

## REVISIONAL CIVIL

Before Eric Weston, C.J.

1952  
July 16th

M/s BANKA MAL-NARANJAN DASS. AND ANOTHER.  
—Petitioners,

versus

The CENTRAL BANK OF INDIA AND OTHERS,—  
Respondents.

Civil Revision No. 124 of 1952

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 17—Whether an addition to the general substantive law or is a provision enforceable only by the Tribunal appointed under the Act holding debt adjustment proceedings under Chapter II of the Act in which it finds place—Interpretation of Statutes—Title of a Chapter—Headings to Sections—Preambles—Whether can restrict or extend the enactment.*

*Held*, that a narrow construction of section 17 is to be preferred in order to avoid a conflict between a decree of a civil Court passed after the commencement of the Act and a decree of the Tribunal, and it should be held that it is a provision of law applicable to proceedings being held by the Tribunal and that it has not application outside those proceedings. If the debtor does not choose to take the remedy under section 5 of the Act, then the civil Court must proceed with the case under the ordinary law and, if necessary, pass a decree without regard to the provisions of section 17.

*Held*, that the title of a chapter cannot be legitimately used to restrict the plain terms of an enactment. The headings to sections may be regarded as preambles to the provisions following them. The rule as to the preamble to an Act undoubtedly is that the preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt.

*Petition under section 44 of Act IX of 1919, for revision of the order of Shri Kirpa Ram, Sub-Judge, Ist Class, Kaithal, dated the 24th April 1952, ordering the defendants to pay Rs. 20 as costs of the suit.*

I. D. DUA, for Petitioners.

H. L. SIBAL, for Respondent.

JUDGMENT

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ERIC WESTON, C.J. This revision application raises a point of considerable difficulty under the Displaced Persons (Debts Adjustment) Act, 1951.

The facts are that the respondent, the Central Bank of India, Limited, filed a suit to recover Rs 52,000 odd alleged due from the defendant firm, the present applicant, on the basis of a cash credit account. The suit was filed in May 1950. It appears that evidence had concluded when in April 1952 an application was filed by the defendant claiming that section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, is a complete bar to the suit. The material part of section 17 is as follows :—

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“ 17. *Debts secured on moveable property.*

Where in respect of a debt incurred by a displaced debtor and secured by the pledge of moveable property belonging to him, the creditor had been placed in possession of such property at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely :—

- (a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale ;
- (b) the creditor shall not be entitled, in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security ;
- (c) the debtor shall not be liable, in the case of a sale by the creditor of any pledged property, whether under clause (a) or otherwise, to pay the balance where the proceeds of such sale are less than the amount of the debt due ;
- (d) the creditor shall in any case where the proceeds of the sale of the pledged property are greater than the

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amount of the debt due, pay over the surplus to the debtor. ”

Then follow two Explanations which it is not necessary to set out.

I understand it to be alleged in the present case that moveable property belonging to the defendant was pledged with the plaintiff Bank as security for the cash credit accommodation given and was in possession of the Bank. The point which arises may be shortly stated and is—

Whether section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, is an addition to the general substantive law or is a provision enforceable only by the Tribunal appointed under the Act holding debt adjustment proceedings under Chapter II of the Act in which section 17 finds place ?

For decision of this question some consideration of the scheme of the Act is necessary. The preamble of the Act recites that it is 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. Section 2 is the definition section, and clause (6) of section 2 defines ‘debt’ as meaning “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 ;
- (b) in the case of a displaced person who, before and after the 15th day of August

1947, has been residing in any area now forming part of India, was incurred before the said date on the security of any immovable property situate in the territories now forming part of West Pakistan ;

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[ This clause (b) is subject to a proviso which it is not necessary to set out ].

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(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends.

(This clause is subject to certain amplification and proviso which also need not be set out).

Clause (8) of section 2 defines 'displaced creditor' as meaning "a displaced person to whom a debt is due from any other person, whether a displaced person or not". Clause (9) defines 'displaced debtor' as meaning "a displaced person from whom a debt is due or is being claimed", and clause (10) defines 'displaced person' in the manner nowadays sufficiently familiar.

Section 3 of the Act provides that the provisions of the 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. Section 4 provides for the setting up of civil Courts as Tribunals having authority to exercise jurisdiction under the Act.

