

## LETTERS PATENT APPEAL

*Before Bhandari, C. J. and Mehar Singh, J.*

THE PUNJAB MEDICAL EDUCATION AND RELIEF  
SOCIETY, JULLUNDUR,—Appellant.

*versus*

THE PUNJAB NATIONAL BANK LTD.,  
DELHI,—Respondent.

Letters Patent Appeal No. 26 of 1956.

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 16—Purpose and scope of—Non-displaced creditor—Whether can originate proceedings under the Act.*

1959

Aug. 6th.

... *Held*, that sub-section (1) of section 16 of the Displaced Persons (Debts Adjustment) Act, 1951, makes it quite clear that the power of the Tribunal to require the creditor to make election under that sub-section is only for the purposes of any proceedings under the Act; in other words, if no proceedings under the Act are before the Tribunal, under sub-section (1) of section 16 the Tribunal cannot require a creditor to make election as referred to in that sub-section. Sub-section (2) of section 16 enables a creditor to apply, after he has made election to retain the security, for a declaration of the amount due under his debt by the Tribunal. It is only when the proceedings are pending before the Tribunal under the Act that a non-displaced creditor can make an application according to sub-sections (2) and (3) of that section and no independent right has been given to such a creditor to originate proceedings either under sub-section (2) or sub-section (3) of section 16.

*Held*, that the only meaning of sub-section (5) of section 16 is that the election by the creditor is made in proceedings before the Tribunal under the provisions of the Act and when he has made election to retain his security, then to him apply sub-sections (2) and (3), and possibly (4) having regard to the circumstances of the case, but if he has elected to be treated as an unsecured creditor, then in

relation to his debt the provisions of the Act apply as taking his debt to be unsecured.

*Held*, that mere fact that the Tribunal has to make a declaration or determination about the amount due to the creditor under his debt does not provide reason to conclude that an independent right has been given to a creditor, other than a displaced creditor, to originate proceedings by an application under sub-section (2) of section 16.

*Held*, that none of the sections from 5 to 15 of the Act gives a right of originating application to a creditor, other than a displaced creditor, and, no such right is given to such a creditor in any part of section 16 either.

*Appeal under clause 10 of the Letters Patent, against the judgment of Hon'ble Mr. Justice Harnam Singh, dated the 9th January, 1956, passed in F. A. O. Case No. 30 of 1956, whereby the order of Shri H. D. Loomba, Tribunal Jullundur, dated the 1st December, 1954, was set aside and the case was remanded to be dealt with in accordance with law.*

D. S. NEHRA AND G. C. MITTAL, for Appellant.

S. L. PURI, for Respondent.

#### JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.—This is an appeal by the Punjab Medical Education and Relief Society, with registered office at Jullundur, appellant, from the the judgment, dated January 9; 1955, of a learned Single Judge of this Court, under clause 10 of the Letters Patent, by which judgment the learned Single Judge reversed the order, dated December 1, 1954, of the Tribunal under the provisions of the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), dismissing the application of the Punjab National Bank, Limited, the respondent, under section 16 of the Act on the ground that no such application is competent under that provision on behalf of or by the respondent.

The appellant was a registered society at Lahore before the partition of the country. It had mortgaged its immovable property to the respondent for something like Rs. 2,41,000. The respondent sought, by an application under section 16 of the Act, determination of its mortgage debt due from the appellant and for it, after determination, being treated as a first charge upon the compensation payable to the appellant under the Act. The application was opposed by the appellant on the ground that no such application is competent on behalf of the respondent, it not being a displaced person within the meaning and scope of the Act; and it is this position taken on behalf of the appellant that was accepted by the Tribunal, but on appeal the learned Single Judge did not agree with the Tribunal and reversed its order.

The Punjab  
Medical Educa-  
tion and Relief  
Society, Jullun-  
dur

v.  
The Punjab  
National Bank  
Ltd., Delhi

Mehar Singh, J.

It is admitted on both sides that within the meaning and scope of the expression 'displaced person' as defined in section 2(10) of the Act, the respondent is not such a person. In clause (8) of section 2 of the Act the expression 'displaced creditor' is defined to mean a displaced person to whom a debt is due from any other person, whether a displaced person or not. In clause (10) of the same section the definition of 'displaced person' is given and it is not denied by any body that the appellant is such a person. It is further an accepted position that the respondent is not a displaced creditor. In Chapter II of the Act, section 5 deals with an application by a displaced debtor for adjustment of his debts. The section contains detailed provisions about what are to be the contents of such an application and one of the particulars required [section 5(2)(e)(i)] is a schedule containing full particulars of all debts of the displaced debtor, whether owing jointly or

