## LETTERS PATENT SIDE

*Before Bhandari C.J. and Falshaw J.*

JAMIA MILLIA ISLAMIA, DELHI,—*Appellant.*

*versus*

SHRI PRITHI RAJ AND OTHERS,—*Respondents.*

**Letters Patent Appeal No. 22-D of 1954**

1954

Dec., **8th**

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 3, 13, 14, and 40—Arbitration Act (X of 1940—Section 34—Whether applicable to proceedings under Act LXX of 1951—Order refusing to stay proceedings by Tribunal—Whether appealable—Proceedings before the Tribunal—Procedure to be followed therein.*

*Held*, that the provisions of section 34 of the Arbitration Act are not applicable to proceedings under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, since they are inconsistent with the procedure laid down by section 14 of the latter Act which does not contemplate the stay of proceedings on any application under section 34 of the Arbitration Act. Consequently neither the award of the arbitrator, which has not been made the order of the Court, nor the arbitration clause in the contract between the parties is a bar to the decision of the petition under section 13 of the Act.

*Held*, that an order refusing, under section 34 of the Arbitration Act, to stay proceedings pending a reference to arbitration thus paving the way for a decision of the case on the merits, is not a final order and no appeal lies therefrom under section 40 of Act LXX of 1951. The test of finality is whether the order finally disposes of the rights of the parties and that where an order does not finally dispose of those rights but leaves them to be determined by the Court in the ordinary way, such an order is not final.

*Held further*, that there is nothing whatever in the provisions of the Displaced Persons (Debts Adjustment) Act, 1951, which compels either displaced debtors or displaced creditors to have recourse to the Tribunals set up under the Act, and all of them are at liberty to have their disputes settled by the ordinary Courts of law, but once a displaced debtor or a displaced creditor has placed his case before a Tribunal under the provisions of the Act with the intention of taking advantage of the benefits provided by it, the procedure to be followed in his case by the Tribunal is strictly confined to that contained in the appropriate sections under which he comes before the Tribunal.

*Appeal under clause 10 of the Letters Patent against the decision of the Hon'ble Mr. Justice Khosla, dated 13th May, 1954, in F.A.O. 12-D of 1954, upholding the order dated 22nd February, 1954, passed by Mr. G. K. Bhatnagar, Tribunal Delhi, rejecting the appellant's application under section 34 of the Indian Arbitration Act.*

IQBAL AHMED, and V. D. MISRA, for Appellant.

A. R. WHIG, M. R. CHHABRA and SULTAN YAR KHAN, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J. This Letters Patent Appeal has arisen in the following circumstances. The respondent Prithi Raj claims to be a displaced person

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from Lahore, now residing at Delhi, where he carries on the business of a building contractor. In 1949 he entered into a contract with the registered society known as the Jamia Millia Islamia for the construction of a Teachers' Training Institute Hostel and according to his allegations completed the building in July 1951. He claimed that allowing for payments made by the society and the material supplied by it a sum of Rs. 19,700 was still due to him and he, therefore, filed a petition before a Tribunal constituted under Act LXX of 1951, under section 13 of that Act which deals with the claims by displaced cereditors against persons who are not displaced debtors. The claim was resisted by the Society, which denied that the subject-matter of the claim was a debt within the meaning of the Act, and also applied for the stay of proceedings before the Tribunal under section 34 of the Arbitration Act. It was in fact alleged by the Society not only that there was an arbitration clause in the contract between the parties but that there had actually already been a reference to arbitration under it.

On these pleadings the Tribunal framed the preliminary issues—

(1) Whether the subject-matter of dispute in the petition was referable to arbitration under the contract between the parties, whether the petitioner did so refer the matter to arbitration and accept the award and is estopped from bringing this petition ?

(2) Whether the Displaced Persons (Debts Adjustment) Act LXX of 1951 is not applicable to the claim in question?

By its order, dated the 11th of February 1954, the Tribunal held that the claim was a debt within the meaning of the Act, and that proceedings under section 13 of the Act, could not be stayed under section 34 of the Arbitration Act. Incidently, it was also held that the particular dispute, namely, regarding payment after completion of

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the building was not covered by the terms of the arbitration clause in the contract. In these circumstances the Tribunal ordered the Society to put in its written statement on the merits of the petitioner's claim.

