APPELLATE CIVIL

Before Bishan Narain J.

S. JOGINDRA SINGH,—*Plaintiff-Appellant*

verus

SARDARNI CHATTAR KAUR.—*Defendant-Respondent*

First Appeal From Order No. 51 of 1954

1954

October, 4th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 2(6), 5, 32 and 34—Maintenance in arrears or in future, liability to pay—Such liability whether debt within section 2(6) of the Act—Application under section 5—Power of the Tribunal to reduce the rate of maintenance under section 34—Whether such reduction can be effected—Pleadings—Requirements of—Duty of Court.

Held, that the word debt as defined in the Act does not depart from its meaning as generally understood although the distinction must be borne in mind between a case where there is an existing debt payment whereof is deferred and a case where both the debt and its payment rest in future. The maintenance allowance that has already become due is, therefore, a debt while the liability to pay maintenance in future is not a debt as it depends upon contingency of a grantee remaining alive till the time when allowance becomes due. Therefore, the word 'debt' includes arrears of maintenance but it does not include future maintenance.

Held further, that it is open to the Tribunal under section 32 to scale down the arrears of maintenance due from the petitioner but that it cannot vary the rate of maintenance for future from a date anterior to the date of the application under section 34 of the Act.

Held also, that it is not the duty of a party to plead law in the pleadings. When the material facts have been stated the duty of giving the appropriate relief according to the facts established on the record devolves on the Court which has to apply the correct rule of law to such facts.

Case law discussed.

Haridas Acharjia Chowdhry v. *Baroda Kishore Acharjia Chowdry* (1), *Brij Kumar* v. *Naurangi Lal* (2), *Raja Ram* v. *Sham Lal* (3), *Akhtar Abbas and others* v. *Nazar Abbas and others* (4), referred to.

First Appeal from the decree of the Court of Shri Ram Singh Bindra, Tribunal, Amritsar, dated the 16th day of November, 1953, awarding a decree for Rs. 40,600 by way of arrears of maintenance to the respondent against the applicant and directing him to pay to the respondent Rs. 20,000 by 31st January, 1954, and the balance of Rs. 20,600 by 30th September 1954, leaving the parties to bear their own costs.

Y. P. GANDHI, for Appellant.

TEK CHAND, for Respondent.

JUDGMENT

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BISHAN NARAIN, J. This is an appeal under section 40 of the Displaced Persons (Debts Adjustment) Act LXX of 1951 by Joginder Singh against an order and decree of the Tribunal appointed under the said Act. The parties to the case are related to each other and their pedigree-table is:—

S. Baghel Singh—Basant Kaur (died in 1950)

Autar Singh,	S. Sangat Singh (Died issueless)
S. Joginder Singh	Widow (Chattar Kaur)

(1) I.L.R. 27 Cal. 38
(2) A.I.R. 1938 Lah. 338
(3) A.I.R. 1954 Pb. 208
(4) A.I.R. 1946 Lah. 10

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Baghel Singh owned considerable properties in U. P., Amritsar and Lahore Districts. A short time before his death he executed a will on 7th May, 1924, and broadly speaking he bequeathed his U. P. property to Autar Singh and gave the property of the Lahore District to Sangat Singh on whose death Joginder Singh was to get it and it was also stated in the will that any person in possession of the Lahore property was liable to pay Rs. 400 per mensem to Chattar Kaur. The Amritsar property was given to Basant Kaur for life. It appears that Sangat Singh also died soon after his father and a dispute arose between Chattar Kaur and her nephew. Joginder Singh by a registered document dated 5th February, 1925, agreed to pay Rs. 700 per mensem to Chattar Kaur as maintenance in accordance with the status of the family on taking into consideration the modern expenses and it was further provided in the agreement that in case of default the widow will have the right to take possession of half share of Sangatwala land (Lahore property) for life and maintain herself from its income. It appears that Joginder Singh after paying the maintenance for some time made a default and the widow on 1st July 1936, filed a suit for recovery of Rs 50,400 as arrears of maintenance and for possession of half share of the Sangatwala land. This suit was, however, compromised on 18th August, 1937, and a consent decree was passed according to it. Under the compromise the widow agreed to accept Rs. 41,400 in full settlement of her claim of arrears of maintenance and in settlement of a sum of money due under another decree and also that this amount should be paid in four instalments. For the future the parties agreed that the 1925 agreement will remain binding on them i.e., Joginder Singh will pay Rs. 700 per mensem to

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the widow and in case of default, it will be open to her to take possession of the land as contemplated therein. It appears that again a default was made in payment of the allowance which compelled the widow to apply for execution of the decree. Parties again for the third time compromised and the widow accepted Rs. 90,000 out of Rs. 1,40,000 due to her to be paid in instalments and it was further agreed—

> "Future maintenance with effect from 1st January, 1944, shall be paid six monthly and the first instalment of Rs. 4,200 shall be paid in July, 1944 and so on during the lifetime of the widow and in case of default of payment of any instalment of maintenance it shall be open to the decree-holder to take out execution for the recovery of half of Sangatwala land."