Then comes Chapter II of the Act which bears the heading "Debt Adjustment Proceedings". Section 5 provides for applications by displaced debtors for adjustment of debts. Such applications must be made within one year after the coming into force of the Act and such applications shall contain certain particulars and shall be accompanied by certain schedules. One schedule

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must contain, *inter alia*, full particulars of all debts and the names and addresses of all creditors and joint debtors. A second schedule must contain a list of all the debtor's properties. Section 6 provides that if the application under section 5 does not comply with any of the requirements of the section the Tribunal may reject it or may grant time to the debtor to comply with such requirements. Section 7 provides that if the application is not rejected notice will be issued to the respondents, that is to say, the creditors and the persons shown as joint debtors. Section 8 provides for objections to be filed by the respondents. Section 9 shows that such objections may relate to whether the applicant is a displaced person or not, to the existence or the amount of the debt due to any creditor or the assets of the displaced debtor. This section shows that when a dispute arises on any of these matters the Tribunal shall decide it after taking such evidence as it thinks fit. Section 10 provides for claims which may be made by creditors against displaced debtors provided the creditor is also a displaced person. On such claim being made by a creditor a notice under section 11 is to be issued to the displaced debtor calling upon him either to show cause against the application or to make an application on his own behalf under section 5. If the debtor elects to make an application under section 5, then the further proceedings continue as if they had been initiated by such application under section 5. The limitation of one year provided in section 5 for applications under that section by reason of clause (3) of section 11 does not apply to a debtor's application made on receipt of notice under section 11(1). If the displaced debtor does not choose to make an application under section 5, the Tribunal after taking evidence shall determine the claim and pass such decree in relation thereto as it thinks fit. The creditor therefore acquires in such circumstances a substantive remedy before the Tribunal.

Coming back to the Act Section 12 provides for objection by the creditor to concealment of assets on the part of the debtor and for determination by

the Tribunal of this matter. Clause (2) of the section provides that when the debtor has wilfully and fraudulently omitted to include assets in his application, the Tribunal may dismiss the application or refuse to allow him any of the reliefs under this Act to which he would otherwise have been entitled or pass such other order in relation thereto as it thinks fit. Section 13 provides for claims by displaced creditors against persons who are not displaced debtors, and section 14 contains the procedure on an application under section 13 and empowers the Tribunal to pass a decree in favour of the displaced creditor against a person who is not a displaced debtor. Section 15 provides that upon an application being filed by a displaced debtor under section 5 or following a creditor's application under section 11 all pending proceedings in any civil Court in respect of any debt to which the displaced debtor is subject, except proceedings by way of appeal or review or revision against decree or orders passed against the displaced debtor, shall be stayed, and the records of such proceedings stayed shall be transferred to the Tribunal and consolidated. Clause (b) of the section provides that all attachments, injunctions and other processes issued and in force in respect of such debt shall cease to have effect and no fresh process shall be issued except in circumstances set out. Clause (c) bars the institution of any fresh suit or other proceeding in respect of such debt, and clause (d) prohibits the transfer of immovable property during the pendency of the proceedings before the Tribunal. Section 16 is headed "Debts secured on immovable property". It is a lengthy section. Clause (1) provides that in case of such debts the Tribunal may require the creditor to elect either to retain the security or to be treated as an unsecured creditor. Clause (2) provides that if the creditor elects to retain the security, he may apply to the Tribunal for a declaration of the amount due to him under his debt. Clause (3) provides that in such instance if the displaced debtor receives any compensation in respect of any such property, the creditor shall be entitled to claim against this compensation and have a

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first charge upon it for certain amounts. Clause (4) provides for the case where the debt was secured by a mortgage of agricultural lands and the mortgagee has been allotted lands in India in lieu of the lands held by him in mortgage in West Pakistan. Clause (5) provides that where a creditor elects to be treated as an unsecured creditor, in relation to the debt, the provisions of the Act shall apply accordingly.

Then comes the section now in question, section 17, the substance of which I have already set out. It is to be noticed and the argument of the present applicant is based mainly upon this that whereas in section 16 there is reference to the Tribunal and proceedings to be held by it there is no reference to the Tribunal in section 17.