The Society filed an appeal in this Court under section 39 of the Arbitration Act, and section 40 of Act LXX. This appeal was decided by Khosla, J., by his order, dated the 13th May, 1954, in which he upheld the findings of the Tribunal that the claim amounted to a debt within the meaning of the Act and that section 34 of the Arbitration Act had no application to proceedings under section 13 of Act LXX. He accordingly dismissed the appeal and the present appeal is against his order.

The preliminary objection has been raised on behalf of the respondent that no appeal lay to this Court at all against the order of the Tribunal dismissing the Society's application under section 34 of the Arbitration Act, and, therefore, the present appeal did not lie, since if no appeal lay to the learned Single Judge, his order must be deemed to have been passed in exercise of the revisional powers of the Court, and no Letters Patent Appeal lies against such an order.

It is clear that the Tribunals set up under the Act are entirely creatures of the Act and that any rights of appeal which may exist against their orders must be confined to such rights as are prescribed in the Act. Section 40 contains the following provisions as regards the appeals:—

> "Save as otherwise provided in section 41, an appeal shall lie from—
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> (a) any final decree or order of the Tribunal, or
>
> (b) any order made in the course of execution of any decree or order of the Tribunal, which is passed in the course of execution of a decree or

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> order of a civil Court would be appealable under the Code of Civil Procedure, 1908, to the High Court within the limits of whose jurisdiction the Tribunal is situated."

Section 41 provides that notwithstanding anything contained in section 40, where the subject-matter of the appeal relates to the amount of a debt and such amount on appeal is less than Rs. 5,000 no appeal shall lie.

It is at once obvious that an order refusing under section 34 of the Arbitration Act to stay proceedings pending a reference to arbitration thus paving the way for a decision of the case on the merits, is not in any sense of the word a final order. There are a number of cases in which it has been held that the test of finality is whether that order finally disposes of the rights of the parties and that where an order does not finally dispose of those rights, but leaves them to be determined by the Court in the ordinary way, such an order is not final. One decision of the Privy Council is a direct authority, namely that in case *Firm Ramchand-Manji Mal* v. *Firm Goverdhandas-Vishindas Ratanchand* (1), in which their Lordships held that an order refusing to stay a suit under section 19 of the Arbitration Act, does not finally dispose of the rights of the parties and is, therefore, not a final order within the meaning of section 109, Civil Procedure Code. It is, therefore, clear that under section 40 of the Act as it stands no appeal lies to this Court against the order of the Tribunal in the present case, since it is not a final decree or order.

It is, however, contended on behalf of the appellant that section 39 of the Arbitration Act gives a right of appeal against an order staying or refusing to stay legal proceedings where there is an arbitration agreement and section 34 under which such an order is to be passed also uses the word 'legal proceedings' which is apparently

(1) 56 I.C. 302

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wider than the term 'suit'. It is, therefore, contended that section 39 of the Arbitration Act gives the appellant a right of appeal independent of anything contained in section 40 of Act LXX, and that in any case the matter cannot properly be decided without also deciding the main question involved in the appeal, namely, whether section 34 of the Arbitration Act could be invoked at all in proceedings under section 13 of the Act LXX. In the circumstances I should proceed to consider the question whether it was rightly decided by the Tribunal and the learned Single Judge that the provisions of section 34 of the Arbitration Act are not applicable in proceedings under section 13 of Act LXX.

The grounds on which the learned Single Judge has considered and decided this matter are as follows. Section 3 of the Act is headed 'Overriding effect of Act, rules and orders' and reads—

> "Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a Court, or in any contract between the parties."

Section 13 provides for the filing of claims by displaced creditors against non-displaced debtors, and section 14 provides for the procedure for dealing with such claims. Briefly the procedure is that notice is to be issued to the debtor calling on him to show cause against the claim and first of all, if there is any dispute as to whether the claimant is a displaced creditor or not, this matter is to be decided, and then, if there is no such dispute, or if the debtor does not appear or has no cause to show, the Tribunal may after considering the evidence placed before it pass such decree in relation thereto as it thinks fit. In other words, once the status of the claimant has been

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determined the Tribunal has to deal with the claim on its merits. Both the learned Single Judge in the present case and Dulat, J., in Civil Revision No. 138-D of 1953, decided on the 23rd of July 1953, have taken the view that the procedure prescribed in section 14 is inconsistent with the provisions of section 34 of the Arbitration Act and that, therefore, the Tribunal was right in holding that it could not stay the proceedings under that Section.

