

passed by the District Judge, it would be passing a decree in contravention of the provisions of section 31 introduced by the amending Act. The amending Act, therefore, must be given effect to not only in fresh suits filed or suits pending but also in those cases in which appeals are pending and have not been decided.

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That being so, this appeal must be allowed and the suit of Raja Ram plaintiff-respondent dismissed. In the circumstances of the case, I would make no order as to costs.

DULAT, J.—I agree.

Dulat, J.

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APPELLATE CIVIL

Before Tek Chand and Shamsher Bahadur, JJ.

THE PUNJAB CO-OPERATIVE BANK, LTD.,—Appellant.

versus

NARANJAN DASS BUDWAR,—Respondent.

Execution First Appeal No. 230 of 1951.

Displaced Persons (Legal Proceedings) Act (XXV of 1949)—Sections 2 and 7—Co-operative Bank having its Head Office in Amritsar and branch office in Lahore and other places in Pakistan—Whether a displaced person—Decree in favour of the Bank passed by Lahore Court before Partition—Whether can be executed in India after Partition if the judgment-debtor resides in India—Indian Limitation Act (IX of 1908)—Articles 181 and 182 (5)—Application for execution in India of a decree passed by Lahore Court prior to Partition—Period of limitation and terminus a quo for such application—Application for having a decree transferred—Whether step-in-aid of execution.

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Held, that the Co-operative Bank having its Head Office in India and branch offices in Pakistan is a "displaced person" as defined in section 2 of the Displaced Persons (Legal

Proceedings) Act, 1949, and in any case it was "a person who, before and after the said date (15th of August, 1947), has resided in and continues to reside in an area forming part of India" and section 7 of the said Act is applicable to it.

Held, that the effect of the partition of the country was that the decree passed by Courts situated in the territories of Pakistan prior to partition became inexecutable in India for want of reciprocity. The result was that subsequent events effectively nullified the execution of the decree of Lahore Court in India and the obstacle put to execution in the way of the decree-holder was beyond his control. This obstacle was later on removed after the passing of the Displaced Persons (Legal Proceedings) Act, No. 25 of 1949, which became law in the Punjab on 4th of June, 1949, and section 7 of this Act opened the way to the execution of certain decrees and orders passed before the 15th of August, 1947, in the territories now forming part of Pakistan. This section enabled the execution of a decree to be taken out in Courts in India in favour of a "displaced persons" or any other person who before and after the said date, has resided in, and continues to reside in an area now forming part of India. This application made to the executing Court on 16th of May, 1950, after the bar to execution had been removed by section 7 of Act No. 25 of 1949, falls within the provisions of Article 181 of the Limitation Act and the period of limitation thereunder runs from 4th of June, 1949, the date when the Act became law in the Punjab. This application having been made within three years from the date when the right to apply accrued is within limitation.

Held, that an application to have a decree transferred to another court for execution, though it is by no means an application for execution, is certainly an application to take a step-in-aid of execution within the meaning of clause (5) of Article 182 of the Indian Limitation Act, 1908.

Case referred by Hon'ble Mr. Justice J. L. Kapur, on 17th August, 1953, to a Division Bench for decision of the difficult questions of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice Shamsher Bahadur, finally decided the case on 1st March, 1960.

Execution first appeal from the order of the Court of Shri Sunder Lal, Senior Sub-Judge, Ferozepore, dated the 19th day of June, 1951, dismissing the execution application.

C. L. AGGARWAL, D. N. AWASTHY, A. L. KAUL and V. C. MAHAJAN, for the Appellant.

H. L. SARIN, N. N. GOSWAMY, V. P. GANDHI and S. D. BAHRI, for the Respondent.

JUDGMENT

TEK CHAND, J.—The facts giving rise to this execution first appeal are as follows. A suit instituted by the Punjab Co-operative Bank Limited, Lahore, filed on 25th of August, 1939, in the Court of Commercial Sub-Judge at Lahore for the recovery of Rs. 1,73,521 was decreed on 23rd of December, 1939, as a result of a compromise between the parties. It was decreed that the defendant was to pay into Court on or before 15th of June, 1940, the sum of Rs. 1,71,178-5-0 and costs amounting to Rs. 2,844 and interest in the following manner.

