

LETTERS PATENT SIDE

Before Bhandari, C.J., and Khosla, J.

EAST PUNJAB PROVINCE (JUDGMENT-DEBTOR),—
Appellant

versus

SHRI MAHANT BASHAMBAR DAS, ETC.,—Respondent

Letters Patent Appeal No. 33 of 1949

Indian Independence (Rights, Property and Liabilities) Order, 1947—Article 9—Whether applicable to a liability on account of costs awarded in a case— Punjab Partition (Contracts) Order, 1947—Articles 2 and 4—Liability of the East Punjab Government under, to pay costs awarded in a case relating to the acquisition of a plot of land situate in East Punjab by the United Punjab Government before partition.

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Held, that a liability on account of costs awarded in a case relating to acquisition of a plot of land situate in East Punjab by the United Punjab Government before partition is not regulated by the provisions of Article 9 of Indian Independence (Rights, Property and Liabilities) Order, 1947, but is regulated by the provisions of Articles 2 and 4 of the Punjab Partition (Contracts) Order, 1947. As the land which was acquired by the Government of the United Punjab is situate in the East Punjab, the costs awarded by the High Court must be paid by the East Punjab Government.

Nilima Sarkar v. Governor-General in Council (1), Province of West Bengal v. Midnapur Zamindari Co., Ltd. (2), and Sree Iswar Madan Gopal Jiu v. Province of West Bengal (3), relied on.

Letters Patent Appeal under clause 10 of the Letters Patent against the Judgment of Hon'ble Mr. Justice D. Falshaw, dated 21st March, 1949, in E.F.A. No. 64 of 1948, dismissing the appeal with costs.

K. S. CHAWLA, Assistant Advocate-General, for Appellant.

P. C. PANDIT, for Respondent.

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- (1) 86 C.L.J. 98
(2) 54 C.W.N. 677
(3) 54 C.W.N. 807

BHANDARI, C. J. These two appeals raise the
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question whether costs payable by Government in respect of a plot of land acquired by it before the partition of the Punjab are a liability of the East Punjab Government or that of the West Punjab Government.

The facts of the case are simple and not in dispute. On the 6th December, 1933, the Government of the United Punjab acquired two plots of land belonging to Mahant Bishambar Das, respondent, and situate at Hoshiarpur for the construction of a hospital. The owner declined to accept the compensation awarded by the Collector and the matter was accordingly referred to the Court under section 18 of the Land Acquisition Act, 1894. On the 18th August, 1941, the Senior Sub-Judge of Hoshiarpur passed two decrees in favour of the respondent and on the 13th October, 1944, these decrees were confirmed by the High Court at Lahore.

On the 31st March, 1948, the respondent presented two applications for recovery of costs amounting to a sum of Rs 362-8-0 in one case and Rs 743-6-0 in the other and impleaded both the East Punjab Government and the West Punjab Government as parties. He later asked for permission to give up the West Punjab Government and on the 31st May, 1948, the executing Court permitted him to do so on the ground that in view of the provisions of the Punjab Partition (Contracts) Order, 1947, the liability for payment of costs of the litigation was of the East Punjab Government. The order passed by the executing Court was confirmed by a learned Judge of this Court and the East Punjab Government has accordingly presented these appeals under Clause 10 of the Letters Patene.

In exercise of the powers conferred by the Indian Independence Act, 1947, the Governor-General promulgated a number of Orders among others being the Indian Independence (Rights, Property and Liabilities) Order, 1947, and the Punjab Partition (Contracts) Order, 1947. The relevant portion of Article 9 of the first Order runs as follows:—

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“9. All liabilities in respect of such loans, guarantees and other financial obligations of the Governor-General in Council or of a Province as are outstanding immediately before the appointed day shall, as from that day,—

(a) * * * * *

(b) * * * * *

(c) in the case of liabilities of the Province of the Punjab, be liabilities of the Province of West Punjab, and

(d) * * * * *

Mr. K. S. Chawla who appears for the Punjab State contends that the Governor-General promulgated different Orders under the Indian Independence Act with the object of providing for the discharge of different kinds of financial obligations. If, for example, any money is due to a person on account of a contract, he is entitled to recover it under the provisions of the Punjab Partition (Contracts) Order, 1947, or under the provisions of Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947. If any money is due to him in respect of an actionable wrong other than a breach of contract he can recover it in accordance with the

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provisions of article 10 of the Rights, Property and Liabilities Order. If, however, money is due to him neither on the basis of a contract nor on the basis of a tort but on the basis of a decree awarded to him, the amount can be recovered only under the provisions of Article 9 which declares that "all liabilities in respect of such loans, guarantees and other financial obligations of the Governor-General in Council or of a Province as are outstanding immediately before the appointed day shall as from that day in the case of the liabilities of the Province of the Punjab be liabilities of the Province of West Punjab." Mr. Chawla contends that the expression "other financial obligations" appearing in this Article is wide enough to embrace the amounts which are awarded to a litigant by way of costs. I regret I am unable to concur in this view. It may be that different provisions have been made for different kinds of liabilities, but I am unable to concur in the contention that a liability on account of costs awarded in a case of this kind is regulated by the provisions of Article 9 of the Rights, Property and Liabilities Order. This Article deals with all liabilities in respect of "such loans, guarantees and other financial obligations." In *Nilima Sarkar v. Governor-General in Council* (1), it was held that the expression "financial obligations" appearing in Article 9 must be read *ejusdem generis* with loans and guarantees and cannot cover a decree for costs. While dealing with this aspect of the question Harries, C. J., observed as follows:—