The Punjab Medical Education and Relief Society, Jullundur v. The Punjab National Bank Ltd., Delhi  
 Mehar Singh, J.

individually, with the names and addresses of his creditors and joint debtors. Section 6 empowers the Tribunal to dismiss the application under section 5 for non-compliance with the requirements of that section. Section 7 provides for the issue of notice of the application to the respondents and section 8 concerns the objections of the respondents by filing their written statements. Sub-section (1) of section 9 provides that "if there is a dispute as to whether the applicant is a displaced person or not or as to the existence or the amount of the debt due to any creditor or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by all the parties concerned and shall pass such decree in relation thereto as it thinks fit." Sub-section (2) of this section merely deals with the situation if the respondent or respondents do not appear. Section 10 provides for a claim by a displaced person against a displaced debtor, in other words it provides for a claim by a creditor, who is a displaced person, against a displaced debtor. Section 11 relates to procedure upon an application under the preceding section 10, but sub-section (1) of this section provides that, on service of notice of the application under section 10 upon him the displaced debtor can make an application on his own behalf under section 5, and when he does that, it will be treated as an application under section 5, and all other provisions of the Act are made applicable to that application accordingly. So far the provisions are that an application may be moved by a displaced debtor (section 5) or by a displaced creditor (section 10), but no reference is made to any application by any other creditor, though reference to the word 'creditor' finds place in sections 5 and 9(1). But no provision so far has been made for an independent application by a

creditor, who is not a displaced person. Then sub-section (1) of section 12 says—

“Any creditor of a displaced debtor may make an application to the Tribunal stating that the displaced debtor, who has made an application under section 5 or sub-section (2) of section 11, has concealed any part of his assets, and the Tribunal shall, after giving due notice thereof to the displaced debtor, determine the matter.”

The Punjab  
Medical Educa-  
tion and Relief  
Society, Jullun-  
dur

v.  
The Punjab  
National Bank  
Ltd., Delhi

Mehar Singh, J.

Sub-section (2) of this section concerns the decision to be made by the Tribunal in that connection. It is to be noted that even under sub-section (1) of section 12 a creditor of displaced debtor has no right to move an independent application, in other words an application on his own unconnected with any proceedings under the Act. He can only make an application under that provision if a displaced debtor's application under section 5 or under sub-section (2) of section 11 is pending before the Tribunal, but not otherwise. He joins in, in the proceedings pending before the Tribunal, but he has no right to initiate proceedings under sub-section (1) of section 12. Section 13 deals with the claim of a displaced creditor against a person who is not a displaced debtor. Section 14 deals with procedure concerning an application under the preceding section 13. Section 15 provides for consequences of an application by a displaced debtor under section 5 or sub-section (2) of section 11. So far there is no provision in any of the sections from section 5 to section 15, in Chapter II, under the heading 'debt adjustment proceedings', which gives right to a creditor, other than a displaced creditor, to originate proceedings under any of

The Punjab Medical Education and Relief Society, Jullundur

those sections. Then comes section 16 and sub-sections (1) and (2) of that section are—

v.  
The Punjab National Bank Ltd., Delhi

Mehar Singh, J

“S. 16(1). Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceeding under this Act, require the creditor to elect to retain the security or to be treated as an unsecured creditor.

(2) If the creditor elects to retain the security, he may apply to the Tribunal, having jurisdiction in this behalf as provided in section 10, for a declaration of the amount due under his debt.”

Sub-sections (3) and (4) of section 16 deals with the rights of the creditor, who has made election to retain his security, in regard to property referred to in sub-section (1), and provide in detail how his rights are to be adjusted and safeguarded. Sub-section (5) of the same says that “where a creditor elects to be treated as an unsecured creditor, in relation to the debt, the provisions of this Act shall apply accordingly”. After referring to sub-sections (1), (2) and (3) of section 16 the learned Single Judge said that “in my judgment the Tribunal has erred in holding that the Bank has no locus standi to apply under section 16(2) and (3) of the Act.”, and no other reason is to be found in support of the conclusion arrived at by the learned Single Judge. This judgment of the learned Single Judge was followed by Gurnam Singh, J., in *The Punjab National Bank, Ltd. v. Sardari Lall Kochhar* (1). In that case the learned Judge has gone

(1) F.A.O. 115 of 1955

into the matter in a little more detail. The consideration that prevailed with him to concur with the previous opinion of Harnam Singh, J., was that the word 'creditor' as used in sub-sections (2) and (3) of section 16 is unqualified and consequently any creditor can take advantage of the provisions of section 16. This case has been relied upon by the learned counsel for the respondent to support the position that he has taken on behalf of the respondent.

