APPELLATE CIVIL

Before Chopra, J.

SARDAR SAMPURAN SINGH,—*Appellant*

versus

NEW BANK OF INDIA, LTD. AND OTHERS,—*Respondents*

First Appeal from the Order No. 78 of 1954.

1957

Oct. 29th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 12(2)—Application under—Necessity and requirements of—Plea of fraudulent concealment of assets—Whether can be raised in the written statement—such written statement, whether can be regarded as an application under section 12(2)—Section 42—Respondent dying during the pendency of the proceedings—Failure to bring his legal representatives on record within time—Effect of—Appeal, whether abates.

Held, that there is no legal bar to a written statement being regarded as an application and a plea raised in the written statement is sufficient compliance with the requirements of section 12. Subsection (2) of this section requires the creditor merely to state that the applicant debtor was guilty of concealment of a part of his assets and the particular intention of the debtor in doing so is not required to be stated. It is then for the Tribunal to find out whether the omission was intentional and fraudulent and to take action under this section, if it were so. The taking up of the plea in the written statement and a prayer for dismissal of the debtor's application on that account amounts to a strict compliance with the provisions of section 12.

Held, that section 42 of the Displaced Persons (Debts Adjustment) Act, 1951, does not enjoin upon an appellant to implead all the parties to the application as respondents to the appeal. Under the proviso the appellate Court may at any time direct that a party who is interested in the result of the appeal, but has not been impleaded, be made a respondent. So where one of the respondents had died during the pendency of the proceedings before the Tribunal but was made a respondent to the appeal and his legal representatives were brought on the record long after, the appeal could not be said to have abated.

First Appeal from the order of Shri Jasmer Singh, Tribunal, Jullundur, dated the 14th January, 1954, dismissing the application of S. Sampuran Singh, under section 5 of Act LXX of 1951.

(Application under section 5 of Act LXX of 1951.)

Claim in appeal: *For reversal of the order of the lower Court.*

H. S. GUJJRAL, for Appellant.

H. L. SIBBAL, S. L. PURI, DALJIT SINGH, N. S. KEER and Y. P. GANDHI, for Respondents.

JUDGMENT

CHOPRA, J.—This is an appeal against the order of the Tribunal, Jullundur, dismissing an application under section 5 of the Displaced Persons (Debts Adjustment) Act (No. LXX of 1951), hereinafter to be referred as the Act. Chopra, J.

Sampuran Singh appellant is a displaced person. He applied for adjustment of his debts amounting to more than a couple of lacs and due to the sixteen respondents. Section 5 of the Act requires the application of the displaced debtor for adjustment of his debts to be accompanied by the following schedules :—

(i) 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 ;

(ii) a schedule of all his properties, both movable and immovable (including

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claims due to him) which are not liable to attachment either under the Code of of Civil Procedure, 1908, (Act V of 1908), as amended by section 31 of this Act or under any other law for the time being in force, a specification of the values thereof and of the places where the same may be found ;

(iii) a schedule of all his properties, both movable and immovable (including claims due to him) which are not included in the schedule under item (ii) of this clause ; and

(iv) a schedule of all his properties in respect of which a claim has been submitted to the registering officer under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and, where any order has been passed in relation to the verification and valuation of the claim under that Act, with a certified copy of the order.

Section 6 lays down that where an application does not comply with any of the requirements of section 5, the Tribunal may either reject it, or grant the applicant such further time as it thinks fit to comply with such requirements. If the application is not so rejected, the Tribunal, under section 7, causes the respondents to be served with a notice of the date for hearing of the application. Section 8 provides for written statement showing cause against the application to be filed by the respondents. Section 12 says—

"(1) Any creditor of a displaced debtor may make an application to the Tribunal stating that the displaced debtor, who

regarded as sufficient in proof of a fact which was not specifically alleged. I do not see force in the contention and have no hesitation to reject it.

