

Chief Settlement Commissioner was competent to correct the error and thus cancel the allotment.

Bara Singh  
v.  
Joginder Singh  
and others

S. S. Dulat, J.

No other reason has been shown why in the exercise of our power under Article 226 of the Constitution we should interfere with the order of the Chief Settlement Commissioner which, in my opinion, he was in lawfully competent to make and in respect of which no patent legal error appears to have been committed. I would therefore allow this appeal, set aside the order of the learned Single Judge and dismiss the writ petition but, considering all the circumstances, leave the parties to their own costs.

Bhandari, C.J.—I agree.

K. S. K.

APPELLATE CIVIL

Before A. N. Grover, J.

S. B. BUDH SINGH,—Appellant.

*versus*

MAYA RAM AND OTHERS,—Respondents.

First Appeal from Order No. 20/P of 1955.

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 21, 29 and 32—Decree passed after the commencement of the Act—Whether liable to be scaled down under Section 32—Section 21(1)—Applicability of.*

Held, that the decretal amount on the basis of a decree passed after the commencement of the Displaced Persons (Debts Adjustment) Act, 1951 falls within the definition of "debt" given in the Act. There is no mention in the definition of debt, where the word decree is used that that decree should be such as has been passed prior to the Commencement of the Act as is mentioned in section 21(1).

If a particular pecuniary liability satisfies the definition of debt, then it is liable to be scaled down under the provisions of section 32 irrespective of the provisions of section 21 which can have reference only to section 29 for the purposes of determining what the amount of the debt is while proceeding to scale it down under the provisions of section 32.

*Held further*, that section 21(1) merely provides that decrees which have been passed before the commencement of the Act can be revised so as to be brought in accord with the provisions of the Act. This has reference only to section 29 according to which on and from the 15th day of August, 1947, no interest can accrue or can be deemed to have accrued in respect of any debt owed by a displaced person. The machinery which has been provided for ascertaining the debts and for their scaling down is contained in the Act and section 21(1) is relevant only for determining the amount of a decretal debt in a particular case. If the decree was passed before the commencement of the Act the debt would be calculated after taking into account the provisions of section 29 and if the decree is subsequent, then section 29 could not apply; the decree could not be revised, and the total amount of the decree was to be taken into account for the purposes of section 32.

*First Appeal from the Order of Shri Fauja Singh, Tribunal, appointed under Section 4 of the Displaced Persons (Debts Adjustment) Act, 1951, Bhatinda, dated the 16th March, 1955 dismissing the application.*

D. C. GUPTA, for Appellant.

H. L. SARIN, for Respondents.

### JUDGMENT

Grover, J.

GROVER, J.—The only point that has been raised in this appeal is that the decision of the Tribunal on issue No. 4 is wrong and erroneous. The Tribunal has made an order scaling down the debts on the application of the appellant who is a displaced debtor. The decree of Inder Singh, respondent, however, was of January, 1952, and a point had

arisen before the Tribunal whether the provisions of the Displaced Persons (Debts Adjustment) Act (hereinafter called the Act) did not apply to the aforesaid decree. The Tribunal has come to the conclusion that the provisions of the Act did not apply to the decree in question by virtue of the provisions contained in section 21 of the Act.

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Section 21 of the Act is as follows:—

“21 (1) Where, before the commencement of this Act, a decree has been passed by a Civil Court against, or a settlement has been entered into by, a displaced debtor in respect of any debt, the Tribunal shall, on the application of such debtor revise it so as to bring it into accord with the provisions of this Act.

(2) In determining the amount due under any such decree or settlement, the Tribunal shall accept as binding the findings of the Court which passed the decree or the facts contained in the settlement, as the case may be, to the extent to which the findings or the facts are not inconsistent with the provisions of this Act :

Provided that the Tribunal shall not determine any claim under any such decree until any appeal or revision filed against it has been finally decided or the period allowed for any appeal, therefrom, has expired, and in all such cases the finding of the Tribunal shall be based on the final decree.

(3) Notwithstanding anything contained in this section, no Tribunal shall in respect of

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any debt revise any settlement arrived at before the commencement of this Act between an insurance company and a displaced person or between an insurance company and a displaced bank having an interest in the claim of a displaced person against the insurance company and arriving at such settlement by virtue of that interest:

Provided that payment in full has been made in pursuance of such settlement.”

