FULL BENCH

Before S. S. Dulat, S. B. Capoor and Prem Chand Pandit, JJ.

RAM LAL JAIN,—*Appellant*

versus

THE CENTRAL BANK OF INDIA, LTD.—*Respondent*

Letters Patent Appeal No. 130 of 1956

1960

Dec., 22nd

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 2(6), 13 and 17—Debt—Definition of—Whether includes compensation for loss of pledged goods—Application by the pledger of goods for damages for the loss of pledged goods—Whether maintainable under section 13—Indian Contract Act (IX of 1872)—Section 73—Damages for breach of contract—Whether pecuniary liability.

Held, by majority (S. B. Capoor and P. C. Pandit, JJ.)—

(1) That the term "debt" in section 2(6) of the Displaced Persons (Debts Adjustment) Act, 1951, does not refer to any liability but that liability must be a "pecuniary" one. This characteristic is reiterated in two other places in the definition. In the case of a displaced person, who is a debtor, it must be a pecuniary liability incurred by him and in the case of a displaced person, who sought recourse to the Tribunal as a creditor, it must be "due" to him, that is, "owing" to him. Thus, whether considered from the point of view of the debtor or that of the creditor, it must be a "pecuniary" liability and not any other kind of liability. The implication of the term cannot change depending on whether it is considered from the point of view of the debtor or the creditor and the transaction must be one which created a "pecuniary" liability, that is, a liability to pay money or money's worth though, of course, it is immaterial whether it was payable immediately or in future.

(2) That the term "debt" is one of very wide connotation and while in ordinary parlance it may

be synonymous with any obligation, whether moral or financial, whether legally enforceable or not, in the ordinary legal sense it means a sum of money payable now or which will become payable in future by reason of a present obligation.

(3) That the definition of "debt" as contained in subsection (6) of section 2 of the Act does not include claims for unliquidated damages for breach of contract or in respect of tortious acts. The object of giving a definition of the term in the Act was not so much to emphasise what sort of transaction it covered as to refer to the status of the person who was either a debtor or a creditor—the former being mentioned in clause (a) and (b) and the latter in clause (c).

(4) That under certain circumstances, the pledgee has the power to sell the goods, but if he does sell the goods, he is bound to make over to the pledgor any surplus beyond the debt owed to him. If the pledgor clears that debt due from him he has a right to demand delivery of the pledged goods. In as much as the title in the goods remains with the predgor, it would not be correct to say that the value of the pledged goods should be taken into consideration for determining the question whether the banker is the creditor or the debtor. The respective liabilities of the bailor and the bailee are stated in Chapter IX of the Indian Contract Act, 1872 (Act No. 9 of 1872), but so far as debts incurred by displaced debtors and secured by the pledge of moveable property are concerned, certain modifications have been effected by section 17 of the Displaced Persons (Debts Adjustment) Act. Clauses (b) and (c), whittle down the rights of the creditors. Throughout the section, the pledgor is referred to as the debtor and the pledgee as the creditor. A special provision is made in case the creditor is still in possession of the pledged property and proceeds to sell it after giving the debtor reasonable notice of the sale. This is to the effect that in any case where the proceeds of the sale

of the pledged property are greater than the amount of the debt due, the creditor must pay over the surplus to the debtor. There would be this liability on the pledgee, even otherwise, and the provision of clause (d) appears to have been made in order to enable the pledgor to recover the surplus by making an application to the Tribunal, and for that limited purpose only. If the Legislature considered it fit to enable the debtor to apply to the Tribunal even after the goods pledged had been lost by negligence of the pledgee or were wrongfully detained by him, a provision for that purpose would have been made in section 17. This was not done because the primary liability of the bailee in a contract of bailment is not a pecuniary liability but that stated in section 151 of the Indian Contract Act, that is, he is bound to take as much care of the goods bailed to him as a man of ordinary prudence, under similar circumstances, takes of his own goods of the same bulk, quality and value as the goods bailed. The right of the bailor to claim damages from the bailee for wrongful detention of the goods bailed or for their loss, destruction or deterioration, if the bailee has not taken the amount of care of the goods as described in section 151, is a "sanctioning right", which is not contemplated as a pecuniary liability in sub-section (6) of section 2 of the Act.

Held (per Dulat, J.)—

That section 73 of the Contract Act expressly provides that as soon as a breach of contract occurs, a liability to pay money compensation arises, and that the liability can only be described as pecuniary. It is, therefore, a 'debt' within the meaning of section 2(6) of the Displaced Persons (Debts Adjustment) Act. The case is exactly similar when the breach is not of a contract, strictly speaking, but of any obligation resembling a contract like a pledge.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat, and Hon'ble

Mr. Justice Prem Chand Pandit, on 27th July, 1960 to a larger Bench for decision due to the conflict between two Division Bench authorities and finally decided by Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice P. C. Pandit, on 22nd December, 1960.

Appeal under Clause 10 of the Letters Patent against the order dated 28th September, 1956, passed by the Hon'ble Mr. Justice Bishan Narain, in F.A.O. No. 1 of 1955, whereby the order of Shri Sham Lal Aggarwal, Senior Sub-Judge, acting as Tribunal under Debt Adjustment Act, Jullundur was affirmed.

H. R. SODHI, L. K. SOOD AND K. N. RAINA, ADVOCATES, for the Appellant.

D. N. AWASTHY, S. S. MAHAJAN AND V. C. MAHAJAN, ADVOCATES, for the Respondent.

JUDGMENT

Capoor, J.

CAPOOR, J.—The short question for decision in this Letters Patent Appeal against the judgment of a learned Single Judge of this Court, which has been referred to the Full Bench by the learned Judges constituting the Letters Patent Bench, is whether a petition by a displaced person to be compensated in damages for the alleged loss of the goods pledged by him as security for loans advanced by a bank in a cash credit account is maintainable as relating to a "debt" under the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), hereinafter to be referred to as the Act.

The Act came into force in the State of Punjab on the 10th December, 1951. Under section 13 of the Act, Displaced creditors could file claims against persons who are not displaced debtors at any time within one year after the date of the coming into force of the Act in any local area. On the 9th December, 1952, Ram Lal, appellant instituted an application before the Tribunal, constituted

under the Act, at Jullundur under section 13 of the Act alleging that he was a displaced person from Kasur, district Lahore, now in West Pakistan, and before the partition of the country had stocked 200 bales of cotton of the value of Rs. 30,000 in a godown of the Central Bank of India Limited, the respondent in the case, at Raiwind, which godown was under the control of the branch of the bank at Kasur. It was asserted that the bales were lying in trust with the respondent bank and that the petitioner owed only a sum of Rs. 44. The petitioner had been demanding from the bank the price of cotton stocked but the bank had been evading to pay the same and the prayer was that a proper and reasonable relief be granted to the petitioner under the Act.

