an employment or of absenting oneself from work without reasonable cause which is the particular offence contemplated by caluse (b) of section 5. As already indicated, on account of the respondent's physical infirmity or deficiency the work assigned to him had been cancelled and he was expected to be in police lines during the material time without apparently doing any " work ". It is clear from the record that he had not been assigned any " work " within the meaning of clause (b) of section 5. Hence his absence from Police Lines during the relevant time may have amounted to neglect of duty ; but, in our opinion, is not synonymous with absence from work or abandonment of employment which has been made penal under clause (b) of section 5.

For the reasons aforesaid it must be held that the respondent had been rightly acquitted, though for wholly wrong reasons. The appeal must therefore stand dismissed.

Before Vivian Bose, B. Jagannadhadas and Bhuvaneshwar Prasad Sinha, JJ.

SHRI RAM NARAIN,—*Appellant.*

versus

THE SIMLA BANKING AND INDUSTRIAL CO., LIMITED,—*Respondent.*

Civil Appeal No. 313 of 1955.

1956

May. 9th

Banking Companies Act (X of 1949), as amended by Banking Companies (Amendment) Act (LII of 1953)—Section 45A—Application by a Displaced Creditor against a non-displaced bank under the Displaced Persons (Debts Adjustment) Act (LXX of 1951) before a Tribunal at Banaras—During the pendency of the application under the Displaced Persons (Debts Adjustment) Act, proceedings for the winding up of the bank taken in the Punjab High Court—Decree obtained before Tribunal at Banaras—Whether Punjab High Court had exclusive jurisdiction to deal with proceedings in execution and other incidental matters—Non-obstante clause in each of the Acts—Effect of—Which is the latter Act—Subsequent Act amending an earlier one—Effect.

Held, that each of the Acts, viz., the Displaced Persons (Debts Adjustment) Act and the Banking Companies Act has a specific provision, whcih clearly indicates that the relevant provisions, if applicable, would have overriding effect as against all other laws in this behalf. The question as to which of the provisions of these two Acts has got overriding effect in a given case and whether a particular provision of each is equally applicable to the matter, will have to be determined on the broad considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.

Whatever may be the *inter-se* position, in a given case, between the provisions of the Banking Companies Act and the provisions of the Displaced Persons (Debts Adjustment) Act relating to displaced debtors, so far as a claim of a displaced creditor against a non-displaced Banking Company in liquidation is concerned, the jurisdiction vested in the Punjab High Court by reason of section 45B of the Banking Companies Act and it cannot be said to be overriden or displaced by anything in the Displaced Persons (Debts Adjustment) Act, 1951. The Banking Companies (Amendment) Act of 1953, is to be treated as the latter Act and held to override the provisions of the earlier Displaced Persons (Debts Adjustment) Act, 1951.

Held further, that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provisions of the Act as amended is, whether it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.

(*On appeal by special leave from the judgment and order, dated the 12th May, 1955, of the Punjab High Court*

at Chandigarh, in Liquidation Miscellaneous No. 72 of 1954).

For the Appellant. MR. J. B. DADACHANJI and MR. RAMESHWAR NATH, Advocates of M|s. RAJINDER NARAIN & Co.

For the Respondent: MR. M. C. SETALVAD, Attorney-General for India, (MR. RATANLAL CHOWLA, Advocate, with him).

JUDGMENT

Jagannadhadas, J.

The Judgment of the Court was delivered by JAGANNADHADAS, J. This is an appeal by special leave against an order of the High Court of Punjab dated the 12th May, 1955, in the following cirumstances.

The appellant was a resident of Lahore who came over to India in or about November, 1947, and took up residence at Banaras as a displaced person. He had, prior to the 15th August, 1947, a fixed deposit of Rs. 1,00,000 in the Lahore Branch of the Simla Banking and Industrial Co. Ltd. (hereinafter referred to as the Bank) which had its head-office at Simla. He had also at the time a cash-credit account in the Bank. The fixed deposit matured in 1948. The Bank did not pay the amount to the appellant in spite of repeated demands but seems to have adjusted it towards part-payment of a sum of R.s 4,00,000, which is alleged to have been due from the appellant to the Bank in his cash-credit account and which the appellant disputed and denied. On the 7th November, 1951, the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951) was passed providing certain facilities and reliefs to displaced debtors and displaced creditors. Section 4 of that Act empowered the State Government to specify any civil court or class of civil courts, as the Tribunals having authority to exercise jurisdiction under the

