REVISIONAL CIVIL

Before Kapur, J.

THE GREAT AMERICAN INSURANCE Co., LTD.,—*Petitioner.*

versus

ATTAR SINGH—*Respondent*

Civil Revision No. 347 of 1953

1954

April 23rd

Interpretation of Statutes—Remedial Statutes—Rule of Construction—Words judicially interpreted and subsequently used in Statutes—Interpretation thereof—Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 2 and 18—Foreign Company—Section 18, whether applies to a foreign Company.

Held—

(1) that the Displaced Persons (Debts Adjustment) Act of 1951 is a remedial Act which has been enacted in order to facilitate the recovery of debts and other claims by displaced persons and has to be given a beneficial interpretation so as to subserve the objects of the Act and not to frustrate the intention of the Legislature.

(2) that if a word has been interpreted in a particular manner by the Courts and the same word is used in another statute the Legislature must be taken to have accepted that interpretation.

(3) that the word Company will include all the Insurance Companies whether Indian or foreign.

(4) that the words 'company' and 'insurance company' have been used in different parts of the statute and therefore they must connote different meanings;

(5) that the word 'insurance company' must either be read in its ordinary parlance which means an insurer or if it is to be read in its technical sense it must be read as defined in the Insurance Act.

Petition under Section 44 of Act 9 of 1919 read with Section 115 C.P. Code, for revision of the order of Shri Ram Lal, Sub-Judge, 1st Class, Tribunal, Amritsar, dated the 1st September 1953, holding that the Court at Amritsar has the jurisdiction to try this suit.

S. L. PURI, for Petitioner.

BHAGIRATH DAS, for Respondent.

JUDGMENT

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KAPUR, J. This is a rule obtained by the defendant, the Great American Insurance Company Limited against an order passed by Mr. Ram Lal, Subordinate Judge, 1st Class, acting as a Tribunal under Act No. LXX of 1951 holding that the defendant company falls within section 18 of the Displaced persons (Debts adjustment) Act No. LXX of 1951.

Attar Singh who was a timber merchant at Jhelum and is now residing at Amritsar made an application under section 18 of the Displaced Persons Act for recovery of Rs 5,000 on account of loss suffered by him under a policy which he had taken from the Great American Insurance Company, Limited, the present petitioners. The Insurance Company is a company incorporated in New York and has one of its offices at Calcutta. They raised a preliminary objection that section 18 is not applicable to them as they are not a company within the meaning of section 2(1) of the Displaced Persons Act, they being a foreign company, and they thus challenged the jurisdiction of the Tribunal to adjudicate upon the question.

The Tribunal has found that the original petitioner Attar Singh is a displaced person from Jhelum and the Act would be applicable to him if section 18 applies to the facts of this case. The Tribunal has also found that this section does apply and the question which has been agitated before me is whether the present petitioner which is an American and therefore foreign company falls within section 18 of the Act.

Section 18 deals with claims against insurance companies and it provides—

> "18(1) where any property in West Pakistan belonging to a displaced person was insured with any insurance company before the 15th day of August 1947, against

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any risk arising out of fire or theft or riot and civil commotion and there has been a loss in respect of such property arising out of any such risk at a time when the contract of insurance was in force, such company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that—

(a) no report was lodged with the police within the agreed time, or
(b) the claim was not made to the company within the agreed time, or
(c) in the case of a policy covering any risk arising out of riot and civil commotion, the disturbances in West Pakistan were not in the nature of a riot or civil commotion, or
(d) the displaced person has not fulfilled any other condition of the contract which in the opinion of the Central Government is of a technical nature and which the Central Government has, by notification in the Official Gazette, specified as a condition of the contract for the purposes of this section,

and any contract to the contrary, to the extent to which it is in contravention of the provisions of this subsection, shall be deemed to have had no effect."

The word 'insurance company' has not been defined in the Act but the word 'company' has been. The definition of this word is given in section 2(1) of the Act and is as follows—

"2(1) 'company' means a company as defined in the Indian Companies Act, 1913 (VII of 1913), and includes a company deemed to be registered under that Act by reason of any of the provisions contained in this Act."

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The word 'company' simpliciter has been used in section 19 which dealing with calls on shares in companies provides—

> "Where a company or a co-operative society has made any call * * * *
>
> * * * * *"

It has also been used in section 20(1).

The Displaced Persons (Debts Adjustment) Act is a remedial statute and has to be interpreted in a very liberal manner. Its preamble runs as follows—

> "An Act to make certain provisions for the adjustment and settlement of debts due by displaced persons, for the recovery of certain debts due to them and for matters connected therewith or incidental thereto."