There is no legal bar to a written-statement being regarded as an application, a plea raised in the written-statement may be a sufficient compliance with the requirements of section 12. Subsection (2) of this section requires the creditor merely to state that the applicant debtor was guilty of concealment of a part of his assets, the particular intention of the debtor in doing so is not required to be stated. It is then for the Tribunal to find out whether the omission was intentional and fraudulent, and to take action under this section, if it were so. In my view, taking up the plea in the written-statement and a prayer for dismissal of the debtor's application on that account amounted to a strict compliance with the provisions of the section. Moreover, at the time of arguments on the two preliminary issues, it was specifically urged that the debtor had omitted to include his entire assets in the schedule wilfully and fraudulently. The law does not enjoin that the application ought to be in writing, an oral application may be equally effective. The Tribunal thereupon took the plea into consideration, framed an additional issue and called upon the parties to lead further evidence. It cannot, therefore, be said that the applicant has had no notice of the allegation against him or enough opportunity to meet it. The procedure laid down under section 12 has, therefore, been strictly complied with and if other requirements were also satisfied, the penalty prescribed by the section could follow.

It has then to be seen whether the omission was wilful and fraudulent. Mr. Gujral vehemently attacks the Tribunal's finding on the point and, having taken me through the evidence, submits

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the application was liable to be dismissed under section 12(2) of the Act. The Tribunal then framed the following additional issue and called upon the parties to adduce evidence thereon :—

> "Whether the applicant omitted to include all the assets in his application intentionally and fraudulently ? If so, what is its effect ?

The Tribunal was of the opinion that the stage at which the provisions of section 6 could be invoked had already passed, that some of the assets were not included in the schedule and that the omission was intentional and fraudulent. Consequently, the Tribunal acting under subsection (2) of section 12 dismissed the application. The present appeal is directed against this order of the Tribunal.

Mr. H. S. Gujral, learned counsel for the appellant, in the first place contends that the application could not be dismissed under section 12(2), because the subsection requires that there should be an application of a creditor stating that the displaced debtor had concealed some of his assets. and notice thereof should be given to the applicant. Before the penalty imposed by the section could be enforced the conditions necessary for taking action under it ought to have been fully and strictly satisfied, and not merely in their spirit. Averment of the omissions in the schedule in the written statements amounted to no more than a substantial compliance with the mandatory provisions of the section, which did not entail the penalty prescribed by the section. It is further submitted that it was nowhere specifically alleged that the omission was intentional and fraudulent and, therefore, no issues on the point could be framed and that no amount of evidence could be

regarded as sufficient in proof of a fact which was not specifically alleged. I do not see force in the contention and have no hesitation to reject it.

There is no legal bar to a written-statement being regarded as an application, a plea raised in the written-statement may be a sufficient compliance with the requirements of section 12. Subsection (2) of this section requires the creditor merely to state that the applicant debtor was guilty of concealment of a part of his assets, the particular intention of the debtor in doing so is not required to be stated. It is then for the Tribunal to find out whether the omission was intentional and fraudulent, and to take action under this section, if it were so. In my view, taking up the plea in the written-statement and a prayer for dismissal of the debtor's application on that account amounted to a strict compliance with the provisions of the section. Moreover, at the time of arguments on the two preliminary issues, it was specifically urged that the debtor had omitted to include his entire assets in the schedule wilfully and fraudulently. The law does not enjoin that the application ought to be in writing, an oral application may be equally effective. The Tribunal thereupon took the plea into consideration, framed an additional issue and called upon the parties to lead further evidence. It cannot, therefore, be said that the applicant has had no notice of the allegation against him or enough opportunity to meet it. The procedure laid down under section 12 has, therefore, been strictly complied with and if other requirements were also satisfied, the penalty prescribed by the section could follow.

It has then to be seen whether the omission was wilful and fraudulent. Mr. Gujral vehemently attacks the Tribunal's finding on the point and, having taken me through the evidence, submits