The first instalment of Rs. 25,000 was payable on 15th of June, 1940, and the judgment-debtor was to pay a sum of Rs. 50,000 on 15th of June, 1941, and the balance of the amount with interest was payable on 15th of June, 1942. In case of single default the whole amount would become due at once, and the plaintiff would have the right to get the properties mortgaged with the Bank, namely, factories at Pattoki, District Lahore, and at Moga, District Ferozepore, sold in execution of the decree. In case the sale proceeds of the mortgaged properties were found to be insufficient to meet the decretal claim of the Bank, the decree-holder would also have the right to proceed against the person and other properties of the judgment-debtor in execution of the decree against him. The future

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interest was payable at the rate of six per cent per annum till realisation.

The first execution application was made on 4th of February, 1941, in the executing Court at Lahore and it was dismissed on 10th of July, 1941, as partly satisfied as the judgment-debtor had paid a sum of Rs. 33,397-13-0,—*vide* Exhibit D.H. 10.

The second execution application was made at Lahore on 28th of February, 1944, which was dismissed on 5th of May, 1944, as partly satisfied,—*vide* Exhibit D.H. 11.

The third execution application was filed in the same Court on 12th of July, 1946, but it was dismissed on 18th of October, 1946, as the process-fee had not been paid by the decree-holder,—*vide* Exhibit D.H. 12.

The decree-holder has contended that on or about 12th of July, 1947, he made an application to the executing Court at Lahore for the grant of transfer certificate under section 38 of the Code of Civil Procedure, to the Court at Ferozpur and the case was fixed for grant of the certificate on 18th of October, 1947. In the meanwhile communal riots had broken out and nobody attended the Court on behalf of the decree-holder on that date and it is not known what, if any, orders were passed.

On 23rd of August, 1949, another execution application was made at Lahore, *vide* Exhibit D.H. 17, in which the decree-holder prayed for the sale of the judgment-debtor's factory at Pattoki, District Lahore. A sum of Rs. 88,512-3-0 was said to be the balance then payable to the decree-holder besides interest at the rate of six per cent per annum from 1st of July, 1947, till realization. In this application, it was stated that an application

was made previously in 1947, which was fixed for 18th of October, 1947, for transfer certificate for taking out execution in District Ferozepur, but the decree-holder was not aware of the orders passed and no certificate had been obtained so far. It was mentioned that on account of the formation of Pakistan and India as two separate countries, the Court at Lahore should order sale of the judgment-debtor's factory at Pattoki which is in Pakistan. Reference was also made to the previous execution application which was dismissed on 18th of October, 1946, on account of non-payment of process-fee. This execution application made on 23rd of August, 1949, was dismissed by the executing Court, Lahore, on 25th of November, 1949, at the instance of the decree-holder whose counsel made a statement that further proceedings would be taken in the Court of the Custodian under the law which had come into force in Pakistan. The application was dismissed as unsatisfied,—*vide* Exhibits D.H. 18 and D.H. 19.

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The present application was made in the Court of District Judge, Ferozepur, on 16th of May, 1950, for execution of the decree under section 7 of the Displaced Persons (Legal Proceedings) Act, No. 25 of 1949. Under this provision, certain decrees and orders passed before 15th of August, 1947, by any Court situated in an area now forming part of Pakistan in favour of a displaced person or in favour of any other person who had, before and after the said date, resided in, and continued to reside in an area now forming part of India, were made executable on application made by the decree-holder as prescribed by Order 21, rule 11(2), Civil Procedure Code, by any Court within local limits of whose jurisdiction the person, against whom the decree or order had been passed, actually and voluntarily resided or carried

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on business, in the same manner and to the same extent as if it were a decree or order passed by that Court.

On 21st of August, 1950, the judgment-debtor filed his objections to the application and the decree-holder filed his replication on 15th of November, 1950, and the judgment-debtor was also allowed to submit a second written statement in reply to the replication.

On the above pleadings, the trial Court framed the following issues :—

- (1) Is the execution application within time?
- (2) Is Shri Ved Paul competent to file execution application on behalf of the decree-holder?
- (3) Is the Bank, the decree-holder, displaced person as defined in Act No. 25 of 1949?
- (4) Has the Bank taken out execution proceedings against the judgment-debtor within time and through competent person?
- (5) Can the decree-holder proceed in this Court without an application under section 39 and without getting non-satisfaction certificate?
- (6) What is the effect of the decree-holder having certified the claim before the Custodian (Pakistan)?
- (7) Cannot the decree-holder take out execution proceedings without accounting for the value of the claim of the

decree-holder or assets of the judgment-debtor certified in Pakistan? The Punjab Co-operative Bank, Ltd.,

- (8) Is judgment-debtor not a displaced person and, therefore, cannot take advantage of Act No. 25 of 1949? v.
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(9) If issue No. 8 is decided in favour of the judgment-debtor, to what relief is he entitled under the said Act?