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

Act for areas to be defined therein. Section 13 of the Act enabled a displaced creditor claiming a debt from any person who is not a displaced person to make an application for recovery thereof to the Tribunal having local jurisdiction in the place where the said creditor resides, and provided for the purpose a special limitation of one year from the date when the Act came into force. Admittedly the appellant is a displaced person, and the Bank is not a displaced Bank, within the meaning of those expressions as defined in the said Act. Taking advantage of these provisions, the appellant filed on or about 24th April, 1952, an application (Case No. 1 of 1952) to the Tribunal at Banaras constituted under section 4 of the Act, claiming the fixed deposit amount of Rs. 1,00,000 as a debt due from the Bank. During the pendency of this proceeding there was an application on the 27th December, 1952, under the Indian Companies Act, 1913 (VII of 1913) in the High Court of Punjab by some creditors for winding up of the Bank. On the 29th December, 1952, an *ex parte* interim order was passed by the High Court under section 171 of the Indian Companies Act staying proceedings in all suits and applications pending against the Bank, at the time. The application — Case No. 1 of 1952 — filed by the appellant before the Banaras Tribunal was also specified therein. It would appear however that before the order was communicated to the Tribunal, the said case before it was disposed of and a decree was passed on the 3rd January, 1953, against the Bank for the sum claimed with future interest at three per cent. per annum. On the 6th January, 1953, the appellant filed an application before the Tribunal for execution of the decree and it was numbered as Execution Case No. 8 of 1953. It appears that on or about the 27th

January, 1953, one Mr. D. D. Dhawan was appointed by the Punjab High Court as a Provisional Liquidator of the Bank. On the application of certain petitioning creditors in the winding up proceedings, the High Court passed another order under section 171 of the Indian Companies Act on the 30th January, 1953, staying execution of the decree against the Bank obtained by the appellant. This order also does not appear to have been communicated to the Tribunal by the Court. But the Tribunal was informed generally about the situation by a letter of the Provisional Liquidator dated the 13th March, 1953. Thereby, the attention of the Tribunal was invited to section 171 of the Indian Companies Act which enacted that pending proceedings could not be proceeded with except with the leave of the Court. The Tribunal was accordingly requested by this letter of the Liquidator to stay further proceedings before it in Case No. 1 of 1952. In view of this intimation, the Tribunal passed an order dated the 20th March, 1953, staying execution, notwithstanding a further application by the appellant dated the 16th March, 1953, to proceed with the execution. On the 21st March, 1953, the Provisional Liquidator filed an appeal in the Allahabad High Court against the decree of the Tribunal obtained by the appellant against the Bank. That appeal is said to be still pending. On the 24th September, 1953, the winding up of the Bank was finally ordered by the Company Judge and the Provisional Liquidator was appointed as the Official Liquidator for the purpose. It is said that as against this order of a Single Judge, there is a Bench appeal now pending in the High Court of Punjab. At this stage the Banking Companies (Amendment) Ordinance, 1953, (Ordinance No. 4 of 1953), was promulgated on the 24th October, 1953. This was repealed and substituted, on the 30th December,

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

1953, by the Banking Companies (Amendment) Act, 1953 (LII of 1953). On the 17th February, 1954, the appellant filed a further application before the Tribunal asking that the execution case filed before the Tribunal on the 6th January, 1953, which was stayed in view of the letter of the Liquidator dated the 13th March, 1953, should now be proceeded with having regard to the various reasons set out in that application. Curiously enough two of the reasons alleged were (1) that section 171 of the Indian Companies Act was overridden and varied by section 45-C of the Banking Companies (Amendment) Ordinance (Act), and (2) that the Tribunal under the Displaced Persons (Debts Adjustment) Act is not a Court and hence the stay under section 171 of the Indian Companies Act or under section 45-C of the Banking Companies Act has no application to proceedings pending before the Tribunal. The application of the 17th February, 1954, above-mentioned also prayed for an order to send the case for execution to the Bombay High Court on the ground that the Bank had property within the local limits of the jurisdiction of the said High Court against which it was intended to seek execution. On this application, notice was issued to the Official Liquidator to appear and show cause by the 24th April, 1954. The Liquidator however did not appear. The Tribunal made an order on the 24th April, transferring to the Bombay High Court under section 39 of the Code of Civil Procedure the said decree for execution. On the 8th June, 1954, the appellant filed an application for execution before the Bombay High Court (Application No. 123 of 1954) and asked for attachment and sale of the right, title and interest of the Bank in certain shares and securities belonging to the Bank and lying with the Central Bank of India Ltd., Bombay, subject to the charge

if any of the said Bank. The attachment was ordered on the 18th June, 1954 and was affected on or about the 19th June, 1954.