The respondent bank resisted the claim and in its written statement raised various preliminary objections, one of which was that the claim was not a "debt" as defined in the Act. It was asserted that the petitioner had a cash credit account with the Kasur Branch of the bank before the partition of the country and that 200 bales of cotton were pledged by the petitioner as security in this account. On the first August, 1947, the account of the petitioner disclosed a debit balance of Rs. 44-11-0 exclusive of interest. The value of the stock was alleged to be only Rs. 8,550. During the disturbances at the time of the partition of the country, the pledged stocks were lost for reasons beyond the control of the bank and had not been insured against all riot risks. It was pointed out that according to the terms of the pledge of goods agreement clause No. 10, the bank was not responsible for the quality, quantity and the safety of the goods and for all the reasons mentioned above, the bank was not liable to pay anything whatsoever to the applicant.

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

The petition went to trial on the following issues :—

(1) Is the applicant a displaced person as defined in the Act ?

(2) Is the claim in suit a debt ?

(3) Is it within time ?

(4) What is the value of the bales pledged by the petitioner with the bank ?

(5) Did the goods disappear owing to the communal disturbances as alleged ?

(6) If issue No. 5 is not proved, is not the bank liable ?

(7) If issue No. 5 is proved, is the bank liable ?

(8) To what relief the plaintiff is entitled ?

The Tribunal found that the applicant was a displaced person as defined in the Act, that his claim was well within time, that the value of the bales pledged by the petitioner with the bank was Rs. 22,900, and that the bank had failed to prove that the goods disappeared owing to the communal disturbances. It was, however, held that the claim was not a "debt" as defined in sub-section (6) of section 2 of the Act and that accordingly the petition was not maintainable under section 13 of the Act. The application was in the result dismissed but the parties were left to bear their own costs.

The petitioner appealed to this Court and the learned Single Judge held that Ram Lal was a debtor of the bank at the time of the partition and not its creditor, and that, therefore, he could not file an application under section 13 of the Act. As his application was considered incompetent,

the learned Single Judge did not consider it necessary to decide the other issues raised in the case, and in the result he dismissed the appeal with costs.

Ram Lal then went up in appeal to the Letters Patent Bench and in view of the conflict of decisions as to the scope of the term "debt" as used in sub-section (6) of section 2 of the Act, the case was referred to a larger Bench for decision. Sub-section (6) of section 2 is as follows :—

"(6) "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—

(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 :

Provided that where any such liability was incurred on the security of immovable properties situate both

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

in India and in West Pakistan, the liability shall be so apportioned between the said properties that the liability in relation to each of the said properties bears the same proportion to the total amount of the debts as the value of each of the properties as at the date of the transaction bears to the total value of the properties furnished as security, and the liability, for the purposes of this clause, shall be the liability which is relatable to the property in West Pakistan;

(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;

and includes—

any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in sub-clause (a) or sub-clause (b) or sub-clause (c) :

Provided that in the case of a loan, whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of liability;

but does not include—

any pecuniary liability due under a decree passed after the 15th day of August, 1947, by any court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement;"

It must be noticed here that though in the application the claim was made as if the bales of cotton were in trust with the bank, which not having returned them, became liable to refund the price thereof to the petitioner, the claim was in reality to be compensated by way of damages for breach of the contract of bailment. The vagueness, which was perhaps intentional, of the claim made in the application, cannot disguise its substance. There was in fact no trust created or recognized and the transaction was a simple one in which things had been pledged as security in a cash credit account with the respondent bank. Mr. H. R. Sodhi, learned counsel for the appellant, had to concede that the maintainability of the application must be decided according to the real nature of the transaction and the relief which could be given, that is, compensation, by way of damages for breach of the contract of bailment between the parties.

The argument on behalf of the appellant is that the definition of "debt" in this Act is a very comprehensive one which includes all claims measurable in terms of money whether it be an obligation to repay a loan or whether it be a claim for damages for breach of contract or a liability to compensate by way of damages for a tortious act. He laid emphasis on the phrase "whether ascertained or to be ascertained" and

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

argued that the term "debt" should not be confined to cases where a claim is made for a liquidated sum of money. He further, pointed out that since the proviso restricted itself to a case of loan, whether in cash or in kind, it followed that the pecuniary liability contemplated in the section covered also the liability arising otherwise than on account of a loan. Then he referred to the preamble to the Act, which is as follows:—

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

He maintained that the preamble indicated that the Act was a remedial measure which was intended to provide for the adjustment and settlement of all monetary liabilities which may be due from displaced persons in the circumstances mentioned in clauses (a) and (b) to sub-section (6) of section 2, or all monetary claims which may be due to displaced persons. It was, therefore, neither legally justifiable nor proper to restrict the term "debt" to cases of loans properly so called. Accordingly, whether a person was a displaced debtor coming within clauses (a) and (b) to sub-section (6) of section 2, or a displaced creditor under clause (c) thereof, would depend not on what the transaction was at its inception but on what the position was at the time of application was brought. Thus if at the latter point of time the displaced person, who was originally a debtor, found that some money was due to him from the other party, he would become a creditor entitled to apply under section 13, and in this connection reliance was placed on clause (d) to sub-section (1) of section 17 of the Act. In the

instant case it was argued that admittedly on the state of the account between the parties, only a sum of Rs. 44 and odd was due from the petitioner to the respondent while the value of the goods pledged with the respondent was indisputably much more. The conclusion sought to be raised was that in these circumstances, the petitioner became a creditor of the respondent bank and, inasmuch as he was admittedly a displaced person, his petition under section 13 of the Act was competent.

On the other hand, Mr. D. N. Awasthy, learned counsel for the respondent, maintained that the definition of the term "debt" in the Act did not contain anything beyond the concept of debt as understood by jurists and Judges, which was that a debt was a present or perfected obligation to pay, whether presently or in future, a sum of money which is either ascertained or is capable of being ascertained merely by an arithmetical process. According to him, all claims for damages for breach of contract or for tortious act in respect of which the liability of the defendant had first to be determined by the Court, fell outside the scope of the definition of "debt" in the Act. He made a reference to various Indian statutes in which the term "debt" has been defined and to judicial decisions in which the scope of the term has been explained and relied in particular on the pronouncements of this Court and other Courts in India in which the term "debt" as used in the Act has been interpreted. He further pointed out that the debts secured on movable property had been specifically dealt with in section 17 of the Act, and the only claim which the pledgor, who is referred to as the "debtor" in this section, could make under the Act was that stated in clause (d) thereof, that is, when the pledged goods had been sold and that the proceeds of the

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

sale were greater than the amount of the debt. An additional argument put forward by him was that claims against insurance companies in respect of property lost in West Pakistan on account of fire or theft or riot and civil commotion were particularly provided for in section 18, and it should, therefore, be inferred that other claims for damages on account of breach of contract did not fall to be determined within the Act.