Continuing with the Act, section 18 deals with claims against insurance companies. This section expressly provides for determination of matters by the Tribunal. Section 19 provides that where a company or a co-operative society has made any call upon a displaced person or a displaced bank and there has been a failure in payment, then no interest shall be payable in respect of any call money due, and the company or the co-operative society shall not be entitled to forfeit the shares or any part thereof, and any forfeiture made before the commencement of the Act shall cease to have effect. Clause (2) of the section makes it lawful for a displaced person or a displaced bank to apply for the conversion of any partly paid-up share into such smaller number of fully paid-up shares as may have been issued. Clause (3) is not very material. Clause (4) provides that if the company or the co-operative society refuses to comply with any request contained in an application under clause (2) the Tribunal may, on application made to it in this behalf, issue directions to the company or society which shall be bound thereby. It is not necessary to set out clauses (5) and (6). Section 20 provides that no calls are to be made on a displaced person or displaced bank when a company or a co-operative society is in liquidation, and clause (2) of this section provides that these provisions shall have effect for a period

of ten years from the 15th day of August, 1947. Section 21 provides that the Tribunal on application made to it may revise any decree passed by a civil Court before the commencement of the Act so as to bring the decree into accord with the provisions of the Act. Section 22 relates to apportionment of joint debts. Section 23 provides for summary procedure by the Tribunal where an individual debt does not exceed five thousand rupees. Section 24 deals with presumption regarding registered documents. Section 25 applies the provisions of the Code of Civil Procedure to all proceedings under the Act. Section 26 provides for signing and verification of applications and written statements. Section 27 sets out the contents of decrees passed by the Tribunal, and section 28 provides that decrees of the Tribunal shall be executed by the civil Court which has been specified to be a Tribunal under the Act.

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Then follows Chapter III which is headed "Reliefs". Section 29 provides that no interest shall accrue in respect of any debt owed by a displaced person on and from the 15th day of August 1947, save in certain cases. Section 30 provides that no displaced person shall be liable to arrest or imprisonment in execution of any decree for the recovery of any debt whether passed before or after the commencement of the Act. Section 31 contains amendment to section 60 of the Code of Civil Procedure. Section 32 deals with the scaling down of debts where on the application of a displaced debtor under section 5 or subsection (2) of section 11, the Tribunal has determined the amount due in respect of each debt in accordance with the provisions of the Act. Sections 33 to 35 deal with matters to be taken into account in directing payment by instalments, variations of maintenance allowances, and taxation of lawyer's fees. Section 36 provides for extension of the period of limitation and provides that any suit or other legal proceeding in respect of which the period of limitation was extended by Act XLVII of 1948 and any suit or other legal proceedings for enforcement of a claim against an insurance company may be instituted at any time within one



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year from the commencement of the Act, that is to say, within one year from the 8th of November, 1951. Section 37 deals with curtailment of period of limitation for execution of certain decrees. Section 38 deals with sale of immovable property in execution. Section 39 deals with encouragement of settlements between debtors and creditors.

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Then follows Chapter IV, sections 40 to 42 of which deal with appeals.

Chapter V is headed "Miscellaneous". Section 44 bars a second application under section 5 when the first has been dismissed. Section 47 provides that where a displaced debtor has not mentioned in the relevant schedule to his application any debt owing by him or any property, movable or immovable, belonging to him, whether such property is liable to attachment or not, nothing contained in the Act shall prevent (a) in the case of the debt, the creditor from instituting any proceeding for the recovery thereof under any law for the time being in force other than this Act, and (b) in the case of the property, from being attached or otherwise dealt with under any such law. It is not necessary to refer to the few remaining sections of the Act.

Learned counsel for the debtor has laid considerable stress on sections 19 and 20 of the Act and has claimed that these sections, which also appear in Chapter II, must be deemed to be modifications of the general law available to displaced debtors outside any proceedings of the Tribunal. It is pointed out that a future call in respect of shares of a company would not amount to a debt within the definition of section 2 (6), that the provision in section 19 (4) for reference to the Tribunal applies only when the company or co-operative society has refused to issue a smaller number of fully paid-up shares in lieu of partly paid-up shares held by a debtor, and that a displaced person is entitled to claim the benefit of clause (1) of section 19 or of section 20 in proceedings taken by a company under the Indian Companies Act before a Court empowered under the

Indian Companies Act to deal with such matters, and that there is no scope for the intervention of the Tribunal in such a matter.