The rule in regard to interpretation of such statutes was discussed in *Thakur Raghuraj* v. *Harikesan*, (1), where at page 442 Lord Atkin delivering the judgment of the Judicial Committee said—

> "The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved."

In construing the provisions of the Bengal Money Lenders Act Mahajan, J., used identical language in *Ram Taran* v. *D. J. Hill* (2) and a Full Bench of the Calcutta High Court adopted the same view in *Amulya* v. *Pashupati* (3), in a judgment which

(1) 48 C.W.N. 439.
(2) 1950 S.C. 74 (C.W.N.)
(3) 53 C.W.N. 385.

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has been described as a vigorous judgment. Denning, L.J., in *Magor & St. Mellons* v. *New Port Corporation* : (1), laid down the following proposition—

> "We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

But this view of Denning, L.J., was not accepted by Lord Simonds when the matter went up in appeal to the House of Lords where his Lordship was of the opinion that if a gap is discovered the remedy is in the hands of the Parliament and not in the hands of the Judiciary. Commenting on this the author of the Calcutta Weekly Notes in 56 C.W.N. XXVI said that if his Lordship had used less vigorous language all might have been well. The Supreme Court also seems to have struck a note of caution in a case dealing with *casus omissus*. In an earlier case *Seaford Court Estates. Ltd.*, v. *Asher* (2), the same Lord Justice (Denning L. J.) observed—

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else,

(1) (1950) 2 A.E.R. 1226, 1236.
(2) (1949) 2 A.E.R. 155 at p. 164.

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> laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (Sir Roger Manwood, C.B., and the other barons of the Exchequer) in Heydon's case [(1584), 3 Co. Rep. 7a)] and it is the safest guide today."

In *Winchester Court, Ltd.*, v. *Miller* (1) the Court of Appeal held that section 2 (3) of the Rent Restriction Act "is to be liberally construed so as to give effect to the governing principles embodied in the legislation." Now that Act was enacted to give effect to the protective policy adopted by the British Parliament of taking rents out of the consensual control of the parties because external causes had made the supply of "dwelling houses" fall short of the demand. It is not necessary in this case to fill up any gaps as was suggested by Denning, L.J., in the two cases cited above. But must we not avoid an interpretation which will strip the statute of much of its vigour and should we not give an interpretation to the words of the statute so as to give "force and life" to the intention of the legislature?

(1) (1944) 2 A.E.R. 106.

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The words of the section to be interpreted should, it has been held, be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is to be found in the subject or in the occasion on which they are used and the object to be attained. *See* Maxwell on Interpretation, p. 48 (8th Ed.).

According to another authority, in order properly to interpret any statute it is necessary to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief". [Maxwell on Interpretation of Statutes, p. 19 (eighth Edition) per Lindley M. R. in *Mayfair Property Co. In* re. (1)

Thus in order to find the true meaning of a passage or words it is permissible to ascertain the circumstances with reference to which the words were used and what was the object appearing from these circumstances which the legislature had in view. *See* Maxwell on Interpretation of Statutes, p. 20 (8th Ed.), Lord Blackburn in *River Wear Com.* v. *Adamson* (2) and Lord Halsbury in *Eastman Co.* v. *Controller of Patents* (3).

There is yet another rule of construction which may well be applied here and that is that if a word has been interpreted in a particular manner by the Courts and the same word is used in another statute the Legislature must be taken to have accepted that interpretation.

In a Full Bench judgment of this Court in the matter of the *Frontier Bank Limited* (4) it was held that for purposes of winding-up an unregistered company would be covered by the definition of the 'company' given in section 2(2) of the Indian Companies Act.

(1) (1898) 2 Ch. 28, 35.
(2) (1877) 2 App. Cas. 743
(3) (1898) A.C. 576
(4) I.L.R. 1950 Punjab 395

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The provisions of section 18 of the Act particularly clauses (a) to (d) of subsection (1) themselves show what mischief the framers had intended to remove and what remedy was being provided and why. It is not necessary to set out the circumstances under which the claimants took out policies of insurance particularly with foreign companies. They are so well known and so recent and the difficulties that arose out of the emigration of the insured from West Pakistan to India and the dangers and the privations that the displaced persons had to undergo were fully known to the framers of the Act as to everyone else who has taken any kind of intelligent interest in that chapter of the history of that unfortunate period.

It is in the light of these observations that we have to see whether section 18 covers the American Company or not. The Act is a remedial Act and must be interpreted in such a manner as to carry out the intention of the Legislature. The object of the Act is to help and facilitate the recovery of debts by displaced persons and prevent mere technicalities impeding the recovery of claims. That would be more applicable to the case of insurance companies because certain provisions of the policies if they were given effect to would, because of the circumstances that arose before and after the partition, make the recovery of claims by displaced persons to be absolutely impossible. It is not necessary in a case of this type to go to the length that L. J. Denning did, but even if we confine ourselves to the view taken by Lord Atkin and Mahajan, J., and by Jervis, C. J., we ought to give the words such meaning which would subserve the objects of the legislation and we should avoid giving a meaning which would be inconsistent with the subject of the enactment and would lead to manifold injustice.