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that it was wholly insufficient to lead to an inference of fraudulent intention. It is pointed out that the appellant is an octagenarian and a Barrister of long standing, having practised at the Bar for a number of years. For some time, he was appointed the Deputy High Commissioner of India in Pakistan. He owned large property worth lacs in West Pakistan. His claim for the same is verified for Rs. 6,33,000. The debts which he now owes and which total rupees three lacs and odd, can be liquidated out of his claim. The claim is included in the schedule of his assets. The property which he is said to have omitted does not in fact exist, or at any rate is of an insignificant character. Having regard to all these facts, I am inclined to think that the contention must prevail. The high status of the appellant is not disputed. According to the Tribunal the assets not mentioned in the schedule are a *tonga,* a horse, furniture, books, one-sixth share in certain houses and land and shares of certain limited concerns. Apart from the statement of the applicant himself, there is no other evidence as regards the assets that are said to have been left out or to rebut the explanation given by the applicant for the omission. He states that he did once own shares in certain limited companies, but he had transferred the same to the New Bank of India some fifteen years ago. There is nothing to show that he is still the holder of those shares or has any interest left in them. His share in the land and a dilapidated house was mortgaged with the Amritsar Central Co-operative Bank for Rs. 25,000. The secured debt is mentioned in the schedule and the Bank impleaded as a respondent. The applicant admitted that he does possess an old mare, one out of use rickety *tonga,* scanty furniture and a few books, all worth a few hundred rupees. These he

omitted to mention in the schedule through inadvertence and lack of proper advice. None of the creditors has come forward to rebut the statement. As already observed, the allegation of fraud was not even made in the written statements filed by them. In the circumstances, it would not be safe to hold that the appellant intended to practise any fraud on his creditors by omitting to mention this insignificant part of his property in the schedule.

The effect of failure on the part of a displaced debtor to disclose any of his assets in the relevant schedule is provided by section 47 of the Act; the effect is that the provisions of the Act shall not give immunity to the property so omitted from being attached or otherwise dealt with under any other law for the time being in force. The omission having not been proved to be wilful and fraudulent, the application could not be dismissed under subsection (2) of section 12.

On behalf of respondents Nos. 7 and 16, it is urged that as against them the applicant had given up his claim before the Tribunal and had unnecessarily impleaded them as parties to the appeal. They pray for costs. Since the names of these respondents were not deleted from the application and they were mentioned as respondents in the copy supplied to the appellant, the counsel included them also in the array of respondents. Moreover, the appellant does not pray for any relief against these respondents in the appeal. Since they were once parties to the application and admittedly are the creditors, they might have been joined as *pro forma* respondents.

Gopal Singh, respondent No. 8 to the application died during its pendency before the Tribunal.

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Since his name was still mentioned in the copy he was joined as respondent in the appeal, filed on 11th May, 1954. An application to implead his son and his widow was presented on 7th February, 1956. Mr. Puri contends that so far as Gopal Singh is concerned, the appeal had abated. Section 42 of the Act contains a specific provision in this connection. It says—

> "For the purpose of any appeal under this Act, it shall be sufficient if only such persons as, in the opinion of the appellant, are necessary parties to the appeal for the purpose of determining the real questions in controversy between them, are impleaded as respondents to the appeal.
>
> Provided that where it appears to the High Court at the hearing that any person who was a party to the proceeding before the Tribunal from whose decree the appeal is preferred but who has not been named a party to the appeal is interested in the result of the appeal, the Court may adjourn the hearing to a future date to be fixed by the Court and direct that such person be made a respondent."

The section does not enjoin upon an appellant to implead all the parties to the application as respondents. Under the proviso the appellate Court may at any time direct that a party who is interested in the result of the appeal, but has not been impleaded, be made a respondent. The question of abatement in such a case does not arise. The legal representatives of the deceased have already been joined as respondents.

In the result, the appeal is allowed, the order of the Tribunal set aside and the case remitted to the Tribunal for being proceeded with according to law. No order is made as to costs. The parties, through their counsel, are directed to appear before the Tribunal on 19th November, 1957.

B.R.T.

SUPREME COURT.

Before Sudhi Ranjan Das, C. J., T. L. Venkatarama Aiyar, Sudhanshu Kumar Das, A. K. Sarkar and Vivian Bose, JJ.

PARSHOTAM LAL DHINGRA,—*Appellant.*

versus

UNION OF INDIA,—*Respondent.*

Civil Appeal No. 65 of 1957.

1957

Nov. 1st

Constitution of India (1950)—Articles 310 and 311—Persons appointed in permanent posts, temporary posts and officiating posts or on probation—Rights of—Whether entitled to the protections of Article 311—Protections of Article 311—In what cases available—Termination of service—Whether by way of punishment or otherwise—Rules to determine, stated.

Held, by majority (S. R. Das, C. J., and T. L. Venkatarama Aiyar, S. K. Das and A. K. Sarkar, JJ.):—

(1) That in the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service.