At this stag the Official Liquidator obtained an order on the 26th June, 1954, from the Punjab High Court purporting to be one under section 45-C of the Banking Companies Act, transferring from the Court of the Banaras Tribunal, the proceedings before it for execution of the decree in Case No. 1 of 1952, obtained against the Bank by the appellant. It would appear that the Tribunal, on the receipt of this order, informed the High Court by letter dated the 14th July, 1954, that the execution proceedings had already been transferred to the High Court of Bombay and that no proceedings relating to the execution case were at the time pending before it. Thereafter the Liquidator made an application dated the 28th October, 1954, to the Punjab High Court for setting aside the order of the Bombay High Court dated the 18th June, 1954, directing attachment of the shares and securities belonging to the Bank in the possession of the Central Bank of India Ltd., Bombay. The main grounds on which this application was made are—

(1) That the order of the Tribunal at Banaras in execution Case No. 8 of 1953, transferring the decree for execution to the Bombay High Court more than six months after the passing of the winding up order, without obtaining leave from the Punjab High Court, was null and void.

(2) That the proceedings taken in execution against the Bank in the Bombay

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

High Court were also null and void in view of sections 171 and 232 of the Indian Companies Act.

(3) That in view of the Banking Companies (Amendment) Act, 1953, it is only the Punjab High Court that has exclusive jurisdiction to entertain and decide all claims between the Bank and the appellant and to deal with the execution proceedings initiated by the appellant against the Bank.

(4) That the execution proceeding was in fact transferred by the Punjab High Court to itself by its order dated the 25th June, 1954, and all questions arising therefrom have to be dealt with and disposed of by the Punjab High Court itself.

The appellant contested this application in the Punjab High Court on various grounds. The main contentions were—

(1) That the provisions of the Banking Companies Act could not override the provisions of the Displaced Persons (Debts Adjustment) Act, 1951, and that the proceedings thereunder are not affected by the Banking Companies Act.

(2) That in any case there was no valid order of transfer to the Punjab High Court of the execution proceeding relating to the decree obtained by him against the Bank in the Banaras Tribunal.

These contentions were negatived by the Punjab High Court. It was held that the provisions of the Banking Companies Act of 1953 had an overriding effect and that exclusive jurisdiction was vested thereby in the appropriate High Court notwithstanding anything in the Displaced Persons (Debts Adjustment) Act, 1951. It was also held that there was a valid order of transfer to the Punjab High Court, of the execution proceedings taken by the appellant in respect of his decree. It was therefore held that the order of attachment obtained by the appellant from the Bombay High Court was invalid. The said order was accordingly set aside. It is against this order that the present appeal has been brought.

Both the above contentions have been strenuously urged before us on behalf of the appellant and equally strenuously opposed on behalf of the Bank. The learned Attorney-General for the Bank placed reliance on section 232 of the Indian Companies Act at the forefront of his argument and pointed out that under the said section no attachment could have been made without leave of the Court when the Bank was in the process of being wound up by order of the Court. On the other side it has been suggested that neither section 171 nor section 232 of the Indian Companies Act are applicable to these proceedings in view of the Banking Companies Act as amended in 1953. This suggestion proceeds on a misconception and ignores section 2 of the Banking Companies Act which specifically provides that the provisions of the Act shall be in addition to and not in derogation of the Indian Companies Act as expressly provided. Hence no leave under section 232 of the Indian Companies Act having been obtained, this might have been enough to dispose of the

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

case against the appellant if the order of attachment had been set aside by the Bombay High Court itself, on the application of the Liquidator to it. Since in this case the order to set aside attachment was passed by the Punjab High Court, the question has to be gone into as to the jurisdiction of that Court to interfere with the order of the Bombay High Court or to declare it to be void. That jurisdiction can only be supported on the view, that exclusive jurisdiction over the matter was vested in the Punjab High Court, under the Banking Companies Act, and that a valid order of transfer of the execution proceeding to the said Court had been made in exercise of the powers under that Act. These questions have, therefore, to be dealt with.

On the facts above stated one matter is clear, viz., that the attempt of the appellant is to realise the amount due to him under the decree by getting at the assets of the Bank which is under liquidation ignoring the purported adjustments of the deposit made by the Bank towards its alleged dues from him under his cash-credit account. His proceeding to execute the decree by attachment is in substance an attempt to constitute himself an independent preferential creditor. So far as the decree is concerned, we wish to say nothing about its validity or otherwise since the matter is pending in appeal before the Allahabad High Court. What we are concerned with now is the proceeding in execution of that decree and the appellant's attempt to get at the assets of the Bank in satisfaction thereof. There can be no doubt that, apart from any argument available under the Displaced Persons (Debts Adjustment) Act, 1951, which will be considered presently, the matters which must necessarily arise in the course of such

an execution proceeding are matters which would directly fall within the scope of section 45-B of the Banking Companies Act as amended in 1953 which runs as follows :

> "The High Court shall, save as otherwise expressly provided in section 45-C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under section 153 of the Indian Companies Act, 1913 (VII of 1913) by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953."