The arguments advanced by the learned counsel will now be considered in detail.

It is clear in the first place that the Tribunal created by the Act was one of restricted jurisdiction ond not one before which all kinds of suits—irrespective of the nature of the cause of action or the relief claimed—could be filed. After the partition of the country, it was considered necessary to make a provision to extend the period of limitation for the institution of suits by displaced persons, as in the circumstances in which the partition of the country took place, displaced persons could not readily take recourse to the Courts for determination of their civil claims. Hence, the Displaced Persons (Institution of Suits) Act, 1948 (Act No. XLVII of 1948); was promulgated. This was (as eventually amended) to remain in force up to the 31st day of March, 1952, and section 6 of that Act provided that suits or other legal proceedings by a displaced person, which would otherwise have been barred by limitation, could be instituted at any time before the expiry of the Act. The period of limitation was further extended by section 36 of the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), according to which such suits or legal proceedings could be instituted within one

year from the commencement of the Act. So far as applications under the Act are concerned, the provision as to limitation is in sub-section (1) of section 5 and section 13. This shows conclusively that the jurisdiction of the Tribunal was not to extend to all suits or legal proceedings but only to applications in respect of debts given by displaced debtors or by displaced creditors, and in respect of claims which did not fall within the definition of "debt", the parties had to seek recourse to the ordinary civil Courts. According to the preamble, the Act seeks to provide for the recovery of certain debts due to displaced persons, and this again appears to indicate that the claims by displaced persons which could be adjudicated by the Tribunal were restricted to those which fell within the definition of "debt" as given in sub-section (6) of section 2. Under sub-section (8) of section 2 "displaced creditor" means a displaced person to whom a debt is due from any other person, whether a displaced person or not, and when section 13 talks of claims by displaced creditors against persons who are not displaced debtors, it would follow that the claim must be restricted to a debt as defined in the Act.

It is further clear that the term "debt" does not refer to any liability but that liability must be a "pecuniary" one. This characteristic is reiterated in two other places in the definition. In the case of a displaced person, who is a debtor, it must be a pecuniary liability incurred by him and in the case of a displaced person, who sought recourse to the Tribunal as a creditor, it must be "due" to him, that is, "owing" to him. Thus, whether considered from the point of view of the debtor or that of the creditor, it must be a "pecuniary" liability and not any other kind of liability. The implication of the term cannot change depending on whether it is considered from the point of view

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

of the debtor or the creditor and the transaction must be one which created a "pecuniary" liability, that is, a liability to pay money or money's worth though, of course, it is immaterial whether it was payable immediately or in future.

In this connection it is useful to consider the distinction between a primary and a sanctioning right as understood by jurists. As enunciated by Salmond "A sanctioning right is one which arises out of the violation of another right. All others are primary ; they are rights which have some other source than wrongs. Thus my rights not to be libelled or assaulted is primary ; but my right to obtain pecuniary compensation from one who has libelled or assaulted me is sanctioning. My right to the fulfilment of a contract made with me is primary ; but my right to damages for its breach is sanctioning." (Jurisprudence by Salmond, page 124 of Eleventh Edition).

The definition of "debt" as given in the Act contemplates that the primary right was to receive money or money's worth whether presently or in future and the corresponding liability incurred was similarly a pecuniary one, that is, to pay money or money's worth. If the agreement was to pay money or money's worth or if the defendant became liable to pay the price of goods purchased by him or received by him under a mistake giving rise to what is known as a *quasi* contract, there was at the inception of the transaction of liability, to pay money or money's worth, that is, a pecuniary liability, which gave a primary right to the other party to receive money or money's worth. Undoubtedly, in other cases of breach of contract, the aggrieved party, if he seeks recourse to the Courts, has a right to be compensated by way of damages for the breach, but

that is a sanctioning right, and the same applies *mutatis mutandis* in actions seeking damages for tortious acts.

The term "debt" is one of very wide connotation and while in ordinary parlance it may be synonymous with any obligation, whether moral or financial, whether legally enforceable or not, in the ordinary legal sense it means a sum of money payable now or which will become payable in future by reason of a present obligation. This definition which was given in *Webb* v. *Stenton* (1), was approved in *Banchharam Majumdar* v. *Advanath Bhattacharjee* (2), Mookerjee, J., observed at page 941 as follows :–

> "Whether a claim or demand is a debt or not is in no respect determined by a reference to the time of payment. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened."

In Corpus Juris Secundum at pages 5 and 6 of Volume 26, it has been observed that every debt must be either *solvendum in presenti* or *solvendum in futuro*--must be certainly, and in all event, payable ; as distinct from the sum of money which may be payable upon a contingency. The phrase "whether payable presently or in future" as used in the definition of "debt" in the Act, does not, therefore, import any novel idea. On behalf of the appellant, however, emphasis is laid on the phrase "whether ascertained or to be

(1) (1883) 11 Q.B.D. 513.
(2) I.L.R. (1909) 36 Cal. 936.

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

ascertained" and it is contended that this would cover unliquidated damages for breach of contract, I do not, however, consider that by the use of the words "whether ascertained or to be ascertained", the Legislature purported to include in the definition of "debt" liabilities which were not in their inception and essence pecuniary. The main characteristic of a "debt" as opposed to unliquidated damages is that the former is a sum certain or capable of being reduced to a certainty (*see* Corpus Juris Secundum, Volume 26, page 6). Hence the use of the phrase "whether ascertained or to be ascertained" does not necessarily lead to the conclusion that the Legislature intended to include unliquidated damages in the term "debt". Even in a simple money suit, the amount due to the plaintiff may have to be ascertained by adjusting any payment proved to have been made by the defendant or by giving relief from excessive rate of interest under some statute. This, however, will be a simple mechanical or mathematical process to determine the quantum of what was a pecuniary liability in its inception and essence. In a case where the plaintiff sues for damages for breach of contract, the primary liability of the defendant was to perform the contract and this liability becomes pecuniary only when the Court has determined that there has been a breach of contract and has assessed damages for that breach.

In support of the argument that the term "debt" referred to all kinds of liabilities which may be assessed in terms of money, the learned counsel for the appellant pointed out that while (*vide* proviso to sub-section (6) of section 2 of the Act) in the case of a loan, whether in cash or in kind, the amount originally advanced, and not the amount

for which the liability has been renewed, shall be deemed to be the extent of liability ; in the case of other pecuniary liability incurred before the commencement of the Act and which was based on and was solely by way of renewal of any such liability as is referred to in sub-clauses (a), (b) or (c), the amount for which the liability has been renewed would be deemed to be the pecuniary liability. He argued, therefore, quite rightly that "pecuniary liability" was a wider term than a loan strictly so called, and it is easy to understand that if for instance, goods are supplied for a price and the price be not paid, or if services have been rendered in consideration of payment and such payment has not been made, a pecuniary liability has arisen which is not on account of a loan whether in cash or in kind. It is not, however, possible to stretch the argument to include claims for unliquidated damages or for damages on account of tortious acts within the term "Pecuniary liability", and in fact it would be inapt to speak of "renewal" of any claim for damages on account of breach of contract or tortious acts.