The Tribunal appears to consider that in view of the fact that the decree was passed subsequent to the commencement of the Act it was to be excluded altogether for the purposes of scaling down the debts under the provisions of section 32. This view, however, does not appear to be correct. Section 21(1) merely provides that decrees which have been passed before the commencement of the Act can be revised so as to be brought in accord with the provisions of the Act. Now this has reference only to section 29 according to which on and from the 15th day of August, 1947, no interest can accrue or can be deemed to have accrued in respect of any debt owed by a displaced person. The position is like this ; If a decree has been passed prior to the commencement of the Act in which interest has been awarded for a period subsequent to the 15th of August, 1947, that decree can be revised and the interest can be disallowed while calculating the amount of the debt. Section 21(1) cannot possibly have, from the language used in it, any reference to section 32 which provides for scaling down of debts. The machinery which has been provided for ascertaining the debts and for their scaling down is contained in the Act and section 21(i)

is relevant only for determining the amount of a decretal debt in a particular case. If the decree was passed before the commencement of the Act, the debt would be calculated after taking into account the provisions of section 29 and if the decree is subsequent, as it was in the present case, then section 29 could not apply and the decree could not be revised. In other words, the total amount of the decree was to be taken to be a debt for the purposes of section 32. In section 32 the words used are:—

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“Where, on the application of a displaced debtor under section 5 or sub-section (2) of section 11, the Tribunal has determined the amount due in respect of each debt in accordance with the provisions of this Act, it shall proceed to determine the paying capacity of the debtor.”

‘Debt’, as defined in section 2(6), means—

“Any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise or whether ascertained or to be ascertained, which—

- (a) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India;

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Grover, J.

The decretal amount in the present case certainly fell within the definition of 'debt'. It is noteworthy that there is no mention at all in the definition of debt, where the word 'decree' is used, that that decree should be such as has been passed prior to the commencement of the Act as is mentioned in section 21(1). If a particular pecuniary liability satisfies the definitions of debt, as mentioned above, then it is liable to be scaled down under the provisions of section 32 irrespective of the provisions of section 21 which can have reference only to section 29 for the purposes of determining what the amount of the debt is while proceeding to scale it down under the provisions of section 32. It is further to be noticed that section 32 occurs in the Chapter entitled 'Reliefs', whereas section 21 is to be found in Chapter II which has the heading 'Debt Adjustment Proceedings'. Section 21(1), therefore, does not rule out relief being granted under the provisions of section 32. Moreover, whenever the Legislature intended to exclude the operation of any decree for the recovery of any debt passed before or after the commencement of the Act, that has been done by express language, e.g., sections 30 and 31: If it had been intended that there should be no scaling down of decretal debts under section 32 created by decrees passed after the commencement of the Act, which otherwise could be included in an application made under section 5 or section 11(2) of the Act, the same would have been clearly indicated in some substantive provisions of the Act and the definition of debt contained in section 2(6) would have also contained the words "passed before the commencement of the Act" after the word 'decree'. As these words are not there, no such intention can be attributed to the Legislature merely on the

language of section 21(1), which relates to revision of decrees that a decree passed after the commencement of the Act would not fall within the definition of the word 'debt' although it otherwise satisfied the conditions laid down therein.

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For all these reasons, I am of the opinion that the Tribunal was in error in deciding issue No. 4 against the appellant. The appeal is, therefore, allowed and the matter is remitted to the Tribunal for making a proper order in accordance with law. There will be no order as to costs.

K. S. K..

SUPREME COURT.

*Before T. L. Venkatarama Aiyar, P.B: Gajendragadkar  
and A. K. Sarkar, JJ.*

COMMISSIONER OF INCOME-TAX, DELHI,—Appellant

*versus*

S. TEJA SINGH,—Respondent

DALMIA JAIN AVIATION LTD., (NOW ASIA UDYOG LTD.)—  
*Intervener*

**Civil Appeal No. 122 of 1957.**

*Income-tax Act (XI of 1922)—Sections 18A(9) and 28(1)—Failure to comply with Section 18A(3)—Income-tax authorities, whether competent to impose penalty under section 28—Interpretation of Statutes—Legal fiction—Construction of.*

*Held*, that it is competent to the Income-tax authorities to impose a penalty under Section 28 of the Income-tax Act read with Section 18A(9)(b) where there has been a failure to comply with Section 18A(3). The fiction under Section 18A(9)(b) that failure to send an estimate under Section 18A(3) is to be deemed to be a failure to send a

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Nov., 5th