There has been some faint argument before us that the questions that arise in execution in this case and particularly the question relating to attachment which has been effected by the Bombay High Court, are not questions which fall within the scope of section 45-B. In our opinion this contention is so obviously untenable, in view of the very wide and comprehensive language of the section, that it requires no more than to be mentioned and rejected. If, therefore, the proceeding to execute the decree obtained by the appellant in

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

this case and the claims and matters which must necessarily arise in the course of that execution fall within the scope of section 45-B, the execution proceeding in this case would *prima facie* be within the exclusive jurisdiction of the High Court under section 45-B, subject to the two questions that have been raised in the case which are (1) whether there is anything in the Displaced Persons (Debts Adjustment) Act, 1951, which overrides this jurisdiction, and (2) whether in view of the fact that the original execution application to the Tribunal was made before the Banking Companies (Amendment) Ordinance and Act of 1953, came into force, there has been any valid order under section 45-C of the Banking Companies Act by the Punjab High Court transferring the pending execution proceeding to itself.

So far as the first of the above questions is concerned, learned counsel for the appellant relies on sections 3 and 28 of the Displaced Persons (Debts Adjustment) Act, 1951. Section 28 declares that the civil court which passed the decree as a Tribunal shall be competent to execute it. Section 3 runs as follows :

> "3. *Overriding effect of Act, rules and orders* :—Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a court, or in any contract between the parties."

On the strength of these sections learned counsel for the appellant argues that the jurisdiction

which the Tribunal has under section 28 for executing the decree must prevail over the jurisdiction of the High Court in respect of this matter under section 45-B of the Banking Companies Act. On the other hand, the respondent relies on section 45-A of the Banking Companies Act, which runs as follows :

> "The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Indian Companies Act, 1913 (VII of 1913) or the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part."

Now the question as to which of the provisions of these two Acts has got over-riding effect in a given case, where a particular provision of each is equally applicable to the matter is not altogether free from difficulty. In the present case, *prima facie* by virtue of section 28 of the Displaced Persons (Debts Adjustment) Act the jurisdiction to execute the Tribunal's decree is in the Tribunal. But it is equally clear that the jurisdiction to decide any of the claims which must necessarily arise in the execution of the decree is vested in the High Court by virtue of section 45-B of the Banking Companies Act. Each of the Acts has

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited

Jagannadhadas, J.

a specific provision, section 3 in the Displaced Persons (Debts Adjustment) Act and section 45-A in the Banking Companies Act, which clearly indicates that the relevant provision, if applicable, would have overriding effect as against all other laws in this behalf. Each being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case. In support therefore of the overriding effect of the Displaced Persons (Debts Adjustment) Act of 1951 as against section 45-B of the Banking Companies Act, learned counsel for the appellant called in aid the rule that a later Act overrides an earlier one. (See Craies on Statute Law, pages 337 and 338). He urged that the Banking Companies (Amendment) Act of 1953 should be treated as part of the 1949 Banking Companies Act and hence overriden by the Displaced Persons (Debts Adjustment) Act of 1951 and relied on the case in *Shamarao V. Parulekar* v. *The District Magistrate, Thana, Bombay* (1), and on the passage therein at page 687 which is as follows :

> "The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all."

(1) (1952) S.C.R. 683.

Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by amending Act either expressly or by necessary implication. On the facts of that case the question that was considered arose in the following circumstances. There was an order of detention under the Preventive Detention Act of 1950. That Act was due to expire on the 1st April, 1951, but there were subsequent amendments of the Act which extended the life of the Act up to 1st October, 1952. The amending Act provided *inter alia* that detention orders which had been confirmed previously and which were in force immediately before the commencement of the amending Act "shall continue to remain in force for so long as the principal Act is in force." The question for consideration was whether this indicated the original date of expiry of the principal Act or the extended date of the principal Act. The Court had no difficulty in holding that it obviously related to the latter, notwithstanding that the principal Act was defined as meaning "Act of 1950". It was pointed out that

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

the phrases "principal Act" and "Act of 1950" have to be understood after the amendment as necessarily meaning the 1950 Act as amended, i.e., which was to expire on the 1st October, 1952. In the present case what we are concerned with is not the meaning of any particular phrase or provision of the Act after the amendment but the effect of the amending provisions in their relation to and effect on other statutory provisions outside the Act. For such a purpose the amendment cannot obviously be treated as having been part of the original Act itself so as to enable the doctrine to be called in aid that a later Act overrides an earlier Act. On the other hand, if the rule as to the later Act overriding an earlier Act is to be applied to the present case, it is the Banking Companies (Amendment) Act, 1953, that must be treated as the later Act and held to override the provisions of the earlier Displaced Persons (Debts Adjustment) Act, 1951. It has been pointed out, however, that section 3 of the Displaced Persons (Debts Adjustment) Act, uses the phrase "notwithstanding anything inconsistent therewith in any other law *for the time being* in force" and it was suggested that this phrase is wide enough to relate even to a future Act if in operation when the overriding effect has to be determined. But it is to be noticed that section 45-A of the Banking Companies Act has also exactly the same phrase. What the connotation of the phrase "for the time being" is and which is to prevail when there are two provisions like the above each containing the same phrase, are questions which are not free from difficulty. It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and

policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.