No doubt, as observed in Corpus Juris Secundum, the term "debt" has, as used in some statutes, been held to include unliquidated damages. The only Indian statute, which could be pointed out by the learned counsel for the appellant, in which such an extended meaning has been given to the term "debt" is Provincial Insolvency Act (Act V of 1920). In clause (a) to sub-section (1) of section 2 of the Act, "debt" is defined to include a judgment-debt. The particulars which have to be mentioned in the insolvency petition by the debtor are stated in section 13 of the Provincial Insolvency Act, and one of these [clause (d) to sub-section (1) of section 13] is the amount and particulars of all pecuniary claims against him. When an order of adjudication has been made either on the application of

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

the debtor or that of the creditor, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under the Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts. If, in the opinion of the Court, the value of any debt is incapable of being fairly estimated the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule. Then comes section 34 of the Act which is as follows :—

> "34. (1) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.
>
> (2) Save as provided by sub-section (1) all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act."

The result of this provision is that under the Provincial Insolvency Act, a claim for unliquidated damages which arises out of a contract or breach of trust may be proved, but not for unliquidated

damages for torts unless it has been ascertained before the date of the order of adjudication by judgment, award or compromise. There is no doubt, therefore, that the term "debt" under the Provincial Insolvency Act covers a wider field than "debt" as understood in ordinary legal parlance, but the argument does not really help the appellant. On the other hand, it might with greater force be urged that if the Legislature intended to include in debts, coming within the scope of the Displaced Persons (Debts Adjustment) Act, claims for unliquidated damages arising out of a breach of contract or breach of some trust, or from a tortious act a specific provision to that and should have been made in this Act as was done by the Legislature in section 34 of the Provincial Insolvency Act. As held in the *River wear Commissioners* v. *Adamson and others* (1), in construing the words of an Act of Parliament, the Court is justified in assuming that the legislature did not intend to go against the ordinary rules of law, unless the language used in the Act obliges the Court to come to the conclusion that they did so intend. I have not, therefore, been persuaded that there is anything in the definition of "debt" as contained in sub-section (6) of section 2 of the Act which really enlarges the scope of the term as commonly understood in legal parlance, so as to include claims for unliquidated damages for breach of cantract or in respect of tortious acts. The object of giving a definition of the term in the Act was not so much to emphasise what sort of transaction it covered as to refer to the status of the person who was either a debtor or a creditor—the former being mentioned in clauses (a) and (b) and the latter in clause (c). I respectfully agree with the observations of Gajendragadkar, J., (as he then was) in *Ramchand Tillumal* v. *Khubchand*

(1) (1876) 1 Q.B.D. 546.

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

Daswani and others (1), at page 140, to the effect that the method adopted by the Legislature in defining the word "debt" in the Act is very unusual. The definition given is not a general definition of the usual type but a definition by reference to the status of the person who is either a debtor or a creditor. The purpose in adopting this unusual mode of defining "debt" is to secure the two-fold object with which the legislation had been passed. The first object was to give relief to the debtor from amongst the class of displaced persons who were divided in clauses (a) and (b), and the second object was to facilitate the speedy recovery of debts due to such displaced persons.

This brings me to the argument advanced by Mr. Sodhi on the basis of the remedial purposes of the Act. The object, as succinctly stated by Kapur, J. (as he then was) in *Parkash Textile Mills Ltd.* v. *Messrs Mani Lal and others* (2), at page 210, was to afford to the displaced debtors as well as the creditors within the time specified in the Act legislative protection and the use of special and speedy machinery for adjustment of debts. On the basis of these observations Mr. Sodhi argued that the object could be properly achieved if a comprehensive meaning was given to the word "debt" as including all liabilities which may be estimated in terms of money howsoever, they may arise. The argument, however, proceeds upon a misapprehension. Under clause (c) to sub-section (6) of section 2—which is the one applicable to claims by a displaced creditor—the cause of action could have arisen, as held in *Ramchand Tillumal* v. *Khubchand Daswani and others* (1), even after the partition of the country and while under section 13 the limitation of one

(1) A.I.R. 1955 Bom. 138.
(2) A.I.R. 1955 Punj. 197.

year after the date of the coming into force of the Act in any local area is provided for claims by displaced creditors against persons who are not displaced debtors, there is no such period of limitation under section 10, which covers claims by creditors against displaced debtors. If, therefore, the comprehensive meaning, which Mr. Sodhi contends, is given to the term "debt", it would follow that a displaced person, who had entered into a contract with any person, whether displaced or not, or against whom a tortious act was alleged to have been committed by any such person, could have recourse to the Tribunal to enforce a claim against any person including a displaced person for damages in respect of breach of contract or a tortious act, even though the contract may have been entered into or the tortious act committed after the partition of the country. On the other hand, as the transaction would be after the point of time specified in clauses (a) and (b) to sub-section (5) of section 2, the so-called debtor would be unable to apply either under section 5 or under sub-section (2) of section 11, and would not, therefore, be able to avail of the provisions as to scaling down of debts and other concessions under the Act. This would certainly not enure for the benefit of any displaced person who was sought to be brought before the Tribunal as a respondent. It could not be contemplated that in such cases the displaced debtor would be deprived of the ordinary procedure of the Civil Court.

As stated above, claims by displaced creditors fall either under section 10 or section 13 of the Act. Section 16 makes a special provision with regard to debts secured on immovable property. Section 17 is with regard to debts secured on movable property and section 18 with regard to claims against insurance companies for damages caused to property in West Pakistan before the 15th day

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

of August, 1947. In the present case we are concerned with section 17, sub-section (1) of which omitting the explanations which are not material for the present purposes is as follows:—

"17. Debts secured on movable property—

(1) Where in respect of a debt incurred by a displaced debtor and secured by the pledge of movable 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 amount of the debt due, pay over the surplus to the debtor.