"In my judgment the case cannot fall within Article 9 of the Indian Independence (Rights, Property and Liabilities) Order. A decree of course is a financial obligation, but I think it is clear

that the phrase 'financial obligations' in Article 9 cannot cover decrees for tort. It seems to me that the phrase 'financial obligations' in Article 9 must be read *ejusdem generis* with loans and guarantees. The phrase I think must be held to mean financial obligations of the nature of loans and guarantees.

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Further, I think it is clear that the financial obligations referred to in Article 9 are the obligations of a contractual nature. Article 8 deals with liabilities in respect of contracts and subsection (6) of Article 8 provides that the provisions of that Article shall have effect subject to the provisions of Article 9 of the Order. In other words Article 9 is an exception to Article 8 which suggests that Article 9 really deals with financial obligations of a contractual nature."

A similar view was taken in *Province of West Bengal v. Midnapur Zemindary Co., Ltd.*, (1), and in *Sree Ishwar Madan Gopal Jiu v. Province of West Bengal* (2).

Mr. P. C. Pandit on the other hand contends that costs arising out of acquisition proceedings initiated by the United Punjab Government must be paid in accordance with the provisions of the Punjab Partition (Contracts) Order, 1947, and that as the property which was acquired is situate in the East Punjab the costs must be paid by the Government of the East Punjab.

(1) 54 C.W.N. 677

(2) 54 C.W.N. 807

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There can be no doubt regarding the correctness of this contention. The preamble to the Punjab Partition (Contracts) Order, 1947, declares that the Order has been promulgated with the object of providing for division between the two new provinces of the rights and obligations of the Governor of the Punjab in respect of "contracts, deeds, covenants and all other matters hereinafter referred to". Articles 2 and 4 of the Order deal with obligations arising out of contracts made, deeds executed or covenants entered into by the Governor of the Punjab in accordance with section 175 of the Government of India Act, 1935, and Article 5 deals with obligations "arising in respect of any statute or any contract, deed or covenant as specified in the preceding clauses or any other cause of action". Article 6 declares—

"Any costs or damages which may be decreed against or in favour of one or both of the new Provinces, in any suit or proceeding of the kinds dealt with in the foregoing clause shall be shared between the two new Provinces in accordance with any order made by the Court or Tribunal, and failing such order, in such proportion as may be mutually agreed between the two new Provinces."

The fact that the plots of land in question were acquired under the provisions of the Land Acquisition Act, 1894, read with the provisions of section 175 of the Government of India Act, 1935, and the fact that Articles 2 and 4 of the Punjab Partition (Contracts) Order refer prominently to section 175 of the Government of India Act, 1935, make it quite clear that the costs must be paid in

accordance with the provisions of this Order. As the land which was acquired by the Government of the United Punjab is situate in the East Punjab it seems to me that the costs awarded by the High Court must be paid by the East Punjab Government.

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For these reasons, I would uphold the order of the learned Single Judge and dismiss the appeal with costs.

KHOSLA, J.—I agree.

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APPELLATE CIVIL

Before Khosla and Falshaw, JJ.

AMIN CHAND,—Plaintiff-Appellant

versus

FIRM MADHO RAM-BANWARI LAL,—Defendants-
Respondents

Regular First Appeal No 139 of 1950

Indian Stamp Act (II of 1899)—Sections 31, 32, 35 and Rules 4, 11, 18—Hundis—Requirement as to stamp, stated—Hundi not properly stamped, effect of—Hundi inadmissible in evidence under section 35 of the Stamp Act—Suit if can be brought on the basis of the original loan forming the consideration of the Hundi.

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Held, that bills of exchange in general, which include *hundis*, are excluded from the instruments in which original mistakes regarding the amount or method of stamping can be subsequently rectified even on payment of penalty, and regarding *hundis* for an amount exceeding Rs. 30,000 or a period of more than one year, the rules regarding the method of stamping are particularly stringent, apparently with the object of entirely precluding the possibility of ante- or post-dating such *hundis*. Rule 18 must be read subject to the provisions of the statute itself and rules 4 and 11. Rule 18 only provides for the validation of an instrument which bears the correct amount of stamp duty but in the wrong form, and it cannot possibly be said that a *hundi* for a sum exceeding Rs. 30,000; even if the stamp duty paid on it is correct, is covered by rule 18 in view of the strict formalities required by rule 11 regarding the stamping of such a *hundi*.