

## REVISIONAL CIVIL

Before Bhandari, C.J.

Firm JAGAN NATH-RAM SARUP,—*Petitioners*

*versus*

Firm AMIN CHAND-PEAREY LAL, Etc.,—*Respondents*

Civil Revision No. 145 of 1953

1953

Sept. 24th.

*Displaced Persons (Debts Adjustment) Act, LXX of 1951—Section 15—Effect of—Whether all proceedings brought against a displaced debtor in respect of debts due from him or the proceedings in respect of debts particulars of which are specified in the schedule attached to the application under section 5 by the debtor are to be stayed—Duty of Court.*

*Held*, that all proceedings pending on the relevant date in any Civil Court in respect of any debt to which the displaced debtor is subject should be stayed and not only the proceedings in respect of debts which are specifically mentioned in the schedule attached to the application under section 5, and that it is the duty of the Court in which the case brought by the creditor is pending to stay the proceedings in accordance with the provisions of section 15.

*Petition under section 44 of Act IX of 1919, Punjab Courts Act, for revision of the order of Shri Jasmer Singh, Sub-Judge, 1st Class, Jullundur, dated the 23rd March 1953, dismissing the application for stay of proceedings under section 15 of Act 70 of 1951.*

BISHEN NARAIN, for—*Petitioners*.

H. L. SARIN and K. L. PANDIT, for—*Respondents*.

## JUDGMENT

Bhandari, C.J. BHANDARI, C.J. The short point for decision in the present case is whether clause (a) of section 15 of the Displaced Persons (Debts Adjustment) Act, 1951, imposes a statutory obligation on the Court to stay proceedings brought by a creditor against a displaced debtor even though the application presented by the debtor under section 5 did not

contain particulars of the debts owed by him to the said creditor. In other words, the question is whether section 15 has the effect of staying all proceedings brought against a displaced debtor in respect of debts due from him or only the proceedings in respect of debts particulars of which are specified in the schedule attached to the application presented by the said debtor.

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The plaintiffs in the case are the firm Amin Chand-Pearey Lal while the defendants are the firm Jagan Nath-Ram Sarup. Both these firms were carrying on business in Khanewal and the plaintiffs advanced certain monies to the defendants in that town. When the country was partitioned in August, 1947, both the firms migrated to India. On the 4th April 1950, the plaintiffs brought a suit against the defendants for the recovery of a sum of Rs. 20,000. On the 8th December 1952 Ram Sarup, who was admittedly one of the partners of the defendant firm, made an application under section 5 of the Displaced Persons (Debts Adjustment) Act, 1951, for the adjustment of his debts against the Central Bank of India. The schedule which was attached to this application contained the names of the various creditors of the applicant but did not contain the name of the firm Amin Chand-Pearey Lal. On the 15th January 1953, Jagan Nath and Baikunth Nath, who are said to be the other two partners of the defendant firm, made an application under section 15 of the Act of 1951 in which they prayed that the suit brought by the plaintiffs against the defendants on the 4th April 1950, be stayed. On the 7th March 1953, the plaintiff firm applied for the withdrawal of the suit against Ram Sarup, who as I have stated already, was one of the three partners of the defendant firm. The Court in which the plaintiffs' suit was pending rejected the application for stay on the ground that the debt due to the plaintiff firm was not mentioned in the schedule attached to the application of Ram Sarup. Jagan Nath and Baikunth Nath are dissatisfied with the order and have come to this Court in revision.

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Subsection (1) of section 5 of the Act of 1951 empowers a displaced debtor to make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain. Subsection (2) requires that the application shall be accompanied by certain schedules, among others being "a schedule containing full particulars of all his debts, whether owed jointly or individually, with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him." Clause (a) of section 15 is in the following terms : —

"15. Where a displaced debtor has made an application to the Tribunal under section 5 or under subsection (2) of section 11, the following consequences shall ensue, namely :—

- (a) all proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject (except proceedings by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews or revisions as aforesaid shall be transferred to the Tribunal and consolidated."