(10) To what amount the decree-holder is now entitled?

(11) Can the judgment-debtor object to the decree-holder realising more than twice the amount originally advanced to the judgment-debtor?

(12) If issue No. 3 is decided against the decree-holder, has this Court jurisdiction to execute the decree?

The first three issues around which the main controversy in appeal centres, were decided in the negative. The fourth issue was decided in the affirmative as to previous execution proceedings. The fifth issue was also decided in the affirmative. The sixth issue was decided in favour of the decree-holder and on the seventh issue it was held that as nothing had been realized as a result of execution taken out in Lahore, after the formation of Pakistan, the decree-holder was at liberty to take out execution in the Court at Ferozepore. On the eighth issue it was held that the judgment-debtor was not a displaced person and, therefore, could not take advantage of the provisions of Act No. 25 of 1949. Issue No. 9 consequently did not arise. On issue No. 10, it was held that the decree-holder was entitled to Rs. 96,743 as the balance of

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the decretal amount, besides interest. Issue No. 11 was decided against the judgment-debtor and on issue No. 12 it was held that though the Bank was not a displaced person, even then the Court at Ferozepore had jurisdiction to execute the decree in view of the provisions of section 7 of Act No. 25 of 1949. In the result, the execution application was dismissed as time-barred but the parties were left to bear their own costs. From the above order, the Bank has come up in appeal.

On behalf of the decree-holder it is argued that the present application filed on 16th May, 1950, is within limitation in view of the provisions of Article 182(5) of the Indian Limitation Act, having been made within three years of the date of the application made at Lahore on or about the 12th of July, 1947, in which the transfer certificate under sections 38 and 39 of the Code of Civil Procedure was sought and in which 18th of October, 1947, had been fixed as the date of hearing but owing to disturbances nobody appeared in Court on behalf of the decree-holder. If such an application was, in fact, made, then it was contended that it would be a step-in-aid of the execution. An application to have a decree transferred to another Court for execution, though it is by no means an application for execution, is certainly an application to take a step-in-aid of execution within the meaning of clause (5) of Article 182,—*vide Sm. Akshoy Kumari Debi v. Nalini Ranjan Mukherjee* (1), *Sheonath Parshad v. Bindeshwari Prasad Choudhury*, (2), *Prayagdas Shankerlal Maheshri v. Mt. Indirabai* (3), and *Sheolal Ramlal v. Ramrao Balasaheb* (4). Reference in this connection may also be made to

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- (1) A.I.R. 1950 Cal. 493
 - (2) A.I.R. 1950 Pat. 518
 - (3) A.I.R. 1948 Nag. 189
 - (4) A.I.R. 1948 Nag. 197

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The real question, however, is whether it has been satisfactorily proved on the record of this case whether an application as alleged by the decree-holder had in fact been made under section 30 Civil Procedure Code, to the executing Court at Lahore on or about 12th of July, 1947, in which 18th of October, 1947, had been fixed as the date for grant of the certificate. There is a clear reference to this application in the subsequent application dated 23rd of August, 1949,—*vide* Exhibit D. H. 17, and there is no reason to suggest that the Bank on 23rd of August, 1949, was interested in making a false averment as that application was admittedly within time even after taking into consideration the date of dismissal of the execution application dated 12th of July, 1946, as it had been dismissed on 18th of October, 1946. The decree-holder, in order to bring his execution application dated 23rd of August, 1949, within time, did not stand in need of the application for a transfer certificate as a step-in-aid of execution.

Furthermore, Ved Paul Suri, who was in the service of the Bank, as D. H. W. 1, has stated that the Bank had filed an application for a transfer certificate for Ferozepore Court and this was done before 15th of August, 1947, but he did not know what happened to that application and the transfer certificate had not been obtained. Along with this application, an affidavit has been filed of Shri Durga Das, an employee of the Bank, to the same effect and certain other documents have also been filed as annexures in proof of the filing of an application for transfer certificate to Ferozepore Court.