As pointed out by the learned Single Judge in the judgment under appeal, the Contract of Pledge is a Bailment, or Delivery, of Goods and Chattels by one man to another to be held "as a security for the payment of a debt or the performance of some engagement and upon the express or implied understanding that the thing deposited is to be restored to the owner, as soon as the debt is discharged or the engagement has been fulfilled. "The legal concomitants of such a pledge are well-known. The pledgee does not become an absolute owner of the pledged goods, but the ownership remains in the pledgor subject to the pledgee's right to retain possession till the debt is discharged. Under certain circumstances, the pledgee has the power to sell the goods, but if he does sell the goods he is bound to make over to the pledgor any surplus beyond the debt owed to him. If the pledgor clears the debt due from him he has a right to demand delivery of the pledged goods. Inasmuch as the title in the goods remains with the pledgor, it would not be correct to say that the value of the pledged goods should be taken into consideration for determining the question whether the banker is the creditor or the debtor The respective liabilities of the bailor and the bailee are stated in Chapter IX of the Indian Contract Act, 1872, (Act No. 9 of 1872), but so far as debts incurred by displaced debtors and secured by the pledge of movable property are concerned, certain modifications have been effected by section 17 of the Displaced Persons (Debts Adjustment) Act. Clauses (b) and (c), as reproduced above, whittle down the rights of the

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

creditors. Throughout the section, the pledgor is referred to as the debtor and the pledgee as the creditor. A special provision is made in case the creditor is still in possession of the pledged property and proceeds to sell it after giving the debtor reasonable notice of the sale. This is to the effect [see clause (d) to sub-section (1) of section 17] that in any case where the proceeds of the sale of the pledged property are greater than the amount of the debt due, the creditor must pay over the surplus to the debtor. There would be this liability on the pledgee, even otherwise, and the provision of clause (d) appears to have been made in order to enable the pledgor to recover the surplus by making an application to the Tribunal, and for that limited purpose only. While, therefore, the learned Single Judge was right in his observation that in every case of cash credit account, the state of the account must be seen after excluding the value of the pledged goods and then it must be found as to who was the creditor and who was the debtor, yet it would appear that in case the pledgee, acting under clause (a) to sub-section (1) of section 17, sells the goods, the debtor is entitled to recover the surplus as a "debt" under the Act and this was so held by a Division Bench of this Court in *Jattu Lal, Darbar Singh* v. *Imperial Bank of India (now State Bank of India), Abohar*, (First Appeal from Order No. 87 of 1953), decided on the 20th November, 1958, consisting of Falshaw and Dua, JJ.

I am, however, of the view that the debtor, referred to in section 17, is entitled to apply to the Tribunal only in the contingency envisaged in clause (d). If the Legislature considered it fit to enable the debtor to apply to the Tribunal even after the goods pledged had been lost by negligence of the pledgee or were wrongfully detained by him, a provision for that purpose would have

been made in section 17. This was not done because the primary liability of the bailee in a contract of bailment is not a pecuniary liability but that stated in section 151 of the Indian Contract Act, that is, he is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. The right of the bailor to claim damages from the bailee for wrongful detention of the goods bailed or for their loss, destruction or deterioration, if the bailee has not taken the amount of care of the goods as described in section 151, is a "sanctioning right", which is not contemplated as a pecuniary liability in sub-section (6) of section 2 of the Act.

The learned counsel for the respondent cited a number of decisions under various Indian statutes, such as the Indian Succession Act (No. XXXIX of 1925), Transfer of Property Act (No. IV of 1882), and the Punjab Relief of Indebtedness Act (No. VII of 1934), to say that the term "debt" as used in these statutes is restricted to existing or perfected obligation to pay either presently or in future a sum of money which may be either specified or may be deducible by some mathematical process. I do not propose to discuss those cases because there are a large number of decisions in which the scope of the term "debt", as used in the Displaced Persons (Debts Adjustment) Act, has been considered and all of them—with the exception of one which is *Union of India* v. *Smt. Tara Rani and others* (1), go to support him. The most important of these cases, which has been referred in several of the subsequent cases, is *Iron and Hardware (India), Co.*, v. *Firm Shamlal and Bros.* (2). One of the points

(1) A.I.R. 1960 Punjab 291.
(2) A.I.R. 1954 Bom. 423.

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

which came up before Chagla, C.J., in that case was whether an application to recover damages for breach of contract was a "debt" as defined in the Act. The learned Chief Justice of the Bombay High Court laid emphasis on the qualification "pecuniary liability" and observed as follows:—

> "Now, in order that there should be a debt there must be an existing obligation. The payment may be due immediately or it may be due in future, but the obligation must arise, in order that the debt should be due. It may even be that the actual amount due in respect of the debt may require ascertainment by some mechanical process or by the taking of accounts. But even when the actual amount is to be ascertained the obligation must exist. It is well settled that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The breach of contract does not * * * * * * result in any existing obligation on the part of the person who commits the breach, and so does not give rise to any debt."

> "Greater emphasis should be placed on the expression 'any pecuniary liability' rather than on the expression 'whether ascertained or to be ascertained'. Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made, and the question is

whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract."

"The only right which the party who complains of the breach has is the right to go to the Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages."

" * * * the whole basis of a suit for damages is that at the date of the suit there is no pecuniary liability upon the defendant and the plaintiff has come to Court in order to establish a pecuniary liability."

Mr. Sodhi on behalf of the appellant maintained that the distinction made by the learned Chief Justice in the passages quoted above was unreal, and he pointed out to the provisions of section 73 of the Indian Contract Act, according to which, when a contract has been broken, the party, who suffers by such breach, is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. It was argued that, as soon as, the breach was committed, the liability to make compensation to the aggrieved party arose, and that, inasmuch as our Courts assess compensation in terms of money, it should follow that as soon as the breach of the contract was committed the pecuniary liability arose. The argument, however, confuses the right with the remedy provided for the breach thereof, and, as pointed out above, while the primary right in the case of contract is that the contract be performed, the sanctioning right in case of breach is to have compensation for loss or damage by seeking recourse to the Courts and obtaining a decree.

The distinction envisaged is, therefore, a real one as made in the judgment of the learned Chief Justice of the Bombay High Court in *Iron and Hardware Company's case*, and the same distinction has been made in a Division Bench decision of that Court in *Karamchand Passumal* v. *Madhavdas Savaldas and others* (1). That was a case in which the appellant had made an application under section 10 of the Act before the Tribunal claiming partnership accounts from his partners on the basis of the partnership being dissolved in July, 1949, and also claiming to receive moneys found due and payable to him on taking such accounts. Chagla, C.J., and Tendolkar, J., who constituted the Bench, held that in order that there can be a debt which can be adjusted or with regard to the recovery of which the special facility provided by the Act can be afforded to a displaced person, it must be not only any liability but a pecuniary liability and the pecuniary liability

(1) A.I.R. 1956 Bom. 669.

must be an existing obligation although it may not be payable *in presenti* and even though it may not be ascertained at the relevant date. It was, further observed that the emphasis, that the legislature has placed, is upon the word "pecuniary" which qualifies liability, thereby ruling out other kinds of liabilities which, although based upon an existing obligation, are not pecuniary in their nature. Since in the instant case the only existing obligation on the date of application was a liability to render accounts to the appellant, it was held that there was no existing pecuniary liability at that date.

