

Pala Singh
 v.
 Shrimati
 Ram Kaur
 ———
 Kapur, J.

No written statement was filed and no *prima facie* case was made out in such an application which could form the basis of adjudication between parties. To merely say that the husband is unable to pay is not a sufficient plea in a bar to an application for arrest in execution of an order made under section 488. As a matter of fact the order of the learned Additional Sessions Judge itself shows that the present petitioner, the husband, possesses at least 40 *ghumaons* of land, although it is stated that the land is *barani* and yields no income. No affidavit was filed before the Magistrate, nor has it been filed here to show as to what the income of 40 *ghumaons* in Muktsar Tahsil is, and I have no reason to doubt that when the Magistrate made the original order of payment of Rs. 35 a month as maintenance it must have been done objectively and not as a result of subjective determination.

In my opinion no reason has been shown as to why the order of the Magistrate should not be carried out but in the circumstances I think it would be proper that I should allow to the petitioner three months' time in which to make the payment and if it is not so made it will be open to the Magistrate to send the present petitioner to such a term of imprisonment as he thinks proper but it should not exceed a period of six months in the aggregate.

CIVIL APPELLATE.

Before Khosla, J.

SMT. VIRANWATI,—Appellant.

versus

GULAB SINGH,—Respondent.

1955

First Appeal from Order No. 35-D of 1954

March, 15th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 36—Promissory note executed at Rawalpindi on the 16th September, 1946—Both the debtor and the creditor displaced persons—Limitation for suit expired on the 15th September, 1949—Application by the displaced

Creditor under section 10 of the Act long after the 15th September, 1949—Whether the displaced creditor entitled to the benefit of section 36 of the Act to get over the bar of limitation.

Held, that cases which fall within section 4 of Act XLVII of 1948 are dealt with in clause (a) of section 8. In these cases limitation was extended until the amending Act expired, and to these cases section 36(a) clearly applies. Then there are cases which do not fall under section 4, to these section 8(b) of the amended Act applies. The limitation in respect of these cases was extended only if the claim became barred by time after the amending Act, that is, after the 18th of December, 1950. In the present case, both the creditor and the debtor are displaced persons and therefore the suit on the basis of a promissory-note could not have been filed in accordance with the provisions of section 4, and that being so, section 8(a) would not apply. Section 8(b) does not apply because the claim became barred before the amending Act came into force. The net result therefore is that the period of limitation was not extended by Act XLVII of 1948 as amended by Act LXVIII of 1950. Section 36(a) of Act LXX of 1951 in consequence does not apply to the case and the Tribunal was right in holding that the appellant's claim was barred by time.

First Appeal from the order of Shri Girdhar Kishan Bhatnagar, Tribunal, Sub-Judge, 1st Class, Delhi, dated the 8th December, 1953, dismissing the application.

J. L. BHATIA, for Appellant.

MOHAN SINGH, for Respondent.

JUDGMENT

KHOSLA, J. The only question for my decision in this appeal is whether the appellant's application under section 10 of the Displaced Persons (Debts Adjustment) Act, LXX of 1951, was barred by time. Khosla, J.

The appellant's claim was based on a promissory note executed at Rawalpindi on the 16th of September, 1946. The limitation for bringing a

Smt. Viranwati
 Gulab ^{v.} Singh
 ———
 Khosla, J. suit on the basis of the promissory-note therefore expired on the 15th of September 1949. The appellant, however, claimed the benefit of section 36(a) of the Act which is in the following terms:—

“36. *Extension of period of limitation.*—
 Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law or in any agreement,—

- (a) any suit or other legal proceeding in respect whereof the period of limitation was extended by section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

Section 8 of the previous Act to which reference has been made was amended by Act LXVIII of 1950. The amended section reads as follows:—

“8. *Extension of period of limitation.*—
 Notwithstanding anything contained in section 3 of the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law, any suit or other legal proceeding by a displaced person—

- (a) where such suit or other legal proceeding is instituted in pursuance of section 4 and the period of limitation expires or has expired on or after the 14th day of August, 1947, or

- (b) where suit or other legal proceeding is instituted otherwise than in pursuance of section 4 in respect of a cause of action which arises or has

arisen in a place now situate within the territories of Pakistan and the period of limitation expires after the commencement of the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950.

Smt. Viranwati
v.
Gulab Singh
Khosla, J.

may be instituted at any time before the date of expiry of this Act."

Section 4 of the Act to which reference has been made is in the following terms:—

"4. *Institution of suits by displaced persons.*—Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908 (V of 1908), or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if —

(i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person;

(ii) the cause of action, wholly or in part, arises or has arisen in a place now

Smt. Viranwati
v.
Gulab Singh

Khosla, J.

situate within the territories of Pakistan;

(iii) the Court in which the suit is instituted is otherwise competent to try it; and

(iv) the suit does not relate to immovable property."

Thus two positions arise. Cases which fall within section 4 of Act XLVII of 1948, are dealt with in clause (a) of section 8. In these cases limitation was extended until the amending Act expired, and to these cases section 36(a) clearly applies. Then there are cases which do not fall under section 4. To these section 8(b) of the amended Act applies. The limitation in respect of these cases was extended only if the claim became barred by time after the amending Act, that is, after the 18th of December, 1950.

The simple position therefore is this that if the appellant's claim is covered by section 4 of Act XLVII of 1948, her application was within time because to claims of this type section 36(a) of Act LXX of 1951, applies. But if her claim was not within section 4 of the old Act, then section 36(a) would not apply and her claim must be held barred by time because it was barred before the amending Act was promulgated, the date of promulgation being the 18th of December 1950, and the date on which the claim on the basis of the promissory note became barred by time being the 15th of September 1949.

Section 4 of Act XLVII of 1948 deals with the Smt. Viranwati question of jurisdiction. There are four types of Gulab^{v.} Singh cases, namely—

- (a) suits or claims by displaced persons **Khosla, J.** against displaced persons;
- (b) suits by displaced persons against non-displaced persons ;
- (c) suits by non-displaced persons against non-displaced persons ; and
- (d) suits by non-displaced persons against displaced persons.

We are not here concerned with category (c) because the legislation under consideration does not deal with such matters. Of the first two types (b) alone falls under section 4 because then only are the four conditions laid down in this section satisfied. If the suit is against a displaced person section 4 will not apply, for then the forum is to be determined by the provisions of the Civil Procedure Code. In the present case both the creditor and the debtor are displaced persons and therefore the suit on the basis of a promissory-note could not have been filed in accordance with the provisions of section 4, and that being so, section 8(a) would not apply. Section 8(b) does not apply because the claim became barred before the amending Act came into force. The net result therefore is that the period of limitation was not extended by Act XLVII of 1948 as amended by Act LXVIII of 1950. Section 36(a) of Act LXX of 1951 in consequence does not apply to the case and the Tribunal was right in holding that the appellant's claim was barred by time.

I, therefore, dismiss this appeal, but in the circumstances make no orders as to costs.