Now so far as the Banking Companies Act is concerned its purpose is clearly, as stated in the heading of Part III-A, for speedy disposal of winding up proceedings. It is a permanent statutory measure which is meant to impart speedy stability to the financial credit structure in the country in so far as it may be effected by banks under liquidation. It was pointed out in *Dhirendra Chandra Pal* v. *Associated Bank of Tripura Ltd.* (1), that the pre-existing law relating to the winding up of a company involved considerable delay and expense. This was sought to be obviated so far as Banks are concerned by vesting exclusive jurisdiction in the appropriate High Court in respect of all matters arising in relation to or in the course of winding up of the company and by investing the provisions of the Banking Companies Act with an overriding effect. This result was brought about first by the Banking Companies (Amendment) Act, 1950 and later by the Banking Companies (Amendment) Act, 1953. Sections 45-A and 45-B of Part III brought in by the 1950 Act vested exclusive jurisdiction in the appropriate High Court to decide all claims by or against a Banking Company relating to or arising in the course of winding up. But sections 45-A and 45-B of the Part III-A substituted by 1953 Act are far more comprehensive and vest not merely exclusive jurisdiction but specifically provide for the overriding effect of other provisions also.

Now, the Displaced Persons (Debts Adjustment) Act is one of the statutory measures meant for relief and rehabilitation of displaced

(1) (1955) 1 S.C.R. 1098

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

persons. It is meant for a temporary situation brought about by unprecedented circumstances. It is possible, therefore, to urge that the provisions of such a measure are to be treated as being particularly special in their nature and that they also serve an important national purpose. It is by and large a measure for the rehabilitation of displaced debtors. Notwithstanding that both the Acts are important beneficial measures, each in its own way, there are certain relevant differences to be observed. The first main difference which is noticeable is that the provisions in the Displaced Persons (Debts Adjustment) Act are in a large measure enabling and not exclusive. There is no provision therein which compels either a displaced debtor or a displaced creditor to go to the Tribunal, if he is satisfied with the reliefs which an ordinary civil court can give him in the normal course. It is only if he desires to avail himself of any of the special facilities which the Act gives to a displaced debtor or to a displaced creditor and makes an application in that behalf under sections 3, or 5 (2) or 13, that the Tribunal's jurisdiction comes into operation. At this point it is necessary to notice the further difference that exists in the Displaced Persons (Debts Adjustment) Act between applications by displaced debtors and applications by displaced creditors against persons who are not displaced persons. So far as the applications by displaced debtors are concerned, section 15 in terms provided for certain consequences arising, when the application is made to the Tribunal by a displaced debtor under section 3 or section 5 (2), i.e., stay of all pending proceedings, the cession of effect of any interim orders or attachments, etc. and a bar to the institution of fresh proceedings and so forth. But the

terms of section 13 relating to the entertainment of an execution proceeding by the said Tribunal on a decree so obtained, do not appear to bring about even the kind of consequences which section 15 contemplates as regards applications by displaced debtors. Section 13 is, in terms, only an enabling section and section 28 merely says that "it shall be competent for the civil court to execute the decree passed by it as a Tribunal." They are not couched in terms vesting exclusive jurisdiction in the Tribunal. Whatever, therefore, may be the *inter se* position, in a given case, between the provisions of the Banking Companies Act and the provisions of the Displaced Persons (Debts Adjustment) Act, in so far as such provisions relate to displaced debtors, we are unable to find that the jurisdiction so clearly and definitely vested in the High Court by the very specific and comprehensive wording of section 45-B of the Banking Companies Act with reference to the matters in question, can be said to be overriden or displaced by anything in the Displaced Persons (Debts Adjustment) Act 1951, in so far as they relate to displaced creditors.