The same interpretation as to the nature of the pecuniary liability which would entitle the debtor or the creditor to make an application under the Act, has been made in certain decisions of this Court. In *S. Joginder Singh* v. *Sardarni Chhattar Kaur* (1), Bishan Narain, J., held that the definition of the term "debt" as given in subsection (6) of section 2 of the Act referred to an actually existing debt, that is, a perfect and absolute debt at the time of the application even though it may be payable in future after ascertainment of the amount.

In *Milkha and others* v. *Messrs N. K. Gopala Krishna Mudaliar and others* (2), a Division Bench of this Court consisting of Bhandari, C.J., and Kapur, J. (as he then was) agreed with the Chief Justice Chagla's interpretation of the term "debt" in *Iron and Hardware Company's case.* The point in issue before the Division Bench of this Court was whether a mere breach of contract of warrantly can be said to be a pecuniary liability and this question was answered in the negative. It was held that all that the breach amounted to was

(1) (1955) 57 P.L.R. 226.
(2) A.I.R. 1956 Punj. 174.

Ram Lal Jain
v.
The Central Bank of India Ltd.,

Capoor, J.

a right to go to Court and recover damages, which right arose not because of any existing obligation by the person who breaks a contract but it arose as a result of the determination by the Court, and the argument, based on section 73 of the Indian Contract Act, was repelled. Kapur, J., who delivered the main judgment, observed as follows :—

> "Besides, as I have already pointed out, there is a distinction between the remedy in regard to getting repayment of money borrowed and for getting damages for personal injury. One is remedial and the other is penal. That it is penal even in the case of breach of contract is shown by the words of section 74. Contract Act, which supports the notion of penalty in the case of suits for compensation of breach of contract. In my opinion, therefore, the suit for damages is not within the jurisdiction of a Tribunal because the word "debt" in section 2(6) of the Act does not include damages for breach of contract.
>
> "If such a wide interpretation as is sought to be put by the petitioner is given to the words "pecuniary liability", then all cases in which ultimately a defendant is ordered to make a money payment whether it is based on a debt, as ordinarily understood, or it arises out of a breach of contract or a personal injury or is imposed as a fine in a criminal case it would be included, which, in my opinion, is not within the contemplation of the statute."

With these observations, I am in respectful agreement.

The next case of our Court bearing on the point is the unreported case of *Jattu Lal-Darbar Singh* v. *Imperial Bank of India (now State Bank of India), Abohar,* already referred to. Two appeals were before the Division Bench (F.A.O. No. 87 of 1953 and F.A.O. No. 120 of 1953). The appellants had in both the cases cash credit and grain accounts with the Abohar Branch of the Imperial Bank of India (now State Bank of India) and had pledged goods as security for the repayment of the advances made to them. One of the questions, which had to be determined, was whether the claims were debts within the meaning of the Act. The bank claimed in either case that the sums claimed were not debts but merely claims for damages. The learned Judges following *Iron and Hardware (India) Company's case and Milkha Singh and others' case* held that the claim of the firm Jattu Lal-Darbar Singh was not a "debt" because their contention was that the Bank had neither returned the pledged foodgrains nor their value, and was thus liable to return either the foodgrains stock or their market-value. The learned Judges observed that it was in effect a suit by a bailor against a bailee for damages for wrongful detention of the pledged goods and could not be regarded as anything but a claim for damages, and hence it was not a pecuniary liability within the meaning of the term "debt" as used in the Act. The appeal of the firm Jattu Lal-Darbar Singh was, therefore, dismissed. As regards the other party Kala Singh-Mehtab Singh—the distinction made was that the Bank admitted that it had, after the partition of the country, realized a certain sum of money by sale of the goods pledged with it by Kala Singh-Mehtab Singh, and these sale-proceeds were paid to the Custodian of Evacuee Property in Bahawalpur. It was, therefore, held that the amount admittedly realised by the Bank

Ram Lal Jain
v.
The Central Bank of India Ltd.

Capoor, J.

by sale of the goods was a "pecuniary liability" and hence a debt within the meaning of the Act. This case, therefore, fully supports the position taken up on behalf of the respondent to the present appeal.

The last case of this Court, upon which the respondent relied, is an unreported decision of R. P. Khosla, J., in *Shri Gopi Chand Singh and others* v. *Union of India and other* (First Appeal from Order No. 104 of 1958) decided on the 28th August, 1959. In that case certain displaced persons had despatched certain goods on the 12th August, 1947, through the agency of the North-Western Railway and the goods did not reach the destination. The learned Judge following *Iron and Hardware (India) Company's case* and *S. Milkha Singh and others' case*, held that the claim was not covered by the definition of "debt" as given in the Act. This case is also against the appellant.

The only case in which the expression "debt" as used in the Act, came to be considered and upon which the learned counsel for the appellant relies is *Union of India* v. *Shmt.* Tara Rani and others (1). The claim in that case, which was in dispute in the appeal, related to certain consignments of fruits and vegetables booked from Jammu Tawi to Delhi, on the 12th August, 1947, through the agency of the North-Western Railway. The goods did not reach the destination and were neither delivered to the consignee nor to the consignor. The principal judgment was delivered by D. K. Mahajan, J., with whom Dulat, J., agreed. After observing that the Railway while carrying goods for hire were liable for bailee, the learned Judge discussed the Bombay decisions in *Iron and Hardware (India) Company's case* and *Karamchand*

(1) A.I.R. 1960 Punj. 291.

Pessumal's case as well as this Court's Judgment in *Milka Singh and others' case.* The principal laid down in this case was that "in the case of a breach of contract what has to be settled first of all is as to who is responsible for the breach and it is after this matter is settled it can be said that a pecuniary liability on the part of the person guilty of the breach arises to pay damages and that till then there is no liability." The learned Judge was, however, unable to agree that in all claims for compensation or damages, there is no existing pecuniary liability. He considered that there could be cases where on the breach of a contract the pecuniary liability is an existing liability, not depending on the determination as to who is guilty of the breach. He considered that in a contract for carriage of goods the pecuniary liability arises the moment the goods are not delivered when they ought to have been delivered and what has to be determined is merely the quantum of that liability.

With due respect to my learned brother Mahajan, J., who decided this case, I confess that I am unable to appreciate the distinction made between a contract for carriage of goods and other contracts of bailment. As observed above, in such contracts the primary liability of the bailee is that laid down in section 151 of the Contract Act, that is, to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods, and it would not be correct to say that this was in its inception and essence a pecuniary liability.