The argument advanced by the learned counsel for the appellant was that the phraseology used in section 3 of Act LXX was somewhat different from that used in more or less similar overriding provisions in other Acts in which such words have been used as, "Notwithstanding anything contained in the Acts specified in column 1 of Part 1 of the Schedule" (section 24), and "The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act", (section 58 of the Damodar Valley Corporation Act XIV of 1948). He contends that where such language is used such Acts as are referred to are *pro tanto* repealed so far as their provisions are repugnant to the provisions of the Act under consideration, but that a deliberately milder form of language has been used in section 3 of Act LXX. He further contends that there is nothing in the procedure provided in section 14 of Act LXX which is inconsistent with the terms of section 34 of the Arbitration Act, and that there is nothing in Act LXX as a whole which prohibits the parties from proceeding to arbitration where there is in existence an agreement between them to do so.

The answer to this argument appears to me that although there may be some difference in the form of words used in different Acts as regards overriding provisions contained therein, the distinction is one without a difference and the practical effect is the same. Moreover, there is nothing whatever in the provisions of Act LXX which

compels either displaced debtors or displaced creditors to have recourse to the Tribunals set up under the Act, and all of them are at liberty to have their disputes settled by the ordinary Courts of law, but once a displaced debtor or a displaced creditor has placed his case before a Tribunal under the provisions of the Act with the intention of taking advantage of the benefits provided by it, the procedure to be followed in his case by the Tribunal is strictly confined to that contained in the appropriate sections under which he comes before the Tribunal, and since the procedure laid down under section 14 does not contemplate the stay of proceedings on any application under section 34 of the Arbitration Act, the Tribunal rightly held the section not to be applicable and this finding was rightly confirmed by the learned Single Judge. I may add that apart from the general considerations outlined above I am of the opinion that the application of the appellant under section 34 of the Arbitration Act is hit by the last words of section 3 of the Act "or in any contract between the parties". This seems to me quite clearly to rule out the pleading of an arbitration agreement as a bar to the deciding of a claim preferred by a displaced creditor under section 13, and I would, therefore, uphold the finding of the Tribunal on this ground also.

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Once it is held that section 34 of the Arbitration Act could not be applied in proceedings under section 14 of the Act LXX, it follows that the order was not appealable under section 39 of the Arbitration Act, and the appeal was, therefore, rightly held to have been filed under section 40 of Act LXX, under which it does not lie, since the order appealed against is not a final decree or order of the Tribunal, and, therefore, the preliminary objection raised by the respondent must be upheld. The other point which was raised before the Tribunal and the learned Single Judge, namely, whether the claim of the present respondent was a debt within the meaning of the Act was not seriously pressed before us. The matter has in fact been exhaustively discussed by the

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learned Single Judge, who besides giving his own considered opinion on the point has also expressed agreement with decision to the same effect by Harnam Singh, J., in *B. S. Bali* v. *Seth Batalia and others* (1).

A point was also raised before us by the learned counsel for the appellant that neither the Tribunal nor the learned Single Judge has given any decision on one of the points which was raised and embodied in the first issue, namely, what is the effect of the fact that there had already been a reference to arbitration before the present petition was filed. The learned Single Judge has not referred to this matter, but the Tribunal has in fact given a finding on it and has held that even if the dispute between the parties was liable to be referred to arbitration the proceedings before the arbitration would have had to stop on the filing of the petition, and even if any award had been given by an Arbitrator or any decree or order had been passed by a Court, it would not be binding on the proceedings before a Tribunal. I do not think it is necessary to go so far in order to dispose of the present appeal, since there was in fact no decree or order of an ordinary Court on the disputed claim in the present case, and I should prefer to express any opinion as to whether any such decree would be *res judicata* between the parties in a claim instituted under section 13 and decided under section 14 of the Act if and when such a case comes before me. It seems to me to be sufficient for the purpose of deciding this appeal to hold that neither the award of the arbitrator, which had not yet been made the order of the Court, nor the arbitration clause in the contract between the parties is a bar to the decision of the petition in the present case. Taking the circumstances as a whole into view I would dismiss the appeal but leave the parties to bear their own costs.

Bhandari, C.J.

BHANDARI, C. J.—I agree.

(1) 1954 P.L.R. 16