It is also desirable to notice that so far as a claim of a displaced creditor against a non-displaced debtor is concerned the main facilities that seem to be available are (1) the claim can be pursued within one year after the commencement of the Act (presumably even though it may have been time-barred), (2) a decree can be obtained on a mere application, i.e. without having to incur the necessary expenses by way of court-fee which would be payable if he had to file a suit, (3) the creditor has the facility of getting his claim adjudicated upon by a Tribunal which has jurisdiction over the place where he resides, *i.e.*,

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

a place more convenient to him than if he had to file a suit under the ordinary law in which case he would have to file a suit at the place where the defendant resides or part of the cause of action arises. There may also be a few other minor facilities. But what is necessary to notice is that the overriding provision of the Banking Companies Act, so far as a displaced creditor is concerned, is substantially only as regards jurisdiction. Section 45-A thereof, while providing that the provisions of Part III-A and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force, specifically provided that "the provisions of any such law in so far as the same are not varied by or inconsistent with, the provisions of that part or rules made thereunder, shall apply to all proceedings under that Part". Therefore, in the present case the overriding effect of section 45-B of the Banking Companies Act deperives him only of the facility of pursuing his execution in the jurisdiction of the Tribunal. But there is no reason why he should not get the benefit of other provisions, if any, which may give him an advantage and are not inconsistent with any of the other specific provisions of the Banking Companies Act. Having regard to all the above considerations and the wide and comprehensive language of sections 45-A and 45-B of the Banking Companies Act, we are clear that a proceeding to execute the decree obtained by the appellant from the Tribunal against the Bank in Case No. 1 of 1952 and all other incidental matters arising therefrom such as attachment and so forth are matters within the exclusive jurisdiction of the Punjab High Court subject to the provisions of section 45-C of the Banking Companies Act as regards pending

matters. This leads us to the question whether in terms of section 45-C there has been a valid transfer of the execution proceeding to the Punjab High Court.

Before dealing with this question it is necessary to notice the argument that section 45-C of the Banking Companies Act has no application at all to a proceeding pending before the Tribunal. The argument is that section 45-C applies only to a proceeding pending *in any other Court* immediately before the commencement of the Banking Companies (Amendment) Act. It is urged that the Tribunal under the Displaced Persons (Debts Adjustment) Act *is not a Court.* In support thereof the judgment of one of the learned Judges in *Parkash Textile Mills Ltd.* v. *Messrs. Muni Lal Chuni Lal* (1) has been cited to show that the Tribunal constituted under this Act is not a Court. The question that arose in that case was a different one, viz., as to whether the Tribunal had the exclusive jurisdiction to determine for itself the preliminary jurisdiction on facts and it is for that purpose the learned Judge attempted to make out that a Tribunal was a body with a limited jurisdiction, which limits were open to be determined by a regular court when challenged. It is unnecessary for us to consider whether the view taken by the learned Judge was correct. No such question arises in this case and we are quite clear that the tribunal which is to exercise the jurisdiction for executing the decree in question is "a Court" within the scope of section 45-C of the Banking Companies Act. Section 28 of the Displaced Persons (Debts Adjustment) Act itself is reasonably clear on the point. That section runs as follows :

> "It shall be competent for the civil court which has been specified as the tribunal

(1) (1955) 57 P.L.R. 107.

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

for the purposes of this Act to execute any decree or order passed by it as the Tribunal in the same manner as it could have done if it were a decree or order passed by it as a civil court."

Jagannadhadas, J.

It is quite clear on the wording of this section that it is a civil court when it executes the decree, whatever may be its status when it passed the decree as a Tribunal. There is ,therefore, no substance in this argument.

Now coming to the question whether there has been a valid transfer of the execution proceedings to the Punjab High Court, there can be no doubt that the execution proceeding filed by the appellant before the Tribunal on the 6th January, 1953, continued to remain pending by the date when the Banking Companies (Amendment) Act, 1953, came into operation. This appears from the subsequent applications dated the 16th March, 1953, and the 17th February, 1954, which always relied on the earlier application of the 6th January, 1953, as the main pending application. This application was, therefore, a pending application for the purposes of section 45-C of the Banking Companies Act. The jurisdiction of the Punjab High Court with reference to this execution proceeding must depend upon whether or not there was a valid order of transfer of this proceeding to itself under section 45-C. This section contemplates in respect of pending proceedings that (a) the Official Liquidator is to make a report to the High Court concerned within the time specified in sub-section (2) thereof, (b) the High Court is to consider which out of these pending proceedings it should transfer to itself, and (c) the High Court should pass orders

