those rare cases in which such inference is not available, in my opinion, order under section 488 will not be justified.

DUA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before G. L. Chopra, J.

THE NATIONAL SECURITY ASSURANCE CO., LTD.,—*Appellant.*

versus

NEHAL SINGH AND ANOTHER,—*Respondent.*

First Appeal from Order No. 58-D of 1958.

1959

Dec., 16th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 18 and 40—Report submitted by Tribunal to the Insurance Board—Whether amounts to a decree or final order—Appeal against such a report—Whether competent.

Held, that the report of the Tribunal submitted to the Insurance Board under sub-section (2) of section 18 of the Displaced Persons (Debts Adjustment) Act, 1951, cannot be regarded either as a decree or a final order, open to an appeal under section 40 of the Act. The matter has yet to be considered by the Insurance Board and a decree, if any, is to follow on the case coming back to the Tribunal and on the basis of the proposal made by the Board.

F.A.O. from the order of Shri Brij Lal, Mage, Sub-Judge, 1st Class, Delhi, dated the 5th November, 1957; passing decree with proportionate costs for Rs. 33,724-8-0.

R. L. BAGAI, for the Appellant.

R. S. NARULA and NAUBAT RAM SURI, for the Respondents.

JUDGMENT

Chopra, J. CHOPRA, J.—This is an appeal against an order made by the Tribunal under sub-section (2) of section 18 of the displace persons (Debts Adjustment) Act, 1951. (LXX of 1951 and hereinafter to be referred as the Act).

A preliminary objection is raised on behalf of the respondent that the appeal is not competent. Section 18(2) of the Act reads :—

[His Lordship read Section 18(2) and continued :]

Section 40 of the Act lays down the provision regarding appeals and says :—

[His Lordship read Section 40 and continued :]

"Save as otherwise provided in Section 41, an appeal shall lie from—

(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 if passed in the course of execution of a decree or order of a civil Court would be appealable under the Code of Civil Procedure, 1908 (Act V of 1908) to the High Court within the limits of whose jurisdiction the Tribunal is situate."

According to section 41, where the subject-matter of the appeal relates to the amount of a debt and such amount on appeal is less than rupees five thousand, no appeal would be competent.

The application in the present case was presented by a displaced person under section 18 of the Act for recovery of Rs. 36,000 in respect of the loss of the insured goods. The Tribunal after going into the points raised by the parties arrived at the conclusion (i) that the insured goods of the value of Rs. 33,724-8-0 were lost in riots, (ii) that the goods were insured for Rs. 36,000 on the date of the loss and (iii) that the insurance company had not paid any amount to the claimant. The Tribunal accordingly submitted a report to the Board constituted by the Central Government saying that the petitioner was entitled to a decree for Rs. 33,724-8-0 with proportionate costs against the respondent company. It is against this order of the Tribunal dated 8th November, 1957, that the present appeal is preferred by the company.

Rules under sub-section (2) of Section 18 of the Act have been framed and they are entitled "The Insurance Claims Board Rules, 1952". Rule 4 of these Rules enumerates the matters which the Board is to take into consideration, on receipt of the report from the Tribunal, for the purpose of making its proposal to the Tribunal. Rule 5 further provides that the Board shall, after taking into account the matters specified in Rule 4 and any other matter which, in its opinion, is relevant for the purpose, propose to the Tribunal the amount for which, in its opinion, it is equitable to pass a decree against the insurance company ; the only limitation being that the amount proposed by the Board shall not exceed the value of the property insured. The Tribunal, on receipt of the proposal, is to pass a decree in the amount proposed by the Board.

The order under appeal certainly cannot be regarded as a decree. The question that then remains to be seen is whether it can be regarded as

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Chopra, J.

a 'final order'. In *S. Kuppuswami Rao* v. *The King* (1), the words 'final order' used in Section 205(1) of the Government of India Act, 1935, for imparting jurisdiction to the Federal Court to entertain appeals, were interpretted to mean 'an order which finally determines the points in dispute and brings the case to an end.' It was further observed that to constitute a final order it is not sufficient merely to decide an important or even a vital issue in the case, but the decision must not keep the matter alive and provide for its trial in the ordinary way. In *Mohammad Amin Brothers Ltd. and others* v. *The Dominion of India and others* (2), the test for determining the finality of an order was stated to be 'whether the judgment or order finally disposed of the rights of the parties. The finality must be a finality in relation to the suit. The fact that the order decides an important and even a vital issue is by itself not material, unless the decision puts an end to the suit.' The same view was taken by their Lordships of the Privy Council in *V. N. Abdul Rahman and others* v. *D. K. Cassim and Sons and another* (3), while interpreting the words 'final order' appearing in Section 109(a) of the Code of Civil Procedure.

Mr. M. L. Bagai, learned counsel for the appellant, submits that the question of liability of the company to pay the loss and the amount of loss determined by the Tribunal cannot be gone into by the Board and the Tribunal's decision is to be final. Even if that be so, I do not think the report of the Tribunal submitted to the Board under sub-section (2) of Section 18 can be regarded as a final order, open to an appeal under Section 40 of the Act. The order is in fact, and does not amount to anything mere than, a report. The matter has

(1) A.I.R. 1949 Federal Court I.
(2) A.I.R. 1950 F.C. 77
(3) A.I.R. 1933 P.C. 58

yet to be considered by the Insurance Board and a decree, if any, is to follow on the case coming back to the Tribunal and on the basis of the proposal made by the Board.

I would, therefore, accept the preliminary objection and held that no appeal is competent. The appeal is dismissed, but the parties are left to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw and G. L. Chopra, JJ.

NAHINDER SINGH ALIAS WAHINDER SINGH AND OTHERS,—*Petitioners.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 433-D of 1957.

1960

Jan., 12th

Evacuee Interest (Separation) Act (LXIV of 1951)—Whether valid—Constitution of India (1950)—Articles 249, 379(1) and 392—Effect of—Evacuee Interest (Separation) Supplementary Act (Punjab Act No. XXI of 1953), and Pepsu Evacuee Interest (Separation) Supplementary Act (VI of 1953)—Effect of.

Held, that the Evacuee Interest (Separation) Act, 1951, is a valid piece of legislation. This Act was passed by the Constituent Assembly, functioning as Parliament, on the 31st of October 1951, the Parliament duly constituted under Chapter II of Part V only coming into existence after the general elections held early in 1952, and it must be presumed that any order which was required under Article 392 had in fact been passed by the President. The resolution required under Article 249(1) of the Constitution was passed on 5th June, 1951, and was to remain in force until the 4th of June, 1952, and the Act passed in pursuance of it would automatically have expired on the 4th of December, 1952.