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was made under section 13 of the Displaced Persons (Debts Adjustment) Act, before the Tribunal on the 31st of March, 1952. Thus the appellant firm shall pay interest at 6 per cent per annum from the 13th of March, 1947, till the 31st of March, 1952.

The result is that the appeal is accepted to the extent that the amount of interest awarded by the Tribunal is reduced to the extent indicated above. Inasmuch as the appeal in substance fails and the conduct of the appellant firm was not helpful in the proceedings before the Tribunal, I order the appellants to pay costs of this appeal.

APPELLATE CIVIL

Before Kapur and Passey, JJ.

SHRI KRISHAN TALWAR,—*Defendant-Appellant*

v.

THE HINDUSTAN COMMERCIAL BANK, LIMITED, ETC.—*Defendant-Respondents*

Civil Regular First Appeal No. 84 of 1951.

1956

Nov. 5th

Contract Act (IX of 1872)—Section 141, Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 17 and 22(g)—Benefits of section 17, whether available to a debtor even in a civil court—Security lost by Act of God—Surety, whether discharged—Section 141 of the Contract Act, whether applies—Liability of the Principal as well as of the surety, whether ceases under sections 17 and 22(g) of the Displaced Persons (Debts Adjustment) Act.

Practice and Procedure—Appeal—Change in law during pendency of—Effect of.

Held, that section 141 of the Contract Act does not cover a case where there had been a loss due to an Act of God or enemies of the State or due to unavoidable accident.

Held further, that the provisions of section 17 of the Displaced Persons (Debts Adjustment) Act are in addition to the substantive law of the country and are not restricted to the proceedings before the ordinary Courts of the country, and therefore the advantages given to the debtor under section 17 are available to a debtor even in a civil court. Sub-clause (b) of this section provides that a creditor shall not be entitled, in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security. Therefore, under section 22(g) a decree cannot be passed against a surety in excess of what could be decreed against the principal, and if against the principal no decree could be passed, no decree could be passed against the surety also.

Held also, that an appeal being a rehearing of the suit the court has to pass such orders which are in accordance with the law in force at the passing of the decree and subsequent change of law has to be taken into account.

First appeal from the decree of the Court of Shri Gurbachan Singh, Sub-Judge, 1st Class, Jullundur, dated the 21st day of December, 1950, granting the plaintiff Bank a decree for Rs. 13,375 with costs of the suit against the defendants. The decree shall carry future interest at the rate of Rs. 4-8-0 per cent per annum from the date of the suit till realization. The decree shall not be executed till 31st March, 1952.

S. L. PURI AND RAJINDAR SACHAR, for Appellant.

M. L. SAKSENA AND K. L. KAPUR, for Respondents.

JUDGMENT

KAPUR, J. This is a defendant's appeal against a judgment and a decree of Mr. Gurbachan Singh, Subordinate Judge, 1st Class, Jullundur, dated the Kapur, J.

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21st December, 1950, decreeing the plaintiffs' suit for Rs. 13,375 with future interest at 4½ per cent per annum from the date of the suit till realisation and awarding costs.

The appellant was defendant No. 2 in the Court below. He became the guarantee broker of the plaintiff-bank by a document Ex. D-1, dated the 2nd September, 1946. By clause 13 of this agreement he guaranteed the repayment of borrowings by all approved borrowers of loans and advances made by the Bank to such persons and by clause 20 he deposited a sum of Rs. 50,000 as security for the due performance of his contract.

Defendant No. 1 was a joint Hindu Family Firm and the proprietor of that firm was Mangal Das who was introduced by defendant No. 2 to the plaintiffs and on the 25th November, 1946, he executed a pronote as proprietor of firm Mangal Das-Ram Parkash for a sum of Rs. 25,000. He also pledged certain goods—cotton and *toria*—to the Bank which is evidenced by a document Exhibit P. 6, at page 31 of the Paper Book. There was a cash credit account with the Bank and on the 23rd August, 1947, a sum of Rs. 13,456-5-6 was due from defendant No. 1, to the plaintiffs which is evidenced by Exhibit P. 7, the account produced by the Bank

Due to disturbances in what became West Punjab and is now West Pakistan, the Bank had to close its business in Sheikhupura. Defendant No. 1 was residing at Warburton which was a pay office under the control of Sheikhupura Branch. It was at Warburton that he pledged the goods and it was at Warburton that he borrowed the money. On the 7th September, 1947, the office at Warburton was closed.

