

other ground for ordering its dismissal. The rules relating to the appointment of Subordinate Judges were promulgated by the Governor on the 26th October, 1951, and cannot apply to the petitioner who appeared in an examination before the commencement of these rules. Rule 10 of Part 'C' declares that the result of the examination will be published in the *Punjab Government Gazette* and that the candidates will be selected for appointment strictly in the order of merit. The examination which has been referred to in the said rule is an examination held under the provisions of these rules, that is, an examination held after the 26th October, 1951. These rules cannot apply retrospectively to an examination which was held in the year 1950, particularly when the syllabus of the earlier examination was different from the syllabus of the later examination.

For these reasons I would uphold the order of the State Government and dismiss the petition. There will be no order as to costs.

Dulat, J. I agree.

Dulat, J.

APPELLATE CIVIL

Before Kapur and Bishan Narain, JJ.

LAHORI MAL AND OTHERS,—Appellants

versus

KASTURI LAL AND OTHERS,—Respondents

First Appeal from Order No. 32 of 1954.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections (2)(b), 2(9), 10, 11, 16 and 48—"Debt", meaning of—"Mortgage with possession" whether debt—Legal representative of a deceased mortgagor—Whether

Shri Bal
Krishan
Aggarwal
v.
The Punjab
State

Bhandari, C. J.

1956

May, 11th

“displaced debtor”, within the meaning of section (2) (9)—Application by displaced mortgagee under sections 10, and 16 against such legal representative—Whether such application maintainable.

Held, that the mortgage in question is a debt as defined in the Act. It is a pecuniary liability which was incurred before the appellants came to reside in India. The debt is due from them as the creditor in this case can realise this amount from them to the extent of the assets that they have inherited from the deceased. The “debt” as defined is not limited to personal liabilities only and is wide enough to include liabilities in other capacities also.

Held further, that a displaced mortgagee can seek relief under sections 10 and 16 of the Act against the legal representative of a deceased mortgagor as such legal representative is a “debtor” within the meaning of section 2 (6) of the Act.

(Case referred to Division Bench by the Hon'ble Mr. Justice Kapur, on the 17 August, 1954, for decision.)

First appeal from the order of Shri Sewa Singh, Sub-Judge, 1st Class (Tribunal Under Act 70 of 1951); Karnal, dated the 12th November, 1953, declaring that a sum of Rs. 5,456-4-0 is due to the respondents from the appellants on account of the mortgage effected by Balmukand, deceased, regarding the shop situated at Sheikhpura, and ordering the amount to be a first charge on the compensation payable to the appellants with regard to the verified claim of the mortgaged property.

H. L. SARIN, for Appellants.

C. L. I. KHANPAL, for Respondents

ORDER

Kapur, J. KAPUR, J.—In both these appeals (F.A.O Nos. 3 and 32 of 1954) the point involved is whether an application could be made by the creditors before the Tribunal. In F.A.O. 32 of 1954 a mortgage was executed by the father of Lahori Lal and others in favour of Kasturi Lal who under section 10 of the

Displaced Persons (Debts Adjustment) Act, 1951, made an application on the 9th of December, 1952, the object of which is to get a declaration under section 16(2) of the Act. The Tribunal has held that an application such as this, i.e., by a person who is a displaced person and is a mortgagee can be made under section 10 of the Act against the legal representatives of a deceased mortgagor, Mr. Sarin has referred to two judgments. (1), *Sahib Ditta Mal v. Mohra Mal* (1) and (2) *Dalip Singh v. Honda Ram* (2). Both of these judgments support the contention of the learned counsel that a legal representative of a debtor is not a debtor within the meaning of the Punjab Relief of Indebtedness Act, the words of which are very similar to the words used in the Displaced Persons (Debts Adjustment) Act.

Lahori Lal
and others
v.
Kasturi Lal
and others
Kapur, J.

In the other appeal (F.A.O. 3 of 1954) a question similar to the one in F.A.O. 32 of 1954, has arisen, i.e., whether a legal representative of a person who would have been a creditor can make an application under sections 10 and 13 of the Debts Adjustment Act. There is a further point raised in that case and that is that an appeal is provided for in section 40 against any final decree or order of the Tribunal. In this case the Tribunal passed a decree but no decree has been filed and the question is whether the appeal is competent. Mr. Chiranjiva Lal Aggarwal submits that it was not necessary for him to appeal against the final decree as the order itself was appealable. These are questions of some importance and I would, therefore, refer them to a Division Bench and direct that the papers be laid before the Hon'ble the Chief Justice for the constitution of such a Bench.