The Punjab Medical Education and Relief Society, Jullundur  
v.  
The Punjab National Bank Ltd., Delhi  
Mehar Singh, J.

It is immediately clear on reading sub-section (1) of section 16 that the power of the Tribunal to require the creditor to make election under that sub-section is only for the purposes of any proceedings under the Act; in other words, if no proceedings under the Act are before the Tribunal, under sub-section (1) of section 16 the Tribunal cannot require a creditor to make election as referred to in that sub-section. Sub-section (2) of section 16 enables a creditor to apply, after he has made election to retain the security, for a declaration of the amount due under his debt by the Tribunal. The learned counsel for the respondent urges that the provision in sub-section (2) stands out independently and gives a right to a creditor, even other than a displaced creditor, to originate proceedings before the Tribunal under this sub-section. He has had to argue that such a creditor can make election of the type referred to in sub-sections (1) and (2) of section 16 before coming to the Tribunal and having done so, he can make an application for declaration of the amount due under his debt under sub-section (2) of that section. In taking this approach to the case the learned counsel does not seem to have kept in view sub-section (5) of section 16 because if such a creditor makes such

The Punjab Medical Education and Relief Society, Jullundur v. The Punjab National Bank Ltd., Delhi  
 Mehar Singh, J.

election not in any proceedings already pending under the Act before the Tribunal but outside, it is not clear how such election by him is to be treated as if he was an unsecured creditor, in relation to his debt, and the provisions of the Act are to apply to him accordingly. The position of an unsecured creditor, other than a displaced creditor, is to be considered by the Tribunal in applications by a displaced debtor under section 5 and sub-section (2) of section 11 and such a creditor has no other means of bringing his case before the Tribunal under any provision of the Act. The only meaning of sub-section (5) of section 16 is that the election by the creditor is made in proceedings before the Tribunal under the provisions of the Act and when he has made election to retain his security, then to him apply sub-sections (2) and (3), and possibly (4) having regard to the circumstances of the case, but if he has elected to be treated as an unsecured creditor, then in relation to his debt the provisions of the Act apply as taking his debt to be unsecured. If, as pointed out, he can make an election as urged by the learned counsel for the respondent outside and is not compelled to do so in the presence of the Tribunal in proceedings under the Act, sub-section (5) of section 16, to my mind, becomes meaningless and redundant. The learned counsel for the respondent then says that the right of a creditor, other than a displaced creditor, under sub-section (2) of section 16 is, after election to retain his security, to obtain a declaration of the amount due under his debt so that he may have benefit of the provisions of sub-section (3) of the same section. He contends that since he is to have a declaration as referred to in sub-section (2), it follows that he has been given a right to originate proceedings under that sub-section. But then similar determination of a debt of a creditor due from a displaced



person is made under sub-section (1) of section 9 and sub-section (1) of section 12, in circumstances referred to in those provisions, and yet such determination of the debt due to the creditor is not inferential of a right having been given to a creditor, other than a displaced creditor, to originate proceedings under those provisions before the Tribunal for such determination, because it is clear from those provisions that such determination is made when the question arises upon an application by a displaced debtor under section 5 or sub-section (2) of section 11. So that the mere fact that the Tribunal has to make a declaration or determination about the amount due to the creditor under his debt does not provide reason to conclude that an independent right has been given to a creditor, other than a displaced creditor, to originate proceedings by an application under sub-section (2) of section 16. The learned counsel for the respondent then refers to the expression 'may apply' as used in sub-section (2) of section 16 and urges that a creditor, other than a displaced creditor, has been given a right to make an application under that provision, but that, in itself; does not lead to the conclusion that the application under sub-section (2) of section 16 is of an originating nature. An analogy is available in sub-section (1) of section 12 in which such a creditor has been given right expressly to make an application in the circumstances referred to in the sub-section and yet it still is not an originating application but is an application in pending proceedings under section 5 or sub-section (2) of section 11 before the Tribunal. As I read sub-sections (1) and (2) of section 16, the only way to make a coherent and consistent reading of those provisions is that both sub-sections concern steps taken before the Tribunal by a creditor for the purposes of proceedings under the

The Punjab  
Medical Educa-  
tion and Relief  
Society, Jullun-  
dur  
v.

The Punjab  
National Bank  
Ltd., Delhi

Mehtar Singh, J.