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The plaintiffs brought a suit for the recovery of Rs. 15,375 on the 28th of November, 1949, alleging that defendant No. 1 was the principal debtor and that defendant No. 2 was a guarantee broker and had guaranteed the loan advanced by the Bank. In paragraph 5, it was alleged that a sum of Rs. 15,001-15-4 was due on the 30th of June, 1949, and adding to that the interest, the amount due on the date of the suit was Rs. 15,375. The Bank also alleged that some goods had been pledged with them which had been looted due to communal disturbances.

Defendant No. 1 could not be served and the report was that he had left Pakistan. Defendant No. 2 pleaded that he had not guaranteed the loan nor had he any knowledge of the loan sued for and that because the Bank had accepted a pledge of cotton and *toria* he was absolved from all liability. He denied that any demand for the money had been made from him. In paragraph 5 of the written statement he denied to have any knowledge of the facts in regard to the amount due which was not admitted but pleaded that defendant No. 2 never borrowed anything and he also claimed the benefit of Act XXV of 1949. The following issues were stated by the learned Judge—

1. Whether S. Harbans Singh is competent to sign and verify the pleadings on behalf of the plaintiff Bank; if not, what is its effect?

2. Whether the sum of Rs. 13,375 is due to the plaintiff Bank from defendant No. 1 on the basis of cash/credit account?

3. What goods were pledged by the defendant No. 1 with the plaintiff Bank and

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whether those goods have been looted due to disturbances and riot and what is its effect?

4. In case it is found that some amount is due to the plaintiff Bank from defendant No. 1, is not defendant No. 2 liable to pay the same to the plaintiff under the terms of the agreement copy of which is Exhibit D. 1, having regard to the fact that the defendant No. 1 is an approved borrower?

5. Whether defendant No. 2 is not liable because the goods have been looted during the disturbances?

6. Whether this Court has no jurisdiction to try this suit?

7. Is the defendant No. 2 entitled to any relief under Act XXV of 1949. If so, to what relief?

and he came to the conclusion that Rs. 13,375 were due to the plaintiffs on the basis of the cash/credit account, that the goods which had been pledged with plaintiffs had been looted and that defendant No. 2 was a guarantee broker and had guaranteed repayment of the loan sued for. He also found that section 141 of the Contract Act was not applicable. The learned Judge, therefore, passed a decree for Rs. 13,375 which was not to be executed till the 31st of March, 1952. The guarantor, defendant No. 2, has come up in appeal to this Court.

The appellant has submitted that the amount which was claimed by the plaintiffs has not been proved and, therefore, no decree could be passed against him. The plaintiff-bank has produced a

copy of the books of account showing the amounts which were borrowed on different occasions by defendant No. 1 and which are admissible under section 4 of the Bankers' Books Evidence Act. Two witnesses have been produced by the plaintiffs to prove the amount due. They are P.W. 2, Parshotam Singh who has stated that on the 25th August, 1947, a sum of Rs. 13,500 was due from defendant No. 1 to the plaintiffs, and P.W. 3, Harbans Singh who is the Manager of the Bank has also stated that the amount was borrowed by defendant No. 1. In my opinion this is sufficient compliance with law and it must be held that the Bank has proved the amount of debt which was due to it as against defendant No. 1.

It is then submitted that the Bank has not proved any loss of goods which had been pledged. In my opinion, this submission is without any substance. P.W. 2 and P.W. 3 have both stated that the goods were looted. P.W. 2 Parshotam Singh has deposed that up to the 20th August, 1947, the godown at Warburton was intact but disturbances started on the 25th and after that the Manager and the Accountant were killed on the 26th and that the Bank at Sheikhupura had to be closed and he was informed that all the goods had been looted. P.W. 3, Harbans Singh has stated that the goods were looted, and no cross-examination was directed against this statement and we must hold that the goods have been proved to have been looted.

It was next contended that no liability arises against defendant No. 2 because there was no loss of the goods pledged. It is not quite clear what is exactly the defence of the defendant on this point, but as we have held that the goods had been looted this point also is without any significance.

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Contention was raised that section 141 of the Contract Act absolves all the defendants. I am unable to agree with that because section 141 provides:—

> 'A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not, and, if the creditor loses, or without the consent of the surety, parts with such security the surety is discharged to the extent of the value of the security."