(1) A.I.R. 1918 Bom. 236—I.L.R. Bom. 420

(2) A.I.R. 1923 Mad. 72

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The learned counsel for the judgment-debtor has objected to the admission of these documents in view of the stringent provisions of Order 41, Rule 27, Civil Procedure Code. It is not necessary to consider whether the verbal request of the learned counsel for the appellant-Bank seeking inclusion of the additional evidence under Order 41, Rule 27, Civil Procedure Code, should be allowed in the circumstances of this case. I, however, feel satisfied from the evidence on the record and from the circumstances of this case that an application for grant of a transfer certificate was in fact made by the Bank as alleged, and in my view such an application was a step-in-aid of execution.

The next argument advanced on behalf of the decree-holder, in the alternative, is that if Article 182(5) of the Indian Limitation Act is not applicable, this petition would be competent under Article 181 of the Limitation Act and would be within limitation. This Article provides limitation of three years in case of an application for which no period of limitation is provided elsewhere. This period starts when the right to apply accrues. In this case after 15th of August, 1947, Pakistan *vis-a-vis*. India became a foreign territory and Pakistan was not a reciprocating territory within section 44A of the Code of Civil Procedure. No execution of a decree passed in territories which later on formed part of Pakistan, could be executed in India in the absence of reciprocal arrangement.

It was held in *S. S. Said-ul-Hamid v. The Federal India Assurance Co., Ltd., New Delhi*, (1), that a Court in the Union of India has no jurisdiction to entertain an application for execution after 15th of August, 1947, of a decree passed by a Court in Pakistan before that date.

(1) A.I.R. 1951 Simla 255

In *N. P. A. K. Muthiah Chettiar and others v. K. S. Rm. Firm Shewbo, Burma, and others* (1), it was held that any judgment or decree obtained in a Burmese Court cannot be executed in the Courts of the Indian Union under the provisions of section 44A, Civil Procedure Code, after Burma became a republic and ceased to be a reciprocating country.

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Reference may also be made to *Krishna Das v. Krishna Bageria* (2),

The effect of the partition of the country, therefore, was that this decree became inexecutable in India. The result was that subsequent events effectively nullified the execution of the decree of Lahore Court in India and the obstacle put to execution in the way of the decree-holder was beyond his control. This obstacle was later on removed after the passing of the Displaced Persons (Legal Proceedings) Act No. 25 of 1949, which became law in the Punjab on 4th of June, 1949, and section 7 of this Act opened the way to the execution of certain decrees and orders passed before the 15th of August, 1947, in the territories now forming part of Pakistan. This section enabled the execution of a decree to be taken out in Courts in India in favour of a "displaced person" or any other person who before and after the said date, has resided in, and continues to reside in an area now forming part of India. This application made to the executing Court on 16th of May, 1950, after the bar to execution had been removed by section 7 of Act No. 25 of 1949, falls within the provisions of Article 181 of the Limitation Act and the period of limitation thereunder runs from 4th of June, 1949, the date when the Act became law in the Punjab.

(1) A.I.R. 1957 Mad. 25

(2) A.I.R. 1955 Pat. 187

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This application having been made within three years from the date when the right to apply accrued is within limitation.

On behalf of the judgment-debtor it was argued that the decree-holder could not avail himself of the provisions of section 7, as the Bank was neither a "displaced person" nor "a person who before and after the 15th of August, 1947, has resided in and has continued to reside in India". It was contended that "displaced person" as defined in section 2 of the Act—meaning any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of the civil disturbances in any area now forming part of Pakistan, has been displaced from, or has left, his place of residence in such area after the 1st day of March, 1947, and who has been subsequently residing in India—would not include a juristic person like the decree-holder-Bank.

In the case of *Steel and General Mills Co. Ltd., v. General Accident, Fire and Life Assurance Corporation, Ltd.* (1), it was held by Soni, J., that "displaced person" includes an artificial person such as corporation. In that case it was held that the plaintiff-Company which had its administrative office at Delhi, was a "displaced person" within section 3 of the Displaced Persons (Institution of Suits) Act No. 47 of 1948, and was treated as a resident of Delhi. In *New Hindustan Bank, Limited, in liquidation* (2), Chief Justice Weston said—

"I think there is no difficulty in accepting the residence of a company for the purposes of the Indian Income Tax Act as the place where its registered office was situate."

(1) A.I.R. 1952 Pun. 229
(2) C.O. 91 of 1949

In *De Beers Consolidated Mines, Ltd., v. Howe* (1), L. C. said at page 458—

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“In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A Company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business.”

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This decision was followed in *Swedish Central Co. Ltd. v. Thompson* (2), and in *Egyptian Delta Land and Investment Co. Ltd., v. Todd* (3).

