

LETTERS PATENT APPEAL

Before Kapur and Soni, JJ.

NIHAL SINGH,—Plaintiff-Appellant.

versus

HAZARA SINGH,—Defendant-Respondent.

Letters Patent Appeal No. 47 of 1949.

1952
August 1st

Punjab Relief of Indebtedness Act (VII of 1934) Section 13—Debt Conciliation Board—Power to discharge debt admitted by the debtor—Original document on which debt due not produced, effect of.

Held, that when a debtor admits a debt it is not open to the Debt Conciliation Board to discharge the debt merely on the ground that the original document on which the debt is due has not been produced.

Hari Narain v. Bhagat Ram (1), and Mohammed Din v. Phula Singh (2), relied upon.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment and decree passed by Mr Justice Falshaw, dated the 20th April 1949, in Second Appeal from order No. 52 of 1948 (Hazara Singh v. Nihal Singh) reversing that of Shri Gurcharan Singh, Senior Subordinate Judge, Ludhiana, dated the 15th October 1948, who remanded the case to S. Pritam Singh, Sub-Judge, 1st Class, for fresh decision.

MELA RAM AGGARWAL and RAJ KUMAR
AGGARWAL, for Appellant.

NATHU LAL WADHERA, for Respondent.

JUDGMENT

Kapur, J.

KAPUR J. This is a plaintiff's appeal against a judgment of a learned Single Judge of this Court, dated the 20th April 1949, allowing an appeal against an appellate order of the Senior Subordinate Judge by which he had remanded the case for trial holding that the order of discharge of debt was illegal.

Narain Singh executed a deed of mortgage for Rs 220 with interest at Rs 1-9-0 per cent. per

(1) A.I.R. 1944 Lah. 126.
(2) A.I.R. 1944 Lah. 127.

mensem on the 9th July 1938. Some time later Kishana Ram made an application to the Debt Conciliation Board under section 9 of the Relief of Indebtedness Act against Hazara Singh. On the 26th November 1943, Hazara Singh filed a written statement in which he admitted that Rs 220 were due to Nihal Singh on the basis of a simple mortgage and he prayed that conciliation may be brought about between him and his creditors. On the 21st March 1944, Nihal Singh, creditor, filed a written statement claiming Rs 417-5-0 being due to him on the basis of the mortgage and he also stated as to how this sum was arrived at—giving a credit of Rs 33 which had been received by him. Along with this written statement he filed a copy of the registered mortgage deed in his favour. On the same day an order was passed in which it was first ordered that the creditors should put in their documents by the 26th July 1944. This order related to those who had not put in their documents. About the other creditors it was stated that they had put in their written statements that day and they should be put on the file. On three occasions, so it has been held by the learned Single Judge, orders were passed by the Debt Conciliation Board calling upon the creditors to produce the original documents, but they were not produced and therefore on the 17th April 1945, the Board discharged the debt of the plaintiff Nihal Singh.

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On the 19th October 1946, Nihal Singh brought a suit for the recovery of Rs 328 being the amount due on his mortgage with interest on the principal which he calculated at a reduced rate. The trial Court dismissed the suit on the ground that the debt had been discharged which order was set aside by the appellate Court who remanded the case for trial. The learned single Judge has restored the decree of the trial Court and the plaintiff has appealed.

The sole question to be decided is whether in the circumstances of this case the Board could discharge the debt which had been mentioned in the written statement of the debtor who admitted that he owed a debt on a simple mortgage for

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Rs 220. When a debtor admits a debt due from him, it is not open to the Debt Conciliation Board to discharge the debt merely on the ground that the original document on which the debt is due has not been produced. It was so held by a learned single Judge of the Lahore High Court in *Hari Narain v. Bhagat Ram*, (1), which was approved of in a Division Bench judgment of that Court, *Mohammad Din v. Phula Singh* (2) where it was held that when a decretal amount due to a creditor has been admitted by the debtor in his petition under section 9, it is not necessary for the creditor to file a copy of the decree in support of his claim.

Mr. Mela Ram has strongly relied on these two judgments, and he submits that when the debtor, Hazara Singh, had admitted that there was a debt due to Nihal Singh on a mortgage for Rs. 220 it was not necessary for him to produce the original document, particularly when he had produced a copy, and in the first order of the Board it was the other persons who had been called upon to produce the original documents. The contention of Mr. Mela Ram appears to be sound, and I would, therefore, hold that in this particular case it was not necessary for the creditor to produce the original mortgage deed.

I would, therefore, allow this appeal, set aside the judgment of the learned single Judge and restore the order passed by the learned Senior Subordinate Judge and remand the case for trial in accordance with law. Costs will abide the event.

Parties have been directed to appear in the trial Court on the 6th October 1952.

Soni, J.

SONI, J.—I agree.

(1) A.I.R. 1944 Lah. 126.
 (2) A.I.R. 1944 Lah. 127.