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the trial Magistrate was right in directing commission to record his statement.

In the result, order dated the 1st May, 1958, in Criminal Revision No. 835 of 1957 is set aside and the order of the trial Court, dated the 8th October, 1956, is restored and affirmed.

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LETTERS PATENT APPEAL.

Before G. D. Khosla, C J., and G. L. Chopra, J.

LAL CHAND,—*Appellant.*

versus

PARMA NAND AND OTHERS,—*Respondents.*

L:A.P: No: 107-D of 1954.

1960

Jan. 22nd

Displaced Persons (Debts Adjustment) Act (LXX) of 1951)—S. 2 (6) (C)—Pecuniary liability—Whether should exist at the time of coming into force of the Act—Provisions of the Act—Whether applicable to debts incurred after the commencement of the Act.

Held, that the pecuniary liability mentioned in clause (C) of Section 2(6) of the Displaced Persons (Debts Adjustment) Act, 1951, whether it be by way of a fresh advanc or only a renewal of an old debt must be shown to be due to the displaced creditor at the time of the Act came into force so as to make it fall within the definition of a "debt". It is only then that he can be deemed to be entitled to the benefit of the provisions of Section 10 or Section 13 of the Act. It does not include a pecuniary liability that becomes due to a displaced person after the Act has come into force and there is no scope for invoking the provisions of the Act to a debt incurred after its commencement.

Letter Patent appeal under clause 10 of the Letters Patent from the judgment of Hon'ble Mr. Justice Falshaw dated 17th January, 1956, in F. A. O. No. 60-D/54.

A. R. WHIG, for the Appellant.

D. K. KAPUR, for the Respondents.

JUDGMENT

Chopra, J. CHOPRA, J.—This is a Letters Patent Appeal against the appellate decision of a learned Judge of the Court in an application under Section 10 of the Displaced Persons (Debts Adjustment) Act, LXXX of 1951.

2. Lal Chand, the appellant, a displaced person, presented the application on 16th October, 1952 for recovery of Rs. 51,687-8-0 on the basis of a pronote executed by Parma Nand, respondent, also a displaced person, in favour of the Tarn Taran Bank Ltd. The pronote was in the amount of Rs. 50,000 and the stipulated rate of interest was 7½ per cent per annum. As a security of the debt Parma Nand had created an equitable mortgage by deposit of title deeds of certain properties owned by him in Mandi Vehari, now in Pakistan. On the very day the pronote was executed, viz., 18th May, 1946, the Tarn Taran Bank is said to have assigned the debt by an endorsement on the pronote in favour of Hari Ram, a son of Ralla Ram, the Managing Director of the Bank, and also to have transferred the mortgagee-rights with respect to the debt. It is further alleged that on 20th September, 1947, Parma Nand entered into an agreement with Hari Ram to refer their dispute arising out of the debt to the sole arbitration of Mr. Chaman Lal Aggarwal. On 28th December, 1947, Mr. Chaman Lal gave an *ex parte* award in favour of Hari Ram in the amount of Rs. 53,400, creating a charge of the amount and future interest on certain properties owned by Parma Nand in Delhi. The award was got registered at Delhi on 10th January, 1948.

3. On 18th February, 1948, Hari Ram presented an application under section 14 of hte Arbitration Act for the filing of the award and the same

being made a rule of the Court. Parma Nand, who alone was impleaded as the opposite party, filed objections to the application and prayed that the award be set aside. He pleaded that no reference agreement was ever executed by him and that the knew nothing of the arbitration or the award until he was served under the orders of the Court. The Court framed several issues and decided them all in favour of the applicant. The objections were accordingly dismissed and the award was made a rule of the Court.

4. In appeal preferred by Parma Nand, it was not only contended that the reference agreement was a forgery and, therefore, the award was without authority and not binding on Parma Nand, but it was also urged that as a matter of fact the pronote had never been endorsed in favour of Hari Ram and the entire proceedings were a fraud from the beginning to the end. Kapur J. went in detail into both these points and decided them in favour of Parma Nand. On the second point, which does not seem to have been directly involved and on which, probably because of this, no issue was framed, but since it was regarded as the very first link in the chain of fraud the learned Judge took into consideration various circumstances in the case and arrived at the conclusion:—

> "I am not satisfied, therefore, that any endorsement of the pronote was really made in favour of the plaintiff or the debt was assigned because the circumstances show that it was neither necessary nor were such steps taken as are in ordinary course of business usual

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for an endorsement of pronotes and assignment of debts."

On the first and the main point, the learned Judge held the view that the alleged signature of Parma Nand on the reference agreement was not genuine and that there was no arbitration agreement between the parties. The appeal was consequently accepted and the award set aside.

5. In the present application under Section 10 of Act LXX of 1951, Lal Chand based his claim on the same pronote and on the allegation that the pronote was endorsed in his favour by Hari Ram on 10th December, 1951. Besides the principal amount of Rs. 50,000, a sum of Rs. 1,687-8-0 was claimed by way of interest. Parma Nand, the displaced debtor, and Hari Ram and the Tarn Taran Bank Ltd were impleaded as respondents. The last two of them supported the claim and admitted the allegations made in the application as correct. Parma Nand opposed the application on various grounds, all of which were decided against him and the claim was decreed. The appeal preferred by Parma Nand was accepted by Falshaw J. on the following grounds:—

(i) That the debt in question was not a 'debt' as defined under the Act, and therefore an application for recovery of that debt under section 10 was not competent;

(ii) that the application was barred by time, because, in the opinion of the learned Judge, it was Hari Ram himself who could claim exclusion of the 3½ years' period taken in the arbitration proceedings, under section 37(5) of

the Act, and not his assignee, the applicant; and

(iii) that the finding of Kapur J. regarding the endorsement of the pronote in favour of Hari Ram was *res judicata* and, therefore, Lal Chand could not claim any interest in the pronote on the basis of any assignment in his favour by Hari Ram.