It is the appellant's case that he paid the maintenance regularly to the widow in accordance with the 1944 agreement and that the last instalment of Rs. 4,200 was paid in July, 1947. He also admits that he has not paid the stipulated amount since then. This third default compelled the widow on 1st August, 1950 to approach the executing Court for realisation of Rs. 25,200 as arrears of maintenance. While these execution proceedings were still pending Joginder Singh made the present application under section 5 of the Debts Adjustment Act alleging that he was a displaced debtor and that neither in law nor under the above-mentioned decree and agreement was he personally liable to pay the maintenance and that in any case Chattar Kaur has a charge on half the share of Sangatwala land and her only remedy is to enforce that charge. It was further alleged in the application that since the inheritance under the will of Baghel Singh has

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failed by partition of the country he is no longer personally liable under the agreements and prayed that the agreements and decree mentioned above be set aside and cancelled by the Tribunal. This aplication was contested by Chattar Kaur on various grounds but before any evidence could be recorded on the issues framed in the case the appellant filed another application under the same section 5 on the same facts but prayed for adjustment of his debts under section 32 of the Act if he was found personally liable to pay the maintenance. It was further alleged in this application that the first application was also under section 34 of the Act under which the Tribunal could vary the rate of maintenance. This second application was also contested by the widow. It is surprising that the Tribunal treated the two applications as independent of each other, framed separate issues and passed separate decrees although the evidence and judgment in both the applications were common. It may be noted here that in the beginning no issue was framed covering the relief claimed under section 32 of the Act and this had to be done later on and a fresh opportunity had to be given to the parties to lead evidence under that issue. No issue, however, was framed covering the relief claimed under section 34 of the Act. The Tribunal dismissed the first application on the ground that it had no power to set aside or cancel the decree or agreements. The Tribunal *inter alia* found that Joginder Singh was personally liable to pay the maintenance allowance under the agreements and that the arrears were the 'debts' within section 2(6) of the Act. It further held that the right of the widow to realise maintenance was not limited to Sangatwala land and that in any case she never got possession of the land and in any case the

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charge, if any, was available on future maintenance and not on its arrears. The Court then proceeded to find that the assets of Joginder Singh far exceeded his liabilities which are found to be Rs. 40,600 due to the widow. On these findings the Tribunal passed a decree in the second application for Rs. 40,600 against Joginder Singh and directed him to pay Rs. 20,000 on 31st January, 1954, and Rs. 20,600 on 30th September, 1954. Joginder Singh being dissatisfied with this decision has filed two separate appeals (F.A.O.s 51 and 52 of 1954) in this Court and it will be convenient to decide both these appeals by one Judgment.

The learned counsel for the appellant has urged various points before me but before I deal with them separately I may state that admittedly Chattar Kaur's right to receive maintenance allowance at Rs. 700 per mensem for life is established by the consent decree dated 18th August, 1937. It is also admitted that when the matter was again compromised in 1944 during the execution proceedings then her right to receive maintenance was maintained.

The relevant portion of the decree reads as follows—

> "It will be open to the plaintiff that according to the terms of the above-mentioned agreement she will have a right to realise the maintenance amount from Joginder Singh or to take possession of the land."

Now this decree refers to the 1925 agreement wherein Joginder Singh agreed to pay Rs. 700 for life according to the status of the family and the scale of modern expenses. It is, however, urged by the learned counsel for the appellant that under these agreements and decree he was not personally liable to pay this amount. There

is no force in this contention as it seems obvious to me from the portion of the decree reproduced above that Joginder Singh is personally liable to pay the maintenance. It is true that she has been given an option to take possession of half share in the land in lieu of maintenance but that is only an additional right given to her and it cannot be reasonably said that her remedy is limited only to taking possession of this land. The mere fact that the widow who is entitled to maintenance is placed in a position to enforce her right by recourse to possession of a piece of property in default of payment by the grantor will not and cannot deprive her of the right to enforce a personal liability incurred by the grantor. Neither under the decree nor under the agreements the land was made security for the payment of the maintenance allowance. Even if it be held that the charge was created by the decree even then it is clear that the respondent by his pleadings has elected to be treated as an unsecured creditor as contemplated in section 16 of the Act and therefore it is open to her to realise arrears of maintenance and the future maintenance personally from Joginder Singh. It was then urged that in any case the respondent had exercised the option given to her under the decree by taking possession of the land at some time before partition of the country. There is, however, no evidence in support of this argument. The petitioner has not come into the witness-box nor has his Mukhtar made a statement to the effect that the widow in exercise of her option had taken possession of the land and the judgments of 1940 and 1943 on which reliance is placed merely show that till 1943 the respondent had not succeeded in getting possession of the land in question. No question of failure of consideration arises in this case as the agreement was in settlement of family

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disputes and it is nowhere stated in this agreement that Joginder Singh was agreeing to pay maintenance for the consideration that he had received—Sangatwala land. I, therefore, affirm the finding of the trial Court that Joginder Singh continues to be personally liable to pay the maintenance allowance to Chattar Kaur under the 1937 decree as agreed upon in 1944.

It was then argued that the finding regarding the petitioner's assets is wrong and in this connection the learned counsel urged that his client was prejudiced by the form in which the issue was framed. It is true that in the beginning the trial Court did not frame any issue to cover the relief under section 32 of the Act but later on the issue was framed reading—

> "Whether the applicant is entitled to adjustment of the debts mentioned in the application? If so, on what terms and in what manner?"

and parties were given full opportunity to lead evidence on this point. The burden of proof of this issue was placed on the applicant and there is no doubt that under section 32 it is for the petitioner to prove his paying capacity so as to get the benefit of this section. The petitioner as required by section 5 of the Act filed a schedule of the immovable properties belonging to him but he did not value those properties even though in law he was required to do so. He himself did not come into the witness-box even though his counsel obtained an adjournment on 4th May, 1953, for the purpose. Every presumption must therefore be drawn against him and it must be presumed that if he had appeared as a witness, his statement would have amply proved his paying capacity to pay the debt due to the widow. The cross-examination of Hardit Singh, the

appellant's Mukhtar-i-am, shows that after partition of the country the appellant sold 275 *bighas* of land for Rs. 2,00,000 and there is no explanation given by him as to what happened to this money. He has valued the *kothi at* Baraich at Rs 30,000 to Rs 40,000 and his income from farms at Rs 18,000 to Rs. 20,000. Ishar Singh, another witness produced by the appellant, mentioned two to three houses as belonging to the appellant in Lucknow. It is therefore clear that the assets of the apnellant far exceed his liability to the respondent. Moreover, the schedule filed by the appellant relating to movable property with his application appears to have been undervalued. I, therefore, uphold the finding of the Tribunal that the assets of Joginder Singh far exceed his liability and therefore no question arises of scaling down the debt due to the respondent.

It was then contended that the liability to pay maintenance whether in arrears or in future was a 'debt' as defined in section 2 (6) of the Act and the Tribunal in the application under section 5 should have, after reducing the rate under section 34 on account of the change in circumstances, scaled down the amount of the arrears of maintenance and should have reduced the rate for the future. It will be noticed that this contention assumes that under section 34 of the Act it is open to the Tribunal to reduce the rate of maintenance with retrospective effect, i.e., from 1947 even if the application is made in May, 1952, as in the present case. There is no force in this contention.

Now, 'debt' is defined in the Act to mean any pecuniary liability whether payable presently or in future and whether ascertained or to be ascertained. This means that the pecuniary liability must be an actually existing debt, i.e., a perfected and absolute debt at the time of the application

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even though it may be payable in future after ascertainment of the amount but it appears to me that it does not include a liability which depends on contingency which may or may not happen. In my opinion the word 'debt' as defined in the Act does not depart from its meaning as generally understood although the distinction must be borne in mind between a case where there is an existing debt payment whereof is deferred and a case where both the debt and its payment rest in future. The maintenance allowance that has already become due is therefore a debt while the liability to pay maintenance in future is not a debt as it depends upon contingency of a grantee remaining alive till the time when the allowance becomes due. Mulla in his Commentary on the Code of Civil Procedure has pointed out that—

> "A debt is an obligation to pay a liquidated (or specified) sum of money. Money that has not yet become due does not constitute a 'debt', for there is no obligation to pay that which has not yet become due. The word 'debt' in this section means an actually existing debt, that is, a perfected and absolute debt. * * * * A sum of money which might, or might not, become due, or the "payment of which depends upon contingencies which may or may not happen, is not a debt."

It was laid down in *Haridas Acharjia Chowdhry* v. *Baroda Kishore Acharjia Chowdhry* (1), that when A is bound under a deed to pay to B a monthly maintenance allowance during the lifetime of the latter, there cannot be a valid attachment of any portion of the allowance by a prohibitory order issued to A of a date anterior to the

(1) I.L.R. 27 Cal. 38

time when the same falls due to B and in this decision the debt has been defined as an existing and absolute liability to pay and has been distinguished from a liability which depends on contingency which may or may not happen. The decision of Tek Chand, J. in *Brij Kumar* v. *Naurangi Lal* (1), is also to the same effect. That this is the meaning of the 'debt' in the Act is supported by the various provisions of the Debts Adjustment Act. Section 32 lays down the circumstances in which debts may be scaled down and it is obvious that arrears of maintenance being debts are covered by this section. The legislature, however, proceeds to provide for the scaling down of the rate of maintenance in future in section 34. If the 'debt' included also the rate of future maintenance then it would be hardly necessary to provide for that relief in section 34 of the Act. I am, therefore, of the opinion that the word 'debt' in the Act includes arrears of maintenance, but it does not include future maintenance.

I may now deal with the contention of the learned counsel for the appellant that the reduction contemplated in section 34 can be made from a time prior to the application thereunder. For this purpose he relies on the words 'such variation shall have effect for such period as the Tribunal may direct.' His argument is that there is no limitation provided in this section limiting the Tribunal to any period or time when giving directions relating to the time from which the variation should have effect and he urges that it is open to the Tribunal to reduce the rate of maintenance and direct that his order will be effective from 1947 even if the application is made much later. Section 34, however, contemplates that a specific application must be made in

(1) A.I.R. 1938 Lah. 338

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that behalf by the petitioner and it is difficult to construe the words quoted to mean that the date of variation may be fixed prior to the date of the application. In a somewhat similarly worded section of the East Punjab Rent Restriction Act it was held by a Division Bench of this Court in *Raja Ram* v. *Sham Lal* (1), that the date fixed for the standard rent cannot be antecedent to the application. I am therefore of the opinion that it is open to the Tribunal under section 32 to scale down the arrears of maintenance due from the petitioner but that it cannot vary the rate of maintenance for future from a date anterior to the date of the application under section 34 of the Act.

This brings me to the contention raised by the learned counsel for the appellant that the application though labelled as one under section 5 of the Act was really a composite application both under section 5 and under section 34 of the Act and he urges that this was made specifically clear by his client in the second application. It is true that both the applications give all the necessary facts on the proof of which Joginder Singh would be entitled to ask for relief under section 34 of the Act. Para 9 of the petition describes the properties lost by partition of the country and the application also mentions the properties lost by him on account of legislation in U. P. and in para 12 it is mentioned that his income has been considerably reduced. The relief claimed in the first application is not happily worded but in the second application it is specifically stated that the first application was meant to be under section 34 as well. In such circumstances the Tribunal would have been well advised to have framed an issue covering the matter and given the

(1) A.I.R. 1954 Pb. 203

decision thereon. It is true that the petitioner did not claim any issue on the point but possibly he was misled by the wording of issue No. 4 reproduced above. After all it is not the duty of a party to plead law in the pleadings. When the material facts have been stated the duty of giving the appropriate relief according to the facts established on the record devolves on the Court which has to apply the correct rule of law to such facts ; vide *Akhtar Abbas and others* v. *Nazar Abbas and others* (1). I am, therefore, of the opinion that the Tribunal erred in not adjudicating upon the relief claimed under section 34 and the case must be remanded for trial of this portion of the claim made by the petitioner in his application.

Now all that remains to be done is to notice the appellant's counsel's submission that the Tribunal should have passed a decree for a lesser amount than Rs. 40,600 for the arrears of maintenance due from his client. The first application was made on 23rd February, 1952, and it was found by the Tribunal that the instalment due in July, 1947, was paid by Joginder Singh, and this finding has not been challenged before me. Under the 1944 agreement maintenance was payable during July and January and therefore at the time of application nine instalments had fallen due. As the application was made before the next instalment of July fell due it therefore follows that Chattar Kaur was entitled to realise 4,200 × 9-Rs. 37,800 at the time of the application in February 1952 and it is clear that a decree for this amount should have been passed by the Tribunal in favour of Chattar Kaur.

(1) A.I.R. 1946 Lah. 10

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The learned counsel also objected to the grant of only two instalments for such a large amount under section 33 of the Act but I see no reason to set aside or to alter that order. The appellant is a rich man and since 1925 he has been refusing to comply with the agreements entered into by him from time to time and by these tactics he has succeeded in depriving the widow of considerable amount due to her under the 1925 agreement. His refusal to pay any allowance since 1947 is without any plausible excuse. It is admitted before me that the appellant has not paid any money due under the decree to Chattar Kaur nor has he paid Rs. 500 per mensem fixed by my Lord the Chief Justice on 19th May, 1954 on the application of the appellant. Under the circumstances I refuse to change the order regarding instalments passed by the Tribunal and also refuse to extend time for the payment of the amount due under the decree.

For the reasons given above I reduce the amount of the decree passed in suit No. 23 of 1952 from Rs. 40,600 to Rs. 37,800 and I remand the case for disposal of the application under section 34 of the Debts Adjustment Act in accordance with law. The parties have been directed to appear before the Tribunal on 29th November. 1954. The appellant shall pay the proportionate costs of this appeal to the respondent.