under section 5 of the Act and there seems to be no escape from this conclusion. I am supported in my view by a decision of this Court in *Lahori Mal and others, v. Kasturi Lal and others* (2),—a decision by Kapur and Bishan Narain, JJ., wherein it was held that 'debt' as defined in section 2(6) of the Displaced Persons (Debts Adjustment) Act, 1951, is not limited to personal liabilities only and is wide enough to include liabilities in other capacities and further that a displaced mortgagee can seek relief under sections 10 and 16 of the Act against the legal representatives of a deceased mortgagor as such legal representative is a debtor within the meaning of section 2(9) of the Act. It may be mentioned that the decision of the Lahore High Court in *Sahib Ditta Mal's case* was noticed in *Lahori Mal's case*, but was rightly distinguished.

For the reasons given above, I am clearly of the view that the legal representatives of a displaced debtor who are displaced persons can make an application under section 5(2) of the Act provided they have inherited the estate of the deceased debtor. The question is answered accordingly.

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The case will not go back for decision to a Single Bench. Office is directed to fix these cases for hearing in the first week of September, 1963. Costs will abide the event.

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SHAMSHER BAHADUR, J.—I agree.

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J.

K. S. K.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

NET RAM,—*Petitioner*

versus

ELECTION COMMISSION AND OTHERS,—*Respondents.*

Civil Writ No. 1373 of 1963

1963
August, 23rd

Representation of the People Act (XLII of 1951)—S. 117—Two persons filing election petition jointly and making security deposit of Rs. 2,000—Whether sufficient—Ss. 85 and 90—Non-compliance with section 117—Whether election petition can be dismissed by Election Tribunal.

Held, that it is true that the word "petitioner" has been used in section 117 of the Representation of the People Act, 1951, but in accordance with the provisions of section 13 of the Central General Clauses Act 10 of 1897, which lays down that the words in singular shall include the plural and *vice versa*, section 117 would apply even to those cases in which there is more than one petitioner. So construing section 117, the conclusion is irresistible that Rs. 2,000 which has to be deposited as security for costs of the petition before the election petition is presented to the Election Commission, will cover the cases in which the election petition is made by more than one person and it is not necessary for each petitioner to deposit the requisite security of Rs. 2,000. The security deposit of Rs. 2,000 made in a joint petition being on behalf of all the petitioners, there will be no difficulty