Mr. Sarin, who appears for the plaintiffs, contends that as section 5 clearly requires the applicant to give full particulars of *all* the debts owed by the applicant to any of his creditors and as the Legislature appears to have contemplated that *all* the proceedings pending against the applicant should be transferred to the Tribunal and consolidated, clause (a) of section 15 must be deemed to

refer only to the proceedings pending at the date of the application under section 5 in respect of debts, particulars of which are given in the schedule attached to the application under section 5. Mr. Bishen Narain, on the other hand, contends that as it is the duty of the Court to give the words used by the Legislature their plain, fair and literal meaning and as section 15 provides clearly that *all* proceedings pending in any civil Court in respect of any debt to which the displaced debtor is subject shall be stayed, it was the duty of the Court to stay the proceedings in the suit brought by the plaintiffs even though the schedule attached to the application presented by Ram Sarup did not contain particulars of the debt owed by him to the plaintiffs.

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The Act of 1951 was designed to provide for the adjustment and settlement of all debts due by displaced persons and the Legislature was accordingly at pains to devise a procedure which would enable the Tribunal constituted under the Act to ascertain the names of all the creditors of the displaced debtor and the particulars of all the debts due from him. Section 5 imposes an obligation on the debtor to give full particulars of *all* his debts whether owed jointly or individually together with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to him or can by the exercise of reasonable care and diligence be ascertained by him. Section 10 empowers any displaced person having a claim against a displaced debtor to make an application for the determination thereof to the appropriate Tribunal. Section 15 declares that when a displaced debtor has made an application to the Tribunal *all* proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews or revisions shall be transferred to the Tribunal and consolidated. If after an application under section 5 has been made, a creditor makes an application under section 10 or

**Firm Jagan Nath-Ram Sarup** the Court in which a case against the debtor is pending transmits the records thereof to the Tribunal under section 15, it is open to the Tribunal under the provisions of section 6 to require the debtor to amend the schedule attached to his application by inserting therein the names and addresses of his creditors and joint-debtors and full particulars of the debts due from him. When the schedule has been duly amended, it is the duty of the Tribunal to issue notices to the persons whose names are shown in the schedule as having claims against the displaced debtor and to take proceedings in accordance with the provisions of section 11 *et seq* of the statute. But if in spite of all the care that is taken by the Tribunal to ascertain the particulars of all the debts due from a displaced debtor it is unable to ascertain the name or particulars of any creditor, the provisions of section 47 come into play. This section declares that when a displaced debtor has not mentioned in the relevant schedule to his application any debt owing by him or any property, movable or immovable, belonging to him, whether such property is liable to attachment or not liable to attachment at all, nothing contained in the Act shall prevent :—

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(a) in the case of the debt, the creditor from instituting any proceeding for the recovery thereof under any law for the time being in force other than this Act; and

(b) in the case of the property, from being attached or otherwise dealt with under any such law.

In other words, the law declares that if a displaced debtor fails to disclose the debts due from him, the property belonging to him would be liable to be attached and he would not be entitled to claim any of the privileges conferred by this Act. As the Legislature was anxious to afford as much protection to a displaced debtor as possible, I am inclined to hold that the language of section 15

must be construed to mean what it says, namely that *all* proceedings pending on the relevant date in any civil Court in respect of any debt to which the displaced debtor is subject shall be stayed and not only the proceedings in respect of debts which are specifically mentioned in the schedule attached to the application under section 5.

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For these reasons, I am of the opinion that it was the duty of the Court in which the case brought by the plaintiffs was pending to stay the proceedings in accordance with the provisions of section 15. I would accordingly accept the petition, set aside the order of the Court below and direct that the proceedings in the case be stayed and the records thereof transmitted to the Tribunal in which Ram Sarup's application under section 5 is pending. There will be no order as to costs.

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#### APPELLATE CIVIL

Before Harnam Singh, J.

MOHD SADDIQ BARRY,—Appellant

versus

MOHD. ASHFAQ AND OTHERS,—Respondents.

Civil Regular Second Appeal No. 438 of 1951

1953

Sept. 10th

*Administration of Evacuee Property Act (Act XXXI of 1950)—Section 46—Suit for declaration qua property claimed to be evacuee property by the Custodian—Jurisdiction of civil Courts—Limits of—What order should be passed.*

*Held*, that under section 46 of the Administration of Evacuee Property Act the trial by the civil Court of the question whether the property in suit is or is not evacuee property is barred. The proper order to be passed by the court was not to dismiss the suit but to direct the adjudication of the question specified in section 46(a) by the Custodian and to order that the disposal of the suit be stayed pending the adjudication of that question. On its adjudication the Court will proceed with the trial of the suit on the basis that the decision given by the Custodian is binding upon the Court.