(1) A.I.R. 1945 Lah. 58
(2) A.I.R. 1947 Lah. 240

JUDGMENT

Bishan Narain,
J.

BISHAN NARAIN, J.—The only question involved in this appeal is whether a displaced mortgagee can seek a relief under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951 (No. LXX of 1951), against the legal representatives of a deceased mortgagor. There is no dispute regarding facts which are relevant for the purposes of deciding this question. One Balmukand who resided in Sheikhpura town with his family before partition mortgaged with possession a shop situated in that town for Rs. 5,000 by a registered document dated the 7th August, 1945, in favour of Kasturi Lal who was then and is still a minor. Balmukand, however, retained possession of the shop as a tenant under the mortgagee. The mortgage deed recites that the shop was acquired by the mortgagor and that money is required for business purposes. It appears that Balmukand lost his life during 1947 riots in Sheikhpura. Admittedly, Kasturi Lal mortgagee and the mortgagor's sons and grandson were residents of Sheikhpura and migrated to India on account of the partition of the country in 1947. The mortgagee made this application under section 10 of the Debts Adjustment Act to get a charge of Rs. 6,500 as principal and interest declared on the mortgaged property and to get this charge intimated to the prescribed authority under section 52 of the Act. In this application sons and a grandson of the original mortgagor were impleaded as respondents. The application was resisted *inter alia* on the ground that the legal representatives of a mortgagor are not displaced debtors as defined in the Act. The Tribunal rejected this defence. The alleged debtors then appealed to this Court and it was referred to a Division Bench by the learned Single Judge and it has come before us under the orders of the Hon'ble the Chief Justice.

There is no doubt that the appellants as heirs of Balmukand deceased are liable to pay his debts to the extent that they have inherited his estate or assets. They are, however, not personally liable to pay his debts. Therefore, the legal position is that if a debtor dies before a suit is filed against him then such a suit can be instituted against his heirs or legal representatives who are liable to pay the amount of that debt but only to the extent that they have received assets from the original debtor. It is also open to the creditor in execution proceedings to call upon the legal representatives of the original debtor to account for the estate or assets of the original debtor received by them (section 52, Civil Procedure Code). If the debtor dies without satisfying a decree, it can be executed against this legal representatives and again they would be liable only to the extent of the assets received by them. As observed by Mahajan, J., in *Sahib Ditta Mal v. Mohra Mal* (1), the correct position is that the legal representative does not get the estate till the debt of the deceased is discharged, or in other words the estate of the deceased devolves upon his legal representatives only to the extent that it is not required for the discharge of the debt due from the deceased. The legal representatives merely represent the estate of the deceased. To that extent, therefore, it is clear that the legal representatives are liable to pay the debts due to the creditors of the deceased and are as such debtors.

Lahori Lal
and others
v.
Kasturi Lal
and others
Bishan Narain,
J.

On behalf of the appellants it is admitted that they are displaced persons but it is argued that they are not displaced debtors as defined in the Debts Adjustment Act. Now, section 2(9) defines a "displaced debtor" as a displaced person from whom a debt is due or is being claimed. The word

(1) A.I.R. 1945 Lah. 58

Lahori Lal
and others
v.
Kasturi Lal
and others
—
Bishan Narain,
J.

“debt” is defined as far as is relevant to the present case thus:—

“Debt” means 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 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.”

“Debt” means any pecuniary liability which in the case of a displaced person was incurred before he came to reside in any area now forming part of India (section 2(5)(a) of the Displaced Persons (Debts Adjustment Act). There can be no doubt and it is not denied that the mortgage in question is a debt as defined in the Act. It is a pecuniary liability which was incurred before the appellants came to reside in India. The debt is due from them as the creditor in this case can realise this amount from them to the extent of the assets that they have inherited from the deceased. The “debt” as defined is not limited to personal liabilities only and is wide enough to include liabilities in other capacities also. In any case this debt is being validly claimed against the appellants.