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This argument has its force but is not in my opinion conclusive that other provisions falling in Chapter II of the Act should not be deemed to be provisions relating to the procedure before a Tribunal. Much weight perhaps is not to be given to the heading of Chapter II, namely "Debt Adjustment Proceedings". It was observed by Patanjali Sastri, J., in *The Commissioner of Income-tax, Bombay v. Ahmedbhai Umarbhai & Co., Bombay* (1) :—

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"Nor can the title of a chapter be legitimately used to restrict the plain terms of an enactment."

The Privy Council in *Martins v. Fowler* (2) considered that headings to sections may be regarded as preambles to the provisions following them. The rule as to the preamble to an Act undoubtedly is that the preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt (Maxwell on Interpretation of Statutes, 1946 Edition, page 48). But when there is no question of restricting or extending the meaning of a section but the question is of the applicability of the section the circumstance that section 17 falls in Chapter II which is headed "Debt Adjustment Proceedings" and lies between two sections, each of them laying down the law to be applied by the Tribunal, has significance to show that section 17 was also intended as a provision applicable to proceedings of the Tribunal.

The circumstance that sections 19 and 20 may contain substantive law applicable to proceedings outside those of a Tribunal I think is not substantial reason for holding that the provisions of section 17 should be available to the debtor in a suit outside the Act. There can be no doubt that if the

(1) A. I. R. 1950, S. C. 134

(2) 1925, A. C. 746

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debtor in the present instance had filed or does file an application under section 5, then an order dealing with the present claim, assuming that section 17 has application, will follow.

The application of the debtors under the Act is circumscribed by a number of formalities, and failure to comply with those formalities may result in failure of the application. The present claim is insistence on the right with no obligation to make the disclosure required by section 5. Ground for holding that provisions of sections 19 and 20 may be applied to proceedings other than those of the Tribunal may be said to exist in that scope does not appear for the application of those provisions to any proceedings of the Tribunal. If in the present case the plaintiff Bank was itself a displaced person it would be open to it to make an application under section 10 or under section 13 of the Act. If the debtor in an application under section 13 claimed to be a displaced person and chose to make his application under section 5, then undoubtedly it would be open to the creditor to claim in the circumstances provided by section 12 that the debtor should be refused any benefit to which he would otherwise be entitled under the Act. The fact of the debtor being a displaced person would be open to dispute by the creditor and would be for the Tribunal to decide it under section 9 of the Act. It would seem that dismissal of the present suit on the ground of the civil Court holding section 17 to be a complete bar to it would in no way prevent the creditor, if a displaced person, from applying under section 10 or section 13 and thereby bringing the matter within the jurisdiction of the Tribunal, with the result that the Tribunal might arrive at a decision in conflict with that of the civil Court. Section 21 of the Act gives to the Tribunal in terms the power only to revise, and that on the application of a debtor, a decree which has been passed before the commencement of the Act. I think an interpretation is to be avoided by reason of which a decree of civil Court passed after the commencement of the Act and a decree of the Tribunal would be in conflict. It seems to me therefore that a narrow construction of section 17 is to be preferred and it

should be held that it is a provision of law which is applicable to proceedings which are being held by the Tribunal, and that it has not application outside those proceedings. On these grounds I think the Court below was right. The debtor has had and still has his remedy by application under section 5 and if he does not choose to take it then the civil Court must proceed with the case under the ordinary law and if necessary pass a decree without regard to the provisions of section 17. Parties to bear their own costs.

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Parties to appear before the trial court on 4th August 1952.

### CIVIL WRIT

*Before Falshaw and Kapur, JJ.*

MAHABIR PARSHAD, Advocate, Hissar,—*Petitioner*

*versus*

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PEPSU, HIMACHAL PRADESH AND BILASPUR AT SIMLA,—*Respondent*. July 17th

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Civil Writ No. 310 of 1951

*Constitution of India, Article 226—Order passed before the coming into force of the Constitution—Whether such order can be interfered with under Article 226 of the Constitution—Income-tax Act (XI of 1922), Section 33-A(2) “Made one year from the date of the order”, whether, mean not merely within one year from the date of the order, but within one year from the date when the petitioner is notified of that order—Interpretation of Statutes—Rule of casus omissus—when applies.*

*Held*, that the powers conferred by Article 226 cannot affect orders passed before the coming into force of the Constitution and the Court has no power to interfere with such orders.

*Held further*, that the phrase “made one year from the date of the order”, in section 33-A(2) of the Income-tax Act means one year from the date of the order and not one year from the date the petitioner is notified of the order, and the time begins to run from the date of the order and not from the date when it is communicated to the assessee.