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

accordingly. It further provides by sub-section (4) thereof that as regards such of the pending proceedings in respect of which no such order of transfer has been made the said proceeding shall continue in the Court in which it is pending. It is with reference to these provisions that on the 23rd November, 1953, the Official Liquidator appears to have submitted a report to the Punjab High Court, requesting that certain proceedings mentioned in lists A and B attached to the said report should be transferred to the High Court under section 45-C (3). List A pertains to suits and List B to applications under the Displaced Persons (Debts Adjustment) Act, 1951. It is pointed out that list B which shows an application before the Tribunal under section 19 of the Displaced Persons (Debts Adjustment) Act does not show the execution application under section 28 of that Act then pending in the Banaras Tribunal and with which we are concerned. It is strenuously urged that this shows that there was no application for transfer of this proceeding to the Punjab High Court and that, therefore, there could have been no transfer thereof and that accordingly by virtue of section 45-C (4) of the Banking Companies Act the jurisdiction in respect of the execution proceeding continued to be with the Tribunal. It is urged that since sub-section (4) of section 45-C enjoins that such proceeding "shall be continued" in the Court in which the proceeding was pending, there can be no question of any transfer thereafter. It is pointed out that the view of the High Court that there has been a valid transfer to itself is based on an order passed on an alleged supplementary report by the Liquidator on the 25th June, 1954, which is beyond the three months' time provided in section 45-C (2) and that such an order of transfer

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

is invalid. It is also urged that the transfer so made was without notice to the appellant.

That there was in fact an order of transfer made by the Punjab High Court specifically of this execution proceeding with which we are concerned admits of no doubts as a fact. This is also admitted by the appellant in his application for special leave. The order itself is not before us nor are the exact circumstances under which this order came to be made clearly on the record. So far as one can gather from the papers before us the position seems to be this. When the appellant filed his application to the Tribunal on the 17th February, 1954 (by which he asked that its order dated the 20th March, 1953, staying execution proceedings should be vacated for reasons shown therein) notice to show cause against it and for appearance therefor on the 24th April, 1954, was sent to the Official Liquidator by the Tribunal. The Official Liquidator not having appeared on that date, the Tribunal, as already stated, passed the order as prayed for on the 24th April, 1954, transferring the execution to the Bombay High Court. It may be mentioned at this stage that an argument has been advanced that the Liquidator, not having appeared on notice, can no longer challenge the validity of the continuance of the execution proceeding by the Tribunal and of the subsequent attachment by the Bombay High Court. The question, however, is one of judisdiction depending on the validity of transfer made by the High Court under statutory power. The argument is without substance. To resume the narrative, the Official Liquidator on receiving notice, addressed a letter dated the 19th March, 1954, to the Company Judge of the Punjab High Court mentioning the fact that he received a notice from the Banaras Tribunal to appear and

show cause on the 24th April, 1954. He mentioned therein his doubt as to the jurisdiction of the Tribunal to entertain the application and requested that in order to avoid inconvenience and expenditure an immediate transfer of the execution case together with the appellant's application to the Tribunal for vacating the stay order should be made by the High Court in exercise of the powers conferred on it by section 45-C of the Act. On this the learned Judge appears to have passed an order dated the 22nd March, 1954, issuing notice to the appellant for appearance on the 2nd April, 1954. This appears to have been adjourned from time to time and it would appear that on the 25th June, 1954, to which date the matter stood adjourned, the Liquidator addressed another letter to the Company Judge, which is referred to in the record as the supplementary report of the Liquidator. Therein he only narrated the entire history of the suit and of the execution proceeding and the circumstances which rendered it necessary that an order of transfer should be made immediately. Probably this was meant for opposing any further adjournment. It appears at any rate that it was on this date that the order of transfer was passed. All the facts stated above can be gathered from the two letters of the Liquidator dated the 19th March, 1954, and the 25th June, 1954, and a further note of the Liquidator put up to the Company Judge with reference to the letter dated the 14th July, 1954, received from the Tribunal which is all the relevant material included in the paper book before us. The actual date of the note does not appear from the record. Unfortunately neither the original order of the Judge made on the report of the Liquidator dated the 23rd November, 1953, nor the order of transfer relating to this particular case, which appears

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

to have been made on the 25th June, 1954, on the letter of the Liquidator dated the 19th March, 1954, are before us. We do not know the exact terms in which those orders were made and the reason why no specific order of transfer was made on the first report and why an additional order of transfer was made—as appears — so late as on the 25th June, 1954. In any case the argument on behalf of the appellant on this part of the case seems to be based on a misapprehension of the facts. If, as appears, the order of the 25th June, 1954, was made with reference to the letter of the Liquidator dated the 19th March, 1954, — a fact which appears to be admitted by the appellant in para 16 of his application for leave to appeal to this Court— and what is called supplementary report dated the 25th June, 1954, was nothing more than bringing additional facts to the notice of the Court by way of the history of the execution proceeding, there appears to be no foundation in fact for the contention that the order was made on a report filed beyond three months provided under section 45-C (2) of the Banking Companies Act. Sub-section (2) of section 45-C provides that "the Official Liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, *whichever is later,* or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof". The letter of the Official Liquidator dated the 19th March, 1954, is within three months of the commencement of the Banking Companies (Amendment) Act, 1953, which came into force on the 30th December, 1953, and there is nothing in sub-section (2) of section 45-C that two or more