Shri H. L. Sarin, however, argues that his clients are not debtors as they are not personally liable to pay this debt, and relies on a decision of a Division Bench in *Sahib Datta Mal v. Mohra Mal* (1). This decision was followed by another Division Bench in *Dalip Singh v. Honda Ram* (2). Now the

(1) A.I.R. 1945 Lah. 53
(2) A.I.R. 1947 Lah. 240

1945 case was under the Punjab Relief of Indebtedness Act (No. VII of 1934) and the jurisdiction of the Conciliation Board to adjudicate or to conciliate the mortgage debt due from the debtor's father was involved. Construing the provisions of that Act the learned Judges came to the conclusion that the Conciliation Board had jurisdiction only over those debts which a debtor is personally liable to pay. They also held that besides the personal debts a debtor may be liable under various capacities, e.g., as an executor, as a trustee, as an heir and as an intermeddler and that the legislature did not intend to include a debtor under these various capacities as a debtor within section 9 of the Punjab Relief of Indebtedness Act.

Lahori Lal
and others
v.
Kasturi Lal
and others
Bishan Narain,
J.

In the present case we are not concerned with the provisions of the Punjab Relief of Indebtedness Act. The learned counsel, however, relies on the arguments which prevailed with the learned Judges in the 1945 case. Now, as I have already indicated legal representatives of a debtor are liable to pay the debts due from the original debtor although the scope of this liability is limited to the assets inherited by them from him and they would not be personally liable for such debts unless they are unable to account for the assets of the deceased which had come in their hands. The Displaced Persons (Debts Adjustment) Act nowhere expressly excludes the liability of a legal representative to pay the debts of the deceased even when he has received certain assets from him. There is nothing in this Act or in the definition of the words "debt" or "displaced debtor" to exclude the adjustment and settlement of such a liability. Section 48 of the Act specifically lays down that after proceedings before the Tribunal have started, if the debtor dies then the proceedings shall not

Lahori Lal
and others
v.
Kasturi Lal
and others
Bishan Narain,
J.

abate. It is further provided that legal representative of the deceased debtor shall be impleaded and a decree shall be passed against such a legal representative subject to the assets of the deceased received by him. Thus under this Act debts due from the original debtor can be settled even after his death. There is no reason why such a debt should not be settled or adjusted when the original debtor has died before proceedings under the Act have been instituted. It must be remembered that the legal representatives can get only that part of the estate of the deceased which is not required for payment of his debts. This means that the legal representatives inherit this shop subject to the debt due to the mortgagee. In the present case the appellants had submitted their claim regarding this mortgaged shop to the Registering Officer under the Displaced Persons (Claims) Act, 1950. Reading sections 10 and 16 of the Act it is clear that the present mortgagee is entitled to get a first charge declared on the compensation that may be paid to the appellants on terms laid down in section 16. If there is any surplus after payment of this debt then that surplus would be the personal asset of the appellants and if they had applied under section 5 of the Debts Adjustment Act they would have had to disclose this fact in that application. I am, therefore, of the opinion that Kasturi Lal is entitled to get his mortgage debt adjusted or settled against the legal representatives of the original mortgagor even though they are not personally liable to pay this debt.

The other argument that prevailed with Mahajan, J., in *Sahib Ditta Mal v. Mohra Mal* (1), is of no assistance to the appellants in the present case. A person may owe debts in various capacities and some of these capacities are specified by

Mahajan, J., in that judgment. Such a person may also be holding properties and assets in various capacities. There is no reason whatsoever for holding under the Debts Adjustment Act that all these rights and liabilities under various capacities must of necessity be put together or thrown into a common stock or so to say thrown in a hotchpot. There is nothing in the Debts Adjustment Act to lead to this conclusion. Rights and liabilities under each capacity can be kept separated and adjusted or settled under the Act separately, and any other conclusion is bound to result in confusion and injustice to one or the other party to the proceedings. After all this Act does not contemplate to adjust or settle all the rights and liabilities in whatever capacity of all the displaced creditors or displaced debtors at the time of the filing of the petition. All the debts due from a displaced debtor at the time of the application to the Tribunal are not necessarily included in the definition of "debt" given in the Act. Under this Act it is open to a displaced creditor to approach the Tribunal for settlement of his own debts irrespective of the other debts due from the displaced debtor and unless the displaced debtor makes an application under section 5 the entire assets and liabilities of the displaced debtor need not be enquired into,—*vide* sections 10 and 11 of the Act.

For all these reasons I am of the opinion that Kasturi Lal, in the present case, is entitled to get his debt adjusted in accordance with the provisions of the Displaced Persons (Debts Adjustment) Act against the legal representatives (who are displaced persons) of the original debtor who resided in Pakistan at the time the debt was incurred.

The result is that this appeal fails and I would dismiss it. I would, however, leave the parties to bear their own costs throughout.