Mr. Sarin, learned counsel for the judgment-debtor, has relied upon the following observations of Kapur, J., in *The Northern India Maches, Ltd., Himachal Pradesh v. Krishan Lal-Sundar Dass*, (4)—

“I hold that if a corporation which was carrying on a business in Pakistan and had its registered office there chooses to transfer its business from a place in what is now Pakistan to a place in what is now India, it would be covered by section 3 of the Act. But if its administrative office and principal place of business was already in India it cannot be said for the purposes of this Act and in the circumstances such as exist in this case that it is a displaced person.”

Mr. Sarin then submitted that the decreeholder-Bank had already its registered office in

(1) (1906) A.C. 455
(2) 1925 A.C. 495
(3) 1929 A.C. 1
(4) A.I.R. 1952 Pun. 418

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Amritsar and had only a Branch office in Lahore and, therefore, should not be deemed to be a displaced person. Reference has been made at the Bar to the case of *New York Life Insurance Company v. Public Trustee* (1). In that case, Pollock M. R. said—

“* * there is clear evidence that the plaintiffs in this case are resident both in New York and in London, in both places they carry on a business, and in both places they are subject to the jurisdiction of the Courts.”

The plaintiffs in this case were New York Life Insurance Company. At page 120, Atkin, L.J., said—

“It appears to me that the true view is that the corporation resides for the purposes of suit in as many places as it carries on business,”

In this connection, reference may also be made to *Dunlop Pneumatic Tyre Company Limited v. Actien-Gesellschaft Fur Motor Und Motorfahrzeugbau Vorm. Cudell and Co.* (2),

To the argument that the decree-holder had its registered office in Amritsar and, therefore, when as a result of disturbances the Lahore office, which was a branch office, ceased to function, could not be treated as a displaced person, the learned counsel for the decree-holder has referred to Exhibits D. H. 2 and D. H. 3. The first document is a letter from the State Bank of Pakistan, Lahore, dated 21st of June, 1949, addressed to the Manager of the decree-holder-Bank, Lahore, stating that

(1) (1924) 2 Ch. D. 101 (f11)

(2) (1902) 1 K.B.D. 342

before the Bank could be permitted to function normally in Pakistan, it had to fulfil certain conditions which had been laid down. It then said—

“At present we, however, allow you to re-open your office only for the purpose of meeting the outstanding claims of Pakistan Nationals and realising your assets in Pakistan.”

The other document is a balance-sheet of the Bank ending 31st of December, 1947, in which it was mentioned in the report that the Bank had suffered great loss and it had to close its Branches in Rawalpindi, Abbotabad, Peshawar and Lahore, and that its Branch office at Bajaj Hatta, Lahore, was burnt on 13th of August, 1947. It was also mentioned that there was no use in maintaining Branches in West Punjab as a large number of customers had migrated there were difficulties experienced by the Bank's employees in living in West Punjab.

Reference may also be made to Exhibit D. H. 8 showing that the decree-account of the judgment-debtor was transferred to the Bank's Branch in Jullundur City from Lahore.

I am satisfied that section 7 of the Displaced Persons (Legal Proceedings) Act No. 25 of 1949 is applicable to the decree-holder-Bank. I am inclined to the view that the Bank falls within the definition of a “displaced person” and in any case it was “a person who before and after the said date (15th of August, 1947) has resided in and continues to reside in an area forming part of India.” The execution could only be taken in view of the provisions of section 44A, Civil Procedure Code, after the obstacle was removed by the passing of the Displaced Persons (Legal Proceedings) Act.

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I am also satisfied that the present application of the decree-holder is within limitation under Article 181 of the Limitation Act. The learned counsel for the decree-holder has also supported the argument as to limitation not having run out, on the ground that under section 19 of the Limitation Act, the judgment-debtor has acknowledged his liability and has referred *inter alia* to letters of the judgment-debtor to the Bank, Exhibits D. H. 21, dated 13th of October, 1948, and D. H. 22, dated 6th of June, 1950. I am, however, not satisfied that these letters comply with the requirements of section 19. On issue No. 1, I feel satisfied that the execution application was within time.