successive reports may not be made within the prescribed period of three months. It appears also from the papers above referred to that notice was issued to the appellant with reference to this letter of the 19th March, 1954, of the Liquidator to transfer the execution application to itself. It appears to us, therefore, from such record as is before us, that the contention of the appellant raising objection to the validity of the order of transfer is untenable on the facts. Nor, are we satisfied that even if the facts as to how the order of transfer dated the 25th June, 1954, came to be made are shown to be otherwise than above stated, there is any reason to think that section 45-C (2), (3) and (4) are to be construed so as to make the power of the Court to transfer dependent on the filing of a report by the Liquidator strictly within three months. The various sub-sections taken together seem to imply the contrary. Section 45-C (1) definitely imposes a bar on any pending matter in any other court being proceeded with except in the manner provided therein. The jurisdiction of that other Court to proceed with a pending proceeding is made to depend on the fact that its pendency is brought to the notice of the appropriate High Court and its decision, express or implied, to leave it out without transferring it to itself. Having regard to the scheme and policy of sections 45-B and 45-C of the Banking Companies Act, it appears more reasonable to think that in respect of a pending matter which was not in fact brought to the notice of the Court by the Liquidator within the three months, there is nothing to prevent the Court exercising its power of transfer at such time when it is brought to the notice of the Court. It is, however, unnecessary to decide that point finally in this case since, to say the least, all the facts and the requi-

Shri Ram Narain
v.
The Simla Banking and Industrial Co., Limited.

Jagannadhadas, J.

site records have not been properly placed before us. We have been asked to send for all the relevant records in order to ascertain the facts correctly or to give an opportunity for the purpose. We do not think it right to do so in the circumstances of this case. It is necessary to point out as admitted by the appellant in his application for special leave that there has been an application to this Court dated the 6th October, 1954, for the grant of special leave specifically as against the order of transfer of the Punjab High Court made on the 25th June, 1954, but that application was rejected. It has been suggested that while so rejecting, this Court left the matter open. There is nothing to substantiate it. Therefore, an argument as to the invalidity of the order of transfer can not be entertained at this stage.

For all the above reasons we are satisfied that the view taken by the High Court that it had exclusive jurisdiction in respect of the present matter and that there was a valid transfer to itself by its order dated the 25th June, 1954, is correct.

In the proceedings before the High Court a good deal has been made as to the alleged suppression of material facts by the appellant from the Bombay High Court in obtaining the impugned order of attachment from that Court and the learned Judge's order also indicates that he was to some extent influenced thereby. It appears to us that the alleged suppression has no bearing on the questions that arose for decision before the learned Judge on this application. The learned Attorney-General frankly conceded the same. We have been told that there has been some application for contempt in the Court on the basis of

the alleged suppression. We do not, therefore, wish to say anything relating to that matter which may have any bearing on the result of those proceedings.

Shri Ram Narain v. The Simla Banking and Industrial Co., Limited.

In the result this appeal is dismissed with costs.

Jagannadhadas, J.

APPELLATE CIVIL.

Before Khosla and Dulat JJ.

BAKHSHISH SINGH,—*Petitioner.*

versus

KARTAR SINGH.—*Respondent.*

Civil Reference No. 16 of 1955.

1956

May, 11th.

Punjab Tenancy Act (XVI of 1887)—Section 77(3)(k)—Owner of land joining a person in cultivation—Such person, whether a co-sharer—Suit by him for recovery of his share of the produce—Whether exclusively cognizable by a Revenue Court.

Held, that a person who cultivates land in partnership with the owner of the land on condition of receiving a share of the produce is co-sharer in the holding within the meaning of section 77(3) (k) of the Punjab Tenancy Act, and his suit for recovery of his share of the produce lies in the Revenue Court.

Reference made by Shri Dalip Singh, Sub-Judge, II Class, Jagraon, under Section 99 of the Punjab Tenancy Act, and forwarded by Shri Pitam Singh Jain, District Judge, Ludhiana,—vide *his Endorsement No. 2161-G, dated the 8th July, 1955 for a final decision on the question of jurisdiction.*

H. L. SIBAL and K. S. THAPAR, for Petitioner.

K. L. JAGGA, for Respondent.

JUDGMENT

Dulat, J.

DULAT, J. The only question in each of these cases is whether a person, who cultivates land in partnership with the owner of the land on condition of receiving a share of the produce, is a co-sharer in the holding within the meaning of Section 77 (3) (k) of the Punjab Tenancy Act.

The plaintiff in each of these cases joined the defendant to cultivate the defendant's land and