On the consideration of the relevant statutes and of the authorities cited by the parties, I am of the view that the term "debt" as defined in subsection (6) of section 2 of the Act must be restricted in the sense so aptly laid down by Chagla, C.J.,

Ram Lal Jain
v.
The Central Bank of India Ltd.,

Capoor, J.

in *Iron and Hardware (India) Company's case* and followed by two Division Benches of this Court in *Milka Singh and others' case and Jattu Lal-Darbar Singh's case.* The appellant's claim in the present case for compensation by way of damages on account of the alleged wrongful detention of his goods by the respondent bank cannot, therefore, be considered a "debt" within the meaning of that term as defined in sub-section (6) of section 2 of the Act and the learned Single-Judge was right in holding, in agreement with the Tribunal, that the petition was incompetent.

In the result, upholding the judgment of the learned Single Judge, I would dismiss the appeal, but as the appeal fails on a legal point as to which there has been some conflict of judicial opinions, I would leave the parties to bear their own costs in this Court.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

Dulat, J.

DULAT, J.—It is after considerable hesitation, caused by the weight of judicial opinion against me, that I have decided to dissent.

The question in this case is whether the expression "debt", as defined in the Displaced Persons (Debts Adjustment) Act, 1951, includes a claim to compensation for damage caused by the breach of a contract, and more particularly caused by the failure to discharge "an obligation resembling those created by contract". The facts raising this question are those. The appellant, Ram Lal, was before partition doing business in Kasur which is now in Pakistan. He had a cash credit account with the respondent, being the Central Bank of India Limited, and the appellant had, as security for the loan taken from the Bank from time to time, pledged two hundred bales of cotton

with the Bank. Immediately before partition the appellant owed the respondent-Bank a sum of Rs. 44-11-0 only and his bales of cotton were still with the Bank. After partition the appellant demanded the return of his bales, and in reply he was told that those bales had been lost, during the communal disturbances for reasons beyond the control of the Bank. The appellant, thereupon filed an aplication before a tribunal set up under the Displaced Persons (Debts Adjustment) Act, 1951, claiming the price of the cotton bales which, according to him, came to Rs. 30,000 less the amount due from him, that is Rs. 44-11-0. The respondent-Bank in reply raised a number of objections stating that the appellant was not a displaced person, that his claim was not a "debt" within the meaning of the Displaced Persons (Debts Adjustment) Act, that his claim was not within time, and that the value of the bales of cotton was not correctly stated as, according to the Bank, the bales were worth about Rs. 9,000 only, and further that the goods had disappeared owing to reasons beyond the control of the Bank and the Bank was not liable. The Tribunal framed a number of issues and found on the evidence that the plaintiff before it, that is, the present appellant, was a displaced person, that his claim was within time, that the bales pledged by him with the Bank were worth Rs. 22,900, and that the Bank had not been able to show that the goods had been lost during the communal disturbances as alleged by the Bank. The Tribunal was not satisfied, however, that the claim made in the case fell within the definition of a "debt" as contained in the Displaced Persons (Debts Adjustment) Act, and, therefore, concluded that it had no jurisdiction to grant any relief to the appellant. The petition was consequently dismissed and the parties left to their own costs. Ram Lal appealed to this

Ram Lal Jain
v.
The Central Bank of India Ltd.,

Dulat, J.

Court and Bishan Narain, J., who heard the appeal, came to the conclusion that the appellant was not a creditor of the Bank at the time of partition and therefore, not entitled to make an application to the Tribunal under section 13 of the Act as he had done. He, thus, affirmed the conclusion of the Tribunal that it had no jurisdiction and without going into the other matters dismissed the appeal with costs. Hence this appeal under clause 10 of the Letters Patent.

The appellant, of course, does not claim that the respondent-Bank owes him or ever owed him any money as such. His claim is that the respondent-Bank having failed to discharge its obligation under the pledge, the appellant is entitled to receive compensation in money for the loss of his goods, and the respondent-Bank is under a liability to pay him such monetary compensation. The question is whether such liability is a "debt" within the meaning of the Displaced Persons (Debts Adjustment) Act, Section 2, sub-section (6) of that Act says—

> "2. (6) '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 * * * * * * * * *".

It is admitted to some extent that on the breach of a contract, and similarly on failure to discharge an obligation resembling a contract, a liability to pay compensation does arise, and Mr. Awasthy does accept this at least that a liability of some kind arises, the reservation being that such liability is not 'pecuniary' in nature. Section 73 of the Contract Act explains the consequences of breach of contract. It says—

> "73. When a contract has been broken, the party who suffers by such breach is

entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

Section 73 of the Contract Act thus clearly directs the party in default to compensate the one injured. Can it then be said that the direction here is not to pay money compensation but compensation is some other form Mr. Awasthy was unable to suggest that the compensation mentioned in section 73 can ever take any other form but, all the same, contended that the liability of the wrong-doer is still not liability to pay money. It is this distinction which I have not been able to appreciate in spite of what Chagla, C.J., said in *Iron and*

Ram Lal Jain
v.
The Central Bank of India Ltd.

Dulat, J.

Hardware (India) Company v. *Firm Shamlal and Brothers* (1), Dealing with this matter the learned Chief Justice observed—

> "It is well settled that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The breach of contract does not give rise to any debt and, therefore, it has been held that a right to recover damages is not assignable because it is not a chose in action. An actionable claim can be assigned, but in order that there should be an actionable claim there must be a debt in the sense of an existing obligation. But inasmuch as a breach of contract does not result in any existing obligation on the part of the person who commits the breach, the right to recover damages is not an actionable claim and cannot be assigned."

A little later he said—

> "As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the *fiat* of the Court.

(1) A.I.R. 1954 Bom. 423.

> Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant."

The argument first makes a distinction between the right of a person to receive compensation and his right to file a suit to recover compensation, and then makes a distinction between a liability created by law and a liability created by the decision of a Court. It will be noticed that section 73 of the Contract Act contemplates a situation where a breach of contract has occurred, and it then proceeds to define the remedy of the injured party and the corresponding liability of the wrong-doer. It certainly does not say that the injured party is merely entitled to file a suit but, on the other hand, says that he is entitled to receive compensation. The point of the distinction between a mere 'right to file a suit' for compensation as against a right to receive compensation is thus not borne out by section 73, and otherwise too there seems to me little point in it, for it could be said in every case that a person is merely entitled to go to Court and file a suit. The second distinction proceeds on the assumption that a party injured by the breach of a contract gets compensation not by reason of any existing obligation or liability on the part of the person who breaks the contract but because of the decision of the Court. This implies that the liability is not fixed by the law of the land but by

Ram Lal Jain
v.
The Central Bank of India Ltd.