The second issue, which has been decided against the decree-holder, is "whether Shri Paul was competent to file execution application on behalf of the decree-holder." On behalf of the Bank reliance has been placed upon the power of attorney by the Bank in favour of its Manager, Shri Ved Paul Suri. In para 1 of the power of attorney, Exhibited D.H. 1, it is stated—

"Whereas the said Bank is desirous of empowering the said Ved Paul Suri to act as its attorney at aforesaid or any other Branch of the said Bank to which he may be appointed for all and singular, the purposes hereinafter mentioned. Now, therefore, these presents nominate, constitute, and appoint the said Ved Paul Suri to be and to act as the true and lawful attorney of the said Bank at Jullundur City or at any other Branch of the said Bank aforesaid to which he may be appointed Manager for the said Bank and in the name and on behalf of the said Bank."

The above words have been construed by the executing Court to mean that Ved Paul Suri was constituted lawful attorney at Jullundur City and to another Branch of the Bank to which he might be appointed a Manager but he could not be a lawful attorney for the Bank at a place where he was not the Manager, and as the Bank had admittedly no Branch at Ferozepore, he could not be a Manager for Ferozepore. This construction to my mind is patently erroneous. Shri Ved Paul Suri was to be the lawful attorney of the Bank at Jullundur City or at any other Branch to which he might be appointed as Manager. As Manager of Jullundur City Branch, he was competent to take out execution. So long as he occupied the position of Manager of any Branch he had the power to act as the attorney. At the time the present execution was filed at Ferozepore, he was undoubtedly the Manager of the Bank, Jullundur City Branch. The learned counsel for the judgment-debtor contends that he could not function outside Jullundur City even if there was Branch at Ferozepore. This to my mind is an entirely wrong interpretation which is being placed on the language of the power of attorney. Even if there be a lurking doubt as to the above interpretation, para 9 completely dispels any such doubt; it recites—

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“The said Ved Paul Suri in virtue of these presents will have the power to demand, collect, receive and give effectual *bona fide* discharge of, in the name and on behalf of the said Bank, all debts, advances and claim due to the said Bank, he shall have further the power to take and use all lawful proceedings and means for recovering and receiving the said debts and advances and also to commence and prosecute and to defend

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at law all actions, suits, claims, demands and disputes and to refer to arbitration; and to adjust and settle and to compromise all accounts, suits, claims and demands, and to appoint lawyers to conduct cases for all or any of the purposes aforesaid to execute and do such instruments and things as shall be thought necessary or expedient."

He has been given complete power to commence and prosecute and to defend all actions, claims, demands, etc., on behalf of the Bank. The language is wide enough to include making of execution applications like the present. I am, therefore, of the view that Shri Ved Paul Suri was competent to file the execution application on behalf of the Bank.

From what has been discussed above, it follows that the third issue should also have been decided in Bank's favour and the decree-holder should have been treated as a displaced person as defined in Act No. 25 of 1949. In any case, if for the sake of argument it be held that the decree-holder-Bank was not a displaced person, the provisions of section 7 are nevertheless applicable to the decree-holder in so far as it is a person who before and after the said date, has resided in and continues to reside in India.

Shri Ved Paul Suri, as D. H. W. 1 has stated that Lahore City Office of the Bank was burnt on 13th of August, 1947, and he shifted to Jullundur. Taking judicial notice of unprecedented riots in Lahore, endangering life and property of the non-Muslims during August, 1947, it cannot be gainsaid that the Bank's employees and management shifted from Lahore to Jullundur on account of disturbances. The findings of the executing Court

on the first three issues being erroneous, are reversed and these issues are decided in favour of the decree-holder-appellant.

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In the result, the execution first appeal succeeds and is allowed with costs throughout. The executing Court is directed to execute the decree in accordance with law. Parties are directed to appear before the executing Court on 18th April, 1960.

SHAMSHER BAHADUR, J.—I agree.

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REVISIONAL CIVIL

Before G. L. Chopra, J

RAM NATH AND ANOTHER,—Petitioners

versus

MESSRS RAM NATH-CHHITAR MAL,—Respondents

Civil Revision No. 266-D of 1958

Delhi Ajmer Rent Control Act (XXXVIII of 1952)—Section 15—Decree for ejectment passed against tenants on condition that they deliver possession to the landlord within two months and landlord will re-deliver possession to them after reconstruction—Possession delivered by the tenants and accepted by the landlord after the time fixed—Whether amounts to waiver on the part of the landlord—Landlord refusing to re-deliver possession to tenants after reconstruction—Remedy of the tenants to get back possession—Whether by way of suit or application for execution or restoration of possession—Practice—Mention of a certain provision of law in the pleadings for relief—Whether debars the litigant from claiming relief under some other provision of law.

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Held, that the landlord was entitled to possession because of the decree in his favour and he could get the