With these principles of interpretation to go upon and keeping these circumstances in view,

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must not the words "insurance company" be interpreted in such a manner as to include all insurers as understood in its dictionary meaning whether it is an incorporated company or not? If that were not so it would go counter to the intention of the Legislature which was to give an easy remedy to the displaced persons to recover their debts particularly from insurance companies. Because only then can we give effect to the protective policy adopted by Parliament of taking such contracts as are dealt with in the Act out of the consensual control of the parties and thus give a beneficial interpretation to the Act which would best harmonise with the subject of the enactment.

In the same statute which is now before me different expressions have been used, e.g., companies, insurance companies and displaced banks. So far as possible the Courts must attribute to the Legislature the intention of conveying different meanings by the use of different expressions. *See Rampratap-Jaidayal* v. *Dominion of India* (1). The words used there were 'the Government' and 'the State Government', and the learned Judges came to the conclusion that the intention of the Legislature was to draw a distinction between the words 'the State Government' and 'the Government'. Therefore by the use of these different words Parliament must have intended to distinguish between a company and an insurance company.

Mr. Shambu Lal Puri has relied on *Tulsiram Shaw* v. *R. C. Pal Ltd.* (2). Here what was held was that a definition given in a statute is limited to that particular statute and cannot be extended to define those words used in another statute especially when those statutes are not in *pari materia*. But the rule laid down by P. B. Mukharji, J., is not applicable to the facts of this case bacause the word 'insurance company' if it is to be taken in

(1) A.I.R. 1953 Bom. 170.
(2) A.I.R. 1953 Cal. 160

its technical sense should ordinarily be taken to be what is given in the Insurance Act because that is a particular Act dealing with insurance companies.

Another case which has been referred to by Mr. Shambu Lal Puri is *Anant Sadashiv* v. *Ratnagiri Jilha Local Board* (1), where it was held that when an expression is defined in the Act that definition must apply wherever that expression occurs in the statute unless the Act itself indicates to the contrary. In my opinion this statute indicates to the contrary because the word 'company' is defined in section 2(1). It is used in sections 19 and 20 and 'insurance company' is used in sections 18 and 21, and where they wanted to make a distinction they have done so by defining 'displaced bank' as banking company etc. etc. The rule to be applied to such cases is what was held in the other Bombay case *Rampratap* v. *Dominion of India* (2), already referred to.

It is then submitted that the word 'company' wherever it occurs in the section should be interpreted to mean a company as understood in section 2(2) of the Indian Companies Act and the words 'insurance', 'banking' etc., should be taken to be adjectival. I am unable to agree with this submission because a company and insurance company are two different things which are governed by two different Acts and there is a special Act for insurance companies, and if a technical meaning has to be given that should be from the Insurance Companies Act and not from the Indian Companies Act.

The petitioners therefore fall within section 18 of the Act. I would here like to quote the well-known Latin maxim *'generalia specialibus non derogant'* which was applied in two cases in India—*Secretary of State* v. *The Dunlop Rubber Co.* (3), and *Jaldu Venkatasubba Rao* v. *The Asiatic Steam Navigation Company of Calcutta* (4). I am therefore of the opinion that—

(1) the Displaced Persons (Debts Adjustment) Act of 1951 is a remedial Act

(1) A.I.R. 1953 Bom. 71.
(2) A.I.R. 1953 Bom. 170
(3) I.L.R. 6 Lah. 301
(4) I.L.R. 39 Mad. 1.

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which has been enacted in order to facilitate the recovery of debts and other claims by displaced persons and has to be given a beneficial interpretation so as to subserve the objects of the Act and not to frustrate the intention of the Legislature ;

(2) the word 'company' according to the interpretation given by this Court would include the American Insurance Companies as indeed all insurance companies whether they are Indian or foreign;

(3) the words 'company' and 'insurance company' have been used in different parts of the statute and therefore they must connote different meanings;

(4) the word 'insurance company' must either be read in its ordinary parlance which means an insurer or if it is to be read in its technical sense it must be read as defined in the Insurance Companies Act; and

(5) the petitioners do fall within section 18 of the Act.

Before I conclude I would like to thank counsel who appeared in this case for the help they have given me and for reasons which I have given above, I would dismiss this petition and discharge the rule, but as the question was not free from difficulty I leave the parties to bear their own costs.

The parties are directed to appear before the Tribunal on the 31st of May 1954.