The Punjab Act. The same is the effect of sub-section (5) of  
 Medical Educa- section 16 as has been pointed out. Sub-section  
 tion and Relief (1) of section 16 empowers the Tribunal to require  
 Society, Jullun- a creditor, when the proceedings are before it, for  
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 v. the purposes of the Act, to make election whether  
 The Punjab the purposes of the Act, to make election whether  
 National Bank to retain his security or to be treated as an un-  
 Ltd., Delhi secured creditor. When he has made election,  
 Mehar Singh, J. there still remains the question of the determina-  
 tion of the amount due under his secured debt and  
 for that purpose he has been given a right to make  
 an application under sub-section (2) of section 16  
 for a declaration of the amount due under his debt.  
 If his election is to be treated as an unsecured cre-  
 ditor, then under sub-section (5) of section 16 he is  
 left to be treated as such under the provisions of  
 the Act. Both sub-sections, to my mind, apply to  
 only proceedings pending for the purposes of the  
 Act and any steps under those sub-sections can  
 only be taken in such proceedings. It has been  
 pointed out that in no section apart from section 5  
 to section 15 any provision is made to give a right  
 of originating application to a creditor, other than  
 a displaced creditor, and, as pointed out, no such  
 right is given to such a creditor in any part of sec-  
 tion 16 either. In Chapter II there is no section  
 thereafter in which any such right has been given  
 to a creditor, other than a displaced creditor, to  
 make an originating application; in fact, there is  
 no such provision in any part of the Act to which  
 the learned counsel for the respondent has been  
 able to make reference.

The learned counsel for the respondent refers  
 to the fact that in some sections, such as section 13  
 and sub-section (2) of section 33, the Legislature  
 has expressly referred to the expression 'displaced  
 creditor', whereas in other parts of the Act it has

used the word 'creditor', and, therefore, the use of the word 'creditor' in the Act, wherever it occurs, relates to any and every creditor, whether a displaced creditor or not, and I agree with this, but it is not clear how this helps the case of the respondent because, as already made clear, a displaced debtor can bring in any creditor in litigation under the Act before the Tribunal and in certain cases in proceedings initiated before the Tribunal by persons entitled to do so under the Act, a creditor, other than a displaced creditor, has been allowed to seek certain kind of redress. It was, therefore, necessary for the Legislature, in the circumstances, to use these two expressions as it has done, but that does not help the case of the respondent. The learned counsel for the respondent then refers to sub-section (1) of section 52 of the Act and points out that under that sub-section it is the duty of the Tribunal to communicate to the prescribed authority the amount of the prior charge declared under sub-section (3) of section 16, among other matters, and then follow provisions in that section for the scaling down of the debt. The learned counsel presses that this means that a creditor can obtain a declaration under sub-section (3) of section 16 in his own right in originating proceedings, but it is difficult to see how this conclusion is available from sub-section (1) of section 52, because that sub-section will apply equally and effectively when such a declaration is made under sub-section (3) of section 16 in consequence of proceedings pending before the Tribunal for the purposes of the Act as referred to in sub-section (1) of section 16. When such a declaration is made in such proceedings, it then becomes the duty of the Tribunal to deal with it as provided in sub-section (1) of section 52. Reference to this sub-section is not helpful to the case of the respondent in the least.

The Punjab  
Medical Educa-  
tion and Relief  
Society, Jullun-  
dur  
v.  
The Punjab  
National Bank  
Ltd., Delhi

Mehar Singh, J.

The Punjab Medical Education and Relief Society, Jullundur v. The Punjab National Bank Ltd., Delhi  
 Mehhar Singh, J.

The consideration of the provisions of the Act, already referred to, leads to the conclusion that sub-sections (1) and (2) of section 16 have reference to proceedings pending before the Tribunal for the purposes of the Act and it is only when such proceedings are pending that a creditor, other than a displaced creditor, can make an application according to sub-sections (2) and (3) of that section and no independent right has been given to such a creditor to originate proceedings either under sub-section (2) or sub-section (3) of section 16. Similar view has been expressed by Falshaw, J., in *In the matter of the Indian Companies Act and of the Punjab Commerce Bank Ltd.*, case No. 5 in Civil Original No. 88 of 1954, decided on April 15, 1955, and with reference to section 16 the learned Judge says—

“Admittedly this section refers only to proceedings before a Tribunal constituted under the Act, either initiated by the debtor under section 5 of the Act for the adjustment of his debts or by a creditor under section 10 of the Act.”

It will be seen that the creditor under section 10 of the Act is a displaced person and not any other creditor like the respondent in this case. In the view taken in this case this appeal succeeds with the result that the judgment of the learned Single Judge is reversed and the order, dated December 1, 1954, of the Tribunal, under the Act, at Jullundur, is restored. In the circumstances of the case, however, the parties are left to their own costs in this appeal.

Bhandari, C. J.

BHANDARI, C. J.—I agree.

R. S.