All these findings are being attacked before us by Mr. A. R. Whig, learned counsel for the appellant, and we have heard him at some length. In my opinion, however, points Nos. (ii) and (iii) can arise only if the appellant succeeds in showing that the application under section 10 of the Act was competent and the Tribunal was seized of the jurisdiction to deal with it and pass a decree. In that, in my opinion, the appellant has undoubtedly failed. Section 10 of the Act lays down:—

"Any displaced person having a claim against a displaced debtor may make an application, in such form as may be prescribed, for the determination thereof to the Tribunal within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, together with a statement of the debts owed to the creditor with full particulars thereof.'

Admittedly, both Lal Chand and Parma Nand are displaced persons. Parma Nand would be a 'displaced debtor' only if a 'debt' is due or is being claimed from him [*vide* Section 2(9)]. The word

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'debt' for the purposes of the Act is defined by Section 2(6), which reads:—

[His Lordship read Section 2(6) and continued:]

Evidently, clauses (a) and (b) deal with debts incurred by displaced persons, whereas clause (c) deals with debts due to a displaced person. Regarding the three types of debts, Gajendragadkar J. in *Ramchand Tillumal* v. *Khubachand Daswani and others* (1), expresses his opinion as follows:—

> "In my opinion, wherever the Act refers to the debt due by a displaced debtor it is necessary to apply the provisions of Section 2(6)(a) or Section 2(6)(b), as the case may be. The definition of the word 'debt' given in section 2(6)(c) would be inapplicable in the context. Similarly, where the Act refers to the creditor's claim for the recovery of his debt, we must turn to the definition of the word 'debt' in sub-section (6)(c) and not sub-section (a) or (b) that in my opinion, is the logical and necessary inference from the definitions of the words 'displaced debtor', 'displaced creditor' and 'debt' contained in section 2, sub-sections (9), (8) and (6), respectively."

The same view was taken by my Lord the Chief Justice, Khosla J. (as he then was) in *Jamia Milia Islamia, Delhi, and another* v. *Prithi Raj* (2).

6. The question then arises whether the pecuniary liability in clause (c), whether it is by way of a fresh advance or only a renewal of an old debt, ought to exist at the time of the coming into force of the Act, or it also includes a pecuniary

(1) A. I. R. 1955 Bom. 138.
(2) 1954 P. L. R. 325.

liability that becomes due to a displaced person after the Act has come into force. An identical question came up before me in *Neta Ram Dip Chand* v. *Gopal Das and others* (1) and there, on a consideration of all the relevant provisions of the Act and also its scheme and object, I had the occasion to observe:—

> "I am, therefore, of opinion that pecuniary liability mentioned in clause (c) of Section 2(6), whether it be by way of a fresh advance or only a renewal of an old debt, must be shown to be due to the displaced creditor at the time when the Act came into force so as to make it fall within the definition of a 'debt'. It is only then that he can be deemed to be entitled to the benefit of the provisions of Section 10 or Section 13 of the Act."

In coming to this conclusion I had relied upon certain observations in the Bombay case referred to above, with which I am still in respectful agreement. A similar view is now taken in *Mr. Mathra Das* v.*Hari Ram and others* (2), and it is held that there is no scope for invoking the provisions of the Act to a debt incurred after its commencement. At page 77 the learned Judge observes:—

> "In my opinion having regard to the intendment, the object and the language employed in Section 2 (6) of the Act, it must be held that the debt, the recovery of which is sought, must be due at the time when the Act came into force, and all debts, which become due subsequent to the commencement of the Act are outside its purview".

No argument to hold a contrary view is advanced, nor has any authority been cited.

(1) A. I. R. 1956 Pepsu 100.
(2) A. I. R. 1958 Andh. Pra. 76.

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7. Act LXX of 1951 came into force in Delhi on 10th December, 1951 (i.e., on the midnight of 9th December, 1951) and according to the appellant himself the pronote was endorsed in his favour and the debt assigned to him on 10th December, 1951, admittedly after the commencement of the Act. So far as Lal Chand appellant is concerned the pecuniary liability became due to him after the coming into force of the Act. The pecuniary liability cannot, therefore, be regarded as 'debt' and Parma Nand cannot be regarded as 'displaced debtor' within the meaning of the Act. That takes away the application of section 10 of the Act to the present case. The decision of the learned Single Judge on the point has accordingly to be upheld, though on different grounds.

8. In the face of this finding regarding the maintainability of the application under section 10 of the Act, I deem it not only unnecessary but inexpendient to go into the other two points, because the appellant, may, if so advised, still institute a regular suit for the recovery of the debt and then the points, if raised, may have to be examined under different provisions of law and in the light of different set of circumstances.

9. I would dismiss the appeal, but leave the parties to bear their own costs.

G. D. Khosla, C. J.

G. D. KHOSLA,—I agree.

B. R T.

LETTERS PATENT APPEAL

Before D. Falshaw and G. L. Chopra, JJ.

CHANDO DEVI,—*Appellant*

versus

MUNICIPAL COMMITTEE, DELHI,—*Resppondent.*

L.P.A. No. 107-D of 1954

1960

Feb. 15th

Letters Patent—Clause X—Order setting aside abatement under Order XXII, Rule 9, C. P. C. Whether a judgment—Appeal against such an order—Whether competent.