Dulat, J.

the order of the Court as if a Court itself could determine the nature of a legal liability. To my mind, it appears that the function of a Court is merely to declare the rights and liabilities of disputing parties as they stand already determined by the law, and that the Court does not, and cannot, alter either the nature or the extent of a right or a liability. To say, therefore, that an injured party 'gets compensation as a result of the *fiat* of the Court', is not really true, for he gets compensation because section 73 of the Contract Act so directs, and all that the Court has to do is to give effect to that provision of law. I am, in the circumstances, unable to accept the distinction made by the learned Chief Justice, and it is this decision of his in *Iron and Hardware (India) Company* v. *Firm Sham Lal and Brothers,* which has been the basis of subsequent decisions in this Court. It will be noticed, as appears from the report, that Chagla, C.J., was not invited to consider the language of section 73 of the Contract Act. Kapur, J., sitting with Bhandari, C.J., in *S. Milkha Singh and others* v. *Messrs N. K. Gopala Krishna Mudaliar and others* (1), however, did, but he still thought that the argument adopted by Chagla, C.J., was not affected 'as no pecuniary liability could be said to arise till the Court has decided the matter', and he in that connection made a distinction between the concept of pecuniary liability and the concept of damages. It is said in this connection that when a person borrows money and agrees to pay it back, he incurs a pecuniary liability because his undertaking is, from the very start, to pay money, while in the case of a breach of contract giving rise to a claim for compensation there is in the beginning no agreement to pay any money and therefore, no pecuniary liability. The argument

(1) A.I.R. 1956 Punj. 174.

thus is that to be called a debt, the pecuniary liability must exist at the time of the agreement and not merely arise on its breach. This argument, in my opinion, mistakes the real meaning of liability, for, as I understand it, no liability can possibly arise out of any agreement. It arises only out of the breach of an agreement. I say this because liability does not come into existence except when a wrong is done. Thus Salmond in his book on Jurisprudence starts his chapter on 'Liability' by saying—

> "He who commits a wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrong-doer and the remedy of the wrong."

If this statement is correct, then it would be futile to look for liability, pecuniary or of any other kind, at the time when any agreement is entered into or any contract made. It can only be looked for when a breach of such agreement or contract occurs, and, as I have already pointed out, section 73 of the Contract Act leaves no doubt as to what happens in law when a contract is broken. The wrong-doer is then expressly placed under a liability to compensate the injured party, and if such compensation is necessarily to take the form of money then it seems difficult to avoid the conclusion that on the breach of a contract a pecuniary liability arises. It is true that the extent of the liability is not at that stage ascertained, but then the definition of "debt", as contained in the Displaced Persons (Debts Adjustment) Act, expressly includes unascertained pecuniary liability, and it seems to me that the intention behind the use of those words was to include, in the definition, claims for compensation for breach of contract.

Ram Lal Jain
v.
The Central Bank of India Ltd.,

Dulat, J.

This conclusion is strengthened by the examination of the scheme of the Act. I must confess that when Mahajan, J., and myself heard the appeal in *Union of India* v. *Shrimati Tara Rani and others* (1) I was reluctant to accept the suggestion that every case arising out of the breach of contract was intended to be brought within the jurisdiction of a tribunal set up under the Displaced Persons (Debts Adjustment) Act, and we, therefore, did not in detail examine the reasoning employed in *Iron and Hardware (India) Company's case*. That reluctance was due to the broad consideration that the jurisdiction of special tribunals ought to be restricted and not allowed to encroach on the general jurisdiction of ordinary Courts. On hearing fuller arguments in the present case, however, that reluctance of mine has disappeared. The first fact to be noticed in this connection is that these tribunals, although of course special, are in actual fact the very Courts already existing, the tribunal being under the Act "any civil court specified under section 4 as having authority to exercise jurisdiction under this Act". The second fact is that the proceedings are governed by the Code of Civil Procedure, and appeals from decrees and orders of the tribunal lie to the High Court. The general scheme of the Act is to provide a speedy and inexpensive machinery for the settlement of certain claims against displaced persons and a similar settlement of claims by displaced persons. It was known at the time that a large number of persons had come over from Pakistan and were not possessed of sufficient means to meet their liabilities or to enforce their remedies. In respect of the debts due from displaced persons, therefore, a provision was made for an adjustment largely resembling the settlement of an insolvent's debts,

(1) 1960 P.L.R. 309.

and similarly to enable displaced creditors to recover what was due to them a special machinery was set up. In both cases, however, similar kinds of liabilities were intended to be included, and a 'debt' was, therefore, defined for both purposes in the same way. It is admitted that in the case of an ordinary insolvent a claim against him for compensation arising out of breach of contract is provable in insolvency. It is, therefore, reasonable to think that the Legislature, when providing for the adjustment of debts due from displaced persons, similarly, intended that claims for compensation arising out of breaches of contract should be included. Mr. Awasthy pointed out that in other statutes, and in ordinary parlance of course, a debt is not taken to include a claim for compensation for breach of contract, and, therefore, contended that there is no reason to think that it was intended to be included in the definition of "debt" in the Displaced Persons (Debts Adjustment) Act. If that were so, and if Parliament intended to connote by the expression 'debt' only what it had previously connoted, there was hardly any occasion for defining it at such length, and the indication, therefore, is that Parliament meant to include in this expression something more than what was previously understood by it, and there is nothing in the other parts of the Act to show that a claim for compensation on breach of contract was not meant to be included.

To sum up, I find that section 73 of the Contract Act expressly provides that as soon as a breach of contract occurs, a liability to pay money compensation arises, and that the liability can only be described as pecuniary. It is, therefore, a 'debt' within the meaning of section 2(6) of the Displaced Persons (Debts Adjustment) Act. The case is exactly similar when the breach is not

Ram Lal Jain
v.
The Central Bank of India Ltd.,

Dulat, J.

of a contract, strictly speaking, but of any obligation resembling a contract like a pledge as is the case here. In my opinion, therefore, the appellant's claim against the respondent-Bank is in respect of a 'debt' and the Tribunal under the Displaced Persons (Debts Adjustment) Act has jurisdiction to determine it. I would, therefore, allow this appeal and send the case back to the learned Single Judge for the determination of the other questions involved in the appeal, without making any order as to costs.

ORDER OF THE COURT

The appeal is dismissed but the parties are left to their own costs in this Court.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and P. C. Pandit, JJ.

BALKISHAN,—*Appellant*

versus

SUBASH CHAND AND ANOTHER,—*Respondents*

Regular Second Appeal No. 175 of 1960

1960

Dec., 22nd

East Punjab Urban Rent Restriction Act (III of 1949)—Section 3—Notification No. 10665-LB-53/957, dated January 19, 1957, issued by the State Government under—Whether exempts the buildings constructed in 1953, 1954 and 1955 with effect from the dates of their completion or from the date of the notification—Interpretation of Statutes—Rules as to, stated.

Held, that notification No. 10665-LB-53/957, dated January 19, 1957, issued by the State Government under section 3 of the East Punjab Urban Rent Restriction Act, 1949, exempts the buildings constructed in the years 1953,