But it cannot be said that it covers a case where there had been a loss due to an act of God or enemies of the State or due to unavoidable accident. No case has been cited and I know of none where in circumstances similar to the one now before us a surety has been discharged in these circumstances. I must, therefore, overrule this contention also. But the real point of substance arises under section 17 of the Displaced Persons (Debts Adjustment) Act LXX of 1951. Section 3 of that Act gives overriding effect to the provisions of the Act and the rules made thereunder as against any other law for the time being in force or any decree or order of a Court, or any contract between the parties. Section 17 gives certain relief to the debtors and it has been held in this Court in *Messrs Sulakhan Singh-Seth Mool Chand* v. *The Central Bank of India, Limited* (1), that provisions of section 17 are an addition to the substantive law of the country and are not restricted to the proceedings before the ordinary Courts of the country, and therefore, the advantages given to the debtor

(1) 1953 P.L.R. 348

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under section 17 are available to a debtor even in a civil Court. Sub-clause (b) of this section provides that a creditor shall not be entitled, in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security. Thus as against defendant No. 1 who is the principal debtor the Bank is not entitled to get a decree. The only question is whether this section is available as a protection to a guarantor also. Counsel for the appellant relies on section 22(g) which applies to joint debtors one of whom is a surety. It runs:—

> "Where the relationship between the joint debtors is that of principal and surety, nothing contained in this Act shall prevent the institution of a suit for the recovery of the debt against the surety but no decree shall be passed in such suit for an amount in excess of the amount decreed or which can be decreed against the principal debtor in accordance with the provisions of this Act:
>
> Provided that the total amount which may be recovered from the principal debtor and the surety shall not exceed the amount decreed or which can be decreed by the Tribunal against the principal debtor in accordance with the provisions of this Act."

Thus under this section a decree cannot be passed against a surety in excess of what could be decreed against the principal, and if against the principal no decree could be passed, no decree could be passed against the surety also. But Mr. Madan

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Lal Saxena submits that there is a provision in clause 20 of the agreement of guarantee by which Rs. 50,000 had been paid for the due performance of the contract of guarantee and he was entitled to take advantage of section 17 of the Act as against the surety. But if the Displaced Persons (Debts Adjustment) Act, has an overriding effect, then the only law under which a suit could be brought is under this Act and the only section which deals with such suits is section 22(g) according to which no decree can be passed against a surety which could not be passed against the principal debtor. In view of this if no decree can be passed against a principal debtor as we have held then no decree can be passed against the guarantor, defendant No. 2 also.

Counsel also submits that future interest could not be awarded by virtue of section 29 of the Debts Adjustment Act. That, in my opinion, is so, and because of this Act there is ceasure of accrual of interest as from the 15th of August, 1947.

The Act which the appellant is taking advantage of came into force after the decree was passed that is on the 8th November, 1951. It has been held by this Court in *British Medical Stores* v. *L. Bhagirath Mal* (1), that because an appeal is a rehearing the Court has to pass such orders which are in accordanace with the law in force at the time of passing of the decree and subsequent change of the law has to be taken into account. Reliance was there placed on *Lachheshwar Parshad* v. *Keshwar Lal* (2), where Varadhachari, J., relied upon *Quilter* v. *Mapleson* (3), and on the *Attorney-General* v. *Birmingham* (4). If the law had been

(1) 1954 P.L.R. 449
(2) 1940 F.C.R. 84
(3) (1882) 9 Q.B.D. 672
(4) 1912 A.C. 788

in force at that time the Bank might not have brought the suit in the form that they have brought and in these circumstances the parties must bear their own costs throughout.

In the result this appeal succeeds and is allowed and the suit as against the appellant is dismissed. The parties will bear their own costs throughout.

Kapur, J.

Passey, J.

PASSEY, J.—I agree.

CIVIL WRIT

Before Bhandari, C.J. and Bishan Narain, J.

SURAJ PARKASH KAPUR,—*Petitioner*

v.

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 385 of 1955.

1956

Nov. 9th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Sections 15 and 26—Executive instructions of Punjab Government in letters, dated the 9th February, 1952 and 18th May, 1953—Validity of—Rights of quasi-permanent allottees under the East Punjab Evacuee (Administration of Property) Act, 1947, notification No. 4892/5, dated the 8th June, 1949—Whether property—Interference with such rights by Consolidation authorities without payment of compensation—Whether justified—Word "Encumbrancer" in section 26 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, L of 1948, meaning of—Transfer of Property Act (IV of 1882)—Section 6 and Constitution of India, Article 31.

Held, (1) that "property" in relation to land is a bundle of rights exercisable with respect to it. The right to transfer is no doubt one of these rights and if there is any restriction on transfer then to that extent the owner's