Lahori Lal
and others
v.
Kasturi Lal
and others
Bishan Narain,
J.

Lahori Lal
and others
v.
Kasturi Lal
and others
—
Kapur, J.

KAPUR, J.—This appeal is brought by the original respondents against an order made by a Tribunal declaring a sum of Rs. 5,456-4-0 as being due to the original petitioners on account of mortgage effected by the father of the original respondents and making it a first charge on compensation money payable to the original respondents.

Balmukand, father of the original respondents, mortgaged a shop in favour of the original petitioners for a sum of Rs. 5,000 by a registered deed dated the 7th August, 1945. The mortgagor died and the mortgagee made an application under section 10 of the Displaced Persons (Debts Adjustment) Act for declaring the mortgage money, i.e., Rs. 6,500, the principal and interest, as charge on the compensation to be allowed to the original respondents. A preliminary objection was raised that no application could be made under the Debts Adjustment Act as the original respondents were not displaced debtors. The Tribunal held that the petition did lie and he also found that the amount due to the original petitioners was Rs. 5,456-4-0 and not Rs. 6,500.

In this appeal question for decision is whether the mortgagee could make the application under section 10 of the Act. Under that section any displaced person having a debt against a displaced debtor can make an application to the Tribunal and when such an application has been made, section 11 of the Act provides that the displaced debtor shall be called upon to show cause against the application or to make an application on his own behalf under section 5 of the Act. If an application is made under section 5, the Tribunal shall proceed as if the matter had commenced by an application by a displaced debtor under section 5. But if no such application is made, the Tribunal

shall determine the claim and pass such decrees as it thinks fit.

In an application under section 5 a displaced debtor is required to give certain particulars as given in sub-section 2 of that section which includes a schedule containing full particulars of his debts, a schedule of his properties and a schedule of his properties in respect of which a claim has been made under the Displaced Persons (Claims) Act, 1950.

A displaced debtor under the Act is a displaced person from whom a debt is due or is being claimed. In this case debt is not due from the debtor but a debt is being claimed from him, and 'debt' is defined under section 2(6) as "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."

It is submitted that the original respondents are not debtors because no debt as defined in the Act is due from them or is being claimed and that in order to be a debtor a debt must be personally due from the displaced person and not as a legal representative, and reliance is placed on a judgment of the Lahore High Court in *Sahib Ditta Mal v. Mohra Mal* (1), which was a case under the Punjab Relief of Indebtedness Act where the word 'debt' is defined in somewhat similar language. But section 48 of the Displaced Persons (Debts Adjustment) Act contemplates that the facilities given under the Act should be available even after the death of the original debtor, and, therefore, the rule laid down in the Lahore case would be inapplicable.

Lahori Lal
and others

v.

Kasturi Lal
and others

Kapur, J.

(1) A.I.R. 1945 Lah. 58

Lahori Lal
and others
v.
Kasturi Lal
and others

Kapur, J.

I would, therefore, agree with my learned brother Bishan Narain J. in dismissing the appeal but I would found my judgment on the reasons which I have given above.

APPELLATE CIVIL

Before Kapur and Bishan Narain, JJ.

SHRI KANWAR JAGAT BAHADUR SINGH,—Appellant

versus

THE PUNJAB STATE,—Respondent

First Appeal from Order No. 56 of 1954.

1956

May, 11th

Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 8, 9 and 11—Arbitrator appointed under—Whether a Civil Court—Award of the Arbitrator, whether a decree or an order having the force of a decree—Appeal against the award—Memorandum of Appeal—Court fee leviable.

Court Fees Act (VII of 1870)—Whether Schedule I, Article 1, or Schedule II, Article 11, applies—Conflict between various sections and the Schedules—How to be reconciled.

The land of J. B. was requisitioned by the State on 15th February, 1951, and acquired on 8th February, 1952. The Collector allowed Rs. 1,97,402-14-4 as compensation which was not accepted by J. B. The District Judge, Ambala, was appointed an arbitrator under the Punjab Requisitioning and Acquisition of Immovable Property Act to determine the amount and he enhanced it by Rs. 53,687-11-0. J. B. filed an appeal against the award under section 11 praying for enhancement of compensation by Rs. 2,68,274-5-0 and affixed Court fee stamp of Rs. 4 under Schedule II, Article 11 of the Court Fees Act. The State filed cross objections paying Court